

PROCEEDINGS
IN MEMORY

OF THE LATE

SIDNEY BREESE,

HAD IN THE SUPREME COURT ON THE 1ST DAY OF
OCTOBER, 1878, BEING OF THE SEPTEMBER
TERM OF THAT YEAR, AT OTTAWA.

Upon the convening of Court the Chief Justice announced:

Court is convened for the purpose of receiving resolutions and hearing such remarks as may be made by the bar upon the death of Judge Breese.

Mr. HENRY I. SHELDON, secretary of the Chicago Bar Association: May it please the Court—On behalf of the Chicago Bar Association, I beg to present to the Court resolutions of respect to the memory of the late Mr. Justice Breese, passed at a meeting of the Chicago Bar, held on the 6th of July last, and afterwards adopted by the Chicago Bar Association.

I am accompanied in this duty by two of the veteran members of our profession, who are with me here to speak further the sentiments of our bar. The resolutions are as follows:

Resolved, That we have heard with unfeigned sorrow of the death of the Hon. Sidney Breese, late one of the justices of the Supreme Court. He has been taken from us full of years, indeed, and of honors, but in the midst of his usefulness. For sixty years he had occupied a conspicuous position as a lawyer, statesman and jurist, and, by his eminent services in professional and public life, and the sterling integrity which marked his character, inspired universal confidence and respect. The loss sustained by the death of such a man may justly be regarded as irreparable. In every position he attained he was fully equal to its responsibilities. As a practitioner at the bar, and as a public prosecutor, as a representative in the State legislature, and a member of the Senate of the United States, as judge of the circuit court, and justice and chief justice of the Supreme Court, he sustained himself with

signal ability and reputation among men who achieved imperishable renown in the service of the State and Nation. From the first organization of the State, in 1818, to the time of his death, he was intimately connected with its jurisprudence, either as a legislator or judge. In the last twenty years of his life, he was one of the most learned and accomplished members of the supreme bench, performing to the end, in his advanced years, his full share of the severe and incessant labors which have borne so oppressively upon the Court, and always acquitting himself of the arduous duties with distinguished ability and uprightness, as well as uniform courtesy.

Resolved, That the fidelity and untiring devotion to duty displayed by Judge Breese in the judicial office, no less than his rare culture and the remarkable capacity he possessed for grasping the most abstruse principles of the law, as well as complicated questions of fact, reflect the highest honor upon his character as a judge, and that in common with the members of the legal profession throughout the State, we deplore the loss which the bench and bar have sustained by his death. His memory will be held by us all in affectionate and grateful remembrance.

Resolved, That the chairman of this meeting be requested to communicate a copy of these resolutions to the family of the deceased.

We ask that the resolutions be accepted by your honors, and that they be ordered spread upon the records of the Court.

THE ATTORNEY-GENERAL: May it please the Court—The duty has been devolved upon me to present to this Court the action of the St. Louis bar taken on the occasion of the death of Judge Breese, together with a communication from the chairman of the meeting of that bar, which I will read to your honors:

The members of the St. Louis bar come together to express their high appreciation of the learning and exalted judicial character of Sidney Breese, late judge of the Supreme Court of Illinois.

Legal learning and judicial ability have no *situs*, and whenever and wherever these great qualities are prominently developed, the bar is ever ready to pay tribute of respect to their possessor. Therefore, it is fit that we of Missouri should express our estimate of the judicial character of an eminent jurist, now no more, of our sister State.

The judicial career of Judge Breese extended through a period of nearly forty years, and for a quarter of a century he was a justice of the Supreme Court of that State.

Throughout his long judicial service, by diligent and exhaustive study of the law, by his critical and comprehensive knowledge of the fundamental laws of the country, both Federal and State, and by his untiring and patient investigation of every subject submitted to him, his course excited the admiration and inspired the confidence and respect of the body of the people of Illinois, in fact, everywhere where his judicial action came in review.

His was a long life of diligent, faithful study. He did not hang on the outer edge of the law, but penetrated its profoundest depths. In his adjudications he labored to develop and disseminate the underlying principles of every question submitted to him, and he was bold and independent in asserting the law, unmoved by popular or other clamor.

These qualities and characteristics enshrined his judicial character and honor, and upheld him in all the changing vicissitudes of a long and eventful judicial career and life. Under his administration the law was faithfully maintained and exalted.

Full of honors and full of years, a venerable and venerated judge, he died with his judicial harness on, leaving his judicial work behind, a luminous example to the world.

Such honor and respect do we pay to the memory of Sidney Breese.

May it please the Court: We all recognize the obvious propriety that the voices of those who have participated from an early day as co-laborers with Judge Breese in his distinguished career should be principally heard upon this occasion. A few words, however, from those who can not claim that honor, I trust may not be unacceptable. His professional and public life began with the organization of our State, sixty years ago; and his name, either as reporter, counselor, or judge, adorns every volume, if not every page of its subsequent judicial history. The record there written constitutes the imperishable memorial of his fame; a monument more enduring than bronze or marble. It is the peculiar felicity of the members of this distinguished tribunal that the results of their labors are necessarily preserved in such form, and subserve such purposes, that they must ever be studied and meditated upon by the bar and their successors upon the bench. The achievements of the great jurist upon this arena can not pass into oblivion. My personal acquaintance with Judge Breese began in 1859, nearly twenty years ago. He was then, and for a long time had been, a member of this Court. He has been in his place at its sessions every term since, until the present. We have all become so familiar with his venerable presence and impressive bearing upon this bench, that when we appear at the session of this Court, we involuntarily feel that he must be present somewhere about us here. While the last twenty years to which I have referred have been only one-third of his entire public career, it has not been an unimportant portion.

Whether we consider the events which have transpired in that time, affecting our most vital interests as a nation or people, the growth and development of our State in population and material resources, or the advancement in the science of the law and the administration of justice, the era has not been excelled, if equaled, in any other period of our history. Consider the judicial labor performed in the last twenty years; more than three-fourths of the volumes of our Reports have been written within that period. With the material progress of the State, its enlarged commerce and business complications, the tendency to collisions between corporate and private interests, and the relative rights of capital and labor, new and intricate questions have been presented for judicial decision. In the determination of these questions it has been necessary to apply the fundamental principles of the law, which in the nature of things must ever remain essentially the same, to new circumstances and combinations of facts. The vigorous intellect and profound learning of Justice Breese have enriched this field of our jurisprudence. He was a gentleman of the old school; decorous in manner, and a punctilious observer of the usages of refined society. As one of that galaxy of eminent men who constituted the "pioneer bar" of our State, he brought to its ranks superior culture and acquirements, an exquisite taste and disciplined mind. He was possessed of a keen perception of the fitness of things. On one occasion a member of the bar remarked in his presence that he proposed to make a *speech* to the Court that day. Judge Breese's instant reply was: "Address arguments to the Court. Never make speeches to it. Speeches may be proper on other

occasions, but are out of place here." The student of his judicial opinions will be impressed with his great mental endowments, his comprehensive grasp of legal principles, and his vigorous logic—not unfrequently adorned with the pleasing graces of literature. His standard of the professional ethics of the bar was high. Unworthy conduct in its members was sure to meet with severe rebuke from him whenever opportunity was presented. On the other hand, he was quick to discern indications of marked talent or other meritorious qualities in its junior members, and seemed to take great satisfaction in expressing to them words of encouragement. His memory and fame are not only cherished by his contemporaries at the bar and colleagues in judicial service, but by those of the succeeding generation who can not share that distinction.

So long as the law is upheld as an honorable profession, and the reputation of our courts for ability, learning and integrity is maintained, the example of this great jurist will be emulated; and his name will hold a prominent position in the annals of the bench and bar.

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Mr. THOMAS HOYNE, (seconding the resolutions presented by Mr. Sheldon:)

If your honors please, in seconding the resolutions offered, I comply with a request of the bar association of Chicago, who have concurred in the proceedings of a general bar meeting held at Chicago, in July last, when the startling intelligence was received that Judge Breese had closed his long career of public usefulness.

It might be sufficient, perhaps, in such cases as this, to rest upon the sentiment of an ancient orator, that "in the recollections retained of such men by the living, there was sufficient of eulogy in the deeds they had performed." But there is a feeling also that when great men die there is something due to the living as well as the dead.

That great profession with which the judge was so long identified, connected, as it is, with the administration of justice, to which the highest integrity of character is essential in the prosperous conduct of affairs—it is obvious that no greater service can be rendered the State than that of impressing upon the profession itself the great lessons which so long a life of human rectitude is calculated to teach, as that of the man whose loss we meet to deplore, and whose memory we recall to honor.

Sallust, in his account of the conspiracy of Cataline, says, "that the great number and brilliancy of the Athenian writers so magnified the deeds of her citizens that Greece enjoyed a fame throughout the globe for a greatness of achievement beyond that to which she was entitled. But that the Romans, on the other hand, were so diligently employed in the practical service of the State, her greatest men preferred the glory of actual achievement to the praise of fame so sounded; and in this neglect of writers, her own fame had suffered because it was the habit of Rome to prefer the greater glory of acting such deeds, rather than writing them."

This claim of the Roman to the merit of making more history than her eminent men found time to write, is one which at this time can be urged with great force in behalf of Illinois.

While the State has a history to look back upon of which she may be proud, it may be said, that, with some exceptions, the great duty of writing it has been neglected, and anything like a complete history of this State may be said, as yet, to be unwritten.

It is manifest to every student of jurisprudence, that under our system of constitutional liberty, the judiciary of the State, being, as it is in all cases, a co-ordinate branch of the State government itself, is one of the most essential agencies we have in securing to the people the blessings of sound government.

The office of the judge rises to that of the very highest rank and dignity in the State. The courts, constantly dispensing justice in the presence of the people, come to be regarded as teachers and exemplars of the laws they sit to administer. Hence it follows, that aside from the official positions they hold, their personal influence, in whatever direction it may be exerted, greatly contributes to the progress or retardation of sound public opinion, which in the end secures or depresses the happiness of the people.

It has been a circumstance of fortunate augury in our State, that the influence of judges has been free of reproach, and the administration of justice untainted by any flagrant instances of corrupt practices on the part of judges. In fact, it may be rather said that our courts have escaped the scandals of the most corrupt period that has yet occurred in our history, while they have mainly been presided over by judges of the most irreproachable character, of rare and sterling common sense, and somewhat peculiarly gifted in respect to meeting the exigencies that are incident to infant settlements, and to the rise and progress of a new State like Illinois.

Illinois was first organized as a county of the State of Virginia in 1773—just one century ago. The most eloquent man of the revolution, Gov. Patrick Henry, of Virginia, signed the first commission that appointed John Todd, a lawyer, the first lieutenant commander of Illinois, to take charge of its military and civil affairs. In 1809 Illinois was organized as a territory, and Ninian W. Edwards, at the time Chief Justice of Kentucky, was appointed and accepted the office of Governor (being the first Governor of the territory appointed) from President Madison, which he held until his election as one of the first Senators sent by our State to Congress, in 1818, after the people had organized the territory and been admitted as a State into the American Union.

From that period down to the present, Illinois has, in her progress as a county, a territory and a State, been marked by events of the highest importance. During the last quarter of a century, her progress has been such as to draw upon herself the attention of the world. Her citizens have come to be recognized abroad and at home for their patriotism, services and ability. The history of the rise and progress of this State is, to a great extent, the biography, also, of her more eminent lawyers and judges.

From Gov. Edwards down to Abraham Lincoln, (and still further, the more recent loss the State has suffered in the death of Judge Breese,) the entire history of the State has been illustrated by the lives and services of some of the most remarkable and illustrious men whom the American Republic has produced.

In this connection it is worthy of remark, that it was a Senator from Illinois (Judge Thomas) who first proposed, in 1821, the well-known Missouri compromise line, which for the time carried the Union through the danger by which it was menaced from slavery, and prevented its extension north of 36 deg. 30 min.; and it is remarkable, also, that another Senator of Illinois, in 1854, thirty-three years afterwards, should have succeeded in repealing it. Neither can it ever be forgotten that the first great struggle to extend slavery occurred in this State, in 1821-24, soon after its organization, and that upon the soil of Illinois was achieved the first great triumph of anti-slavery, in a political contest, after the Declaration of Independence.

It suffices, however, to say, that in every triumph, as well of war as of peace, since the State became a member of the national Union, Illinois can record the names of those, living or dead, whose heroic or distinguished services shed a lustre upon the National and State history. In all that has been done to advance the interests of our civilization, she has achieved a renown that entitles her to rank among the foremost of the American Union.

When Gov. Henry issued his first commission to the county of Illinois, it contained the significant instruction to his lieutenant "that he must inculcate in the people of Illinois the value of liberty, and the differences between the state of free citizens and that slavery to which Illinois had been destined." The lesson of the mother, in this instance, was never lost upon her offspring.

It will be remembered that the first law ever passed in this State establishing free schools was enacted as early as 1825, and that it provided for their support by an appropriation of \$2 from every \$100 of revenue collected into the State Treasury. It was eventually repealed in 1829 by other acts, but against the earnest opposition of Gov. Edwards and his friend Judge Breese. The preamble of that act is worthy of notice, as it is eloquent in the utterance of those truths now so well understood. Among other things it says, that "no nation ever continued long in the enjoyment of civil and political freedom which was not both virtuous and enlightened, and that to enjoy the rights and liberties of freedom the people must understand them."

If your honors please, I have thus glanced back at the history of our State to mark some of the outlines of its early progress, in which no man, as an actor or public servant, has borne a more conspicuous or honorable part than the late venerable Chief Justice of this Court. During the last twenty years he has been a member of the bench which you now honor. You, as members of the Court, his colleagues and friends, can best testify as to the fidelity with which he performed his duties, and the extent of the labors necessarily cast upon him, with yourselves, in the recently crowded state of your dockets in the respective judicial divisions of the State.

It becomes me, if your honors please, to speak of Judge Breese as a personal friend. I was honored by his confidence, and the word friendship scarcely expresses the nature of the intimacy which so long subsisted between us. For more than a quarter of a century I have esteemed it my honorable privilege to share his confidence. On my part, the confidence was qualified by the respect I entertained for his great learning, his wisdom and genius! He was no ordinary man. I think it will be found of him that his posthumous fame will far exceed in value that of his living reputation. Time, in his case, will bring to maturity a fame which in the case of many public men it destroys. The Greek orator said over the graves of his dead, that the "whole earth is the sepulchre of illustrious men." Marble and brass are unnecessary in such cases. It is the fame of deeds performed. He says: "That being repositied in the universal remembrance of men, no time can obliterate and no generation omit to honor."

The monuments in Westminster Abbey to Lord Hale, to Mansfield and Bacon, will long have perished when their names will be remembered through their works—Bacon in his writings, Mansfield in his judgments, and Hale in his brightness of character as a great magistrate. The labors of Judge Breese while a member of this Court are in themselves a monument of learning, wisdom and justice. The labors and judgments of this court will send down the names of his associates, as well as himself, to posterity. And yet, if your honors please, it is not at all improbable that, had Judge Breese succeeded in the career he would have preferred at first, his life would not have been so fortunate for the State or himself.

It was not in his nature to have long sought that popularity of the forum, where there is to be a sacrifice of self-respect, or principle. His contempt of the typical demagogue, described in the verse of Homer as well as the prose of De Stael—that bane of ancient as well as modern republics—would have driven him, sooner or later, out of public life.

"Factitious monsters, born to vex the State
With wrangling talents, formed for foul debate."

It is indeed probable, that the more recent methods of seeking popularity in American public life, cured, if it did not entirely divest, Breese, the young statesman, of his ambition.

But Judge Breese did not go out of political life without leaving monuments of his career and labor behind him. That practical sagacity and comprehensive information for which he was distinguished, discovered what a connection by railroad with the Pacific across the continent would do for the development of his own State, and the commercial empire of America. He availed himself of his opportunity, and as chairman of the committee on public lands, in the United States Senate, in 1846, elaborated in detail and brought in the first report ever made, advocating and anticipating the construction of the Pacific railroad, twenty-three years in advance of its commencement. His friends were incredulous, but his enemies thought for the time they had succeeded in throwing ridicule on the project. It has happened that no man has

left to his age or his country any more enduring monument than this to transmit his name to posterity!

Who can look around upon this court room, around this court house: who, of all the gentlemen, eminent in their profession, that for years have come up here as to some temple or shrine, has failed to note the absence on that bench of the form and face with which the entire State was so long familiar.

It was last year that I saw him last, and it seems but yesterday only. Graceful in his venerable age and dignified in manner, the bold outline of his remarkable face, and the classic contour of his massive head, covered with its fine, full shock of white hair, made him appear as if he had descended, like Jove among the gods in council, upon these supreme seats of justice!

"Hyperion curls, the front of Jove himself,
A combination and a form indeed,
Where every god did seem to set his seal
To give the world assurance of a man."

Yet, did any professional friend follow the great magistrate to his own room, he would find a mortal like himself, genial and gladsome as some school boy escaped from school, "free of converse and full of glee." By nature of social habits, he loved his friends, and while conveying instruction, appeared as if he were receiving it. Familiar with the best authors in the English as well as other classics, he drew upon them freely. He loved every kind of rational amusement, such as the drama and poetry, and visited the galleries and museums of art, whenever he could avail himself of such opportunities. He was, indeed, a connoisseur as well as critic in art matters.

He cherished no hatreds, and never manifested any malice toward individuals. When he manifested resentment, it was always toward some person whom he supposed guilty of an outrage against justice, sound morals or the public interest.

He never paraded his personal griefs in conversation; nor did he complain of offenses committed against himself. Fraud, duplicity, gross breaches of professional integrity and trust, were ever sure to kindle his indignation; and in these cases he was frequently called upon to exercise a prudent control over his temper.

But such was the charity of that temper toward an enemy, or any person he disliked, that he never trusted himself to speak of him except to praise some of his better qualities. And his estimate of the character of such a person would be as calm and dispassionate as if he had been pronouncing a judicial decision between some parties to a record in this Court whom he had never seen to know.

He believed in the three cardinal principles of a christian life, "Faith, Hope, and Charity," but he believed, also, that the greatest of these was charity.

The death of Judge Breese marks an epoch of time in the history of this State. Born at the close of the century which saw the American revolution inaugurated, entering Illinois just after she had adopted her first constitution and had been admitted as a State into the Union, the contemporary and inti-

mate associate of many of the leading minds who had themselves borne an active part in all those events, he had, therefore, engaged with all the grave enthusiasm of his character, his learning and talents, in the work of carrying forward to their practical conclusion the great labors of those remarkable men. And to this work he devoted the more active and buoyant energies of his youth. "There were giants in those days." It is no wonder if he felt deeply impressed by their grand conception, and their moral and intellectual greatness.

The present generation, conscious of their own decline in virtue, are looking back at the heights upon which those men stood who became leaders in the civilization of a new continent, such as has never before blessed mankind.

It is to these teachers of the new gospel of liberty, the leaders and apostles of the American revolution, the founders of the new States in the wilderness, the regenerators of old systems of thought and government, the victors over ancient tyranny and misrule, that the world is now looking back for a satisfactory solution of the difficult problems that are now arising out of their work—as obstacles in the way of its further progress.

Judge Breese was one of those men who never doubted as to the ultimate result. "He saw the end from the beginning." "All error," as Jefferson said, "may be safely tolerated while truth has a free cause to combat it." The revolution of '76 is still working out popular government to its logical results. The slavery question was a difficult problem, even at the time of the Declaration of Independence, but the people worked it out through a great civil war.

Other questions must necessarily continue to arise, from the complication of government, in respect to the industries and finances of the nation. Divisions of opinion are inseparable from the freedom we enjoy as citizens, and party strifes are inevitable under all republics.

The death of Judge Breese has removed, perhaps, the last-living link of the connection that existed between the present generation and the men who organized this State government sixty years ago. He was a Senator from Illinois in the United States Senate, when the Senate, for the wisdom and the talents of its members, according to the opinion of foreign writers, had no equal as a deliberative assembly in the world. He was the contemporary, but what is more, he was considered the peer of Clay and of Webster, of Calhoun and of Wright, of Benton and Davis. Those at all familiar with the part he took in that body need not be told that his influence was very effective in carrying through such measures as especially led to the development of the resources and settlement of this State, without reference to those great national measures, upon which he always voted and acted with the Democratic party.

In this State and in this Court his labors will ever remain a conspicuous monument to his fame. The very first book ever published in this State was "Breese's Reports," and the last opinions delivered are in his handwriting.

He first became a member of this Court upon its reorganization in 1841. He went from this Court to the United States Senate in 1843. He returned the last time in 1857, to continue a member of this Court until his career was recently closed by his death.

On the title page of the eighteenth volume Illinois Reports will be found a note "that Judge Scates has resigned his seat, and the Hon. Sidney Breese has been elected to fill the vacancy occasioned by such resignation," and it is noted also, that another member of this bench, (which it is hoped he may long occupy), the Hon. Pinkney H. Walker, had been appointed by the Governor to fill the place of Judge Skinner, resigned.

Since those appointments, more than sixty-five volumes of Reports have followed within a period a little over twenty years, and it is only justice to the memory of Judge Breese, as well as the other able jurists who have occupied seats on that bench as his associates, to say that the authority of those Reports and the judicial opinions they contain, stand as high as those of any Court in this country. They are often sought in illustration of legal principles by eminent lawyers and judges in all other States, as well as our own. When it is considered that this great judge has spent sixty years of his life in active public service; that twenty of his last years have been occupied in the administration of justice; that he published the first volume of the Reports of this Court ever issued; and that his name goes down to posterity inscribed on the sixty-five or sixty-seven volumes, that will contain his judicial opinions upon nearly all subjects; the record he leaves of himself will surely be as immortal as anything connected with our civilization or history.

One more word: In December, 1833, the celebrated annalist, that ancient chronicler and gazeteer of our State, Rev. L. N. Peck, delivered a eulogy at the funeral of Gov. Edwards, in which he said: "The death of great men is a public calamity. The prosperity of a nation depends much more on the character of the public men than is commonly supposed. The direction they give to public affairs has a tendency to promote the wealth and prosperity of a nation, or to cover it with a thick cloud of adversity. These upright and good men are the defense of a nation, while fools bring it to destruction."

Wise, great and upright in all that he did as a public man, Judge Breese loved his State and loved his country. In view of the present condition of political morals, it is painful to reflect that had he been otherwise—a man of evil counsels or corrupt practices instead of one who cherished patriotic and upright impulses—what might have been the result to the State in which, for sixty years, he was so prominent an actor!

But, as it is, we need only look back upon what the State has accomplished. The rapid and steady progress which Illinois has made from the beginning of her history as a State, with whose progress as a public man Judge Breese has been so closely connected, admits of no doubt (were other evidence wanting) that his influence has been salutary and well directed. The able discharge of the many trusts confided to his hands as a representative of the people, and the inflexibly faithful and upright discharge of his judicial functions, leave no doubt of the integrity of his whole life, nor that the reputation which he leaves behind him will prove a valuable legacy to his family, posterity and the State, forever.

Hon. ISAAC N. ARNOLD: May it please the Court—I have been honored by the Chicago Bar Association with a request that I would add something to what has been said by my associates on this occasion.

In the fullness of years, and after a service of his country in various departments of the government, both State and National, beginning more than half a century ago, your honorable senior has been gathered to his fathers. It is every way fit and proper that we should meet here and place upon your records the resolutions which have been read, but no words which we can now speak can add to or detract from the permanent memorials of a well-spent, honorable and useful life, which he himself has left behind him, the pages of which are spread out over the records of this court in its reports, and upon the history of our State and Nation; and may I not adopt and appropriately use the memorable words of an early and life-long friend of the deceased—words uttered on a still more interesting occasion: “The world will little note nor long remember what *we* say here, but it can never forget what he *did* here.” The people of Illinois will little note nor long remember what *we* say here, but it will be long ere they forget these your records of his life-long, conscientious and intelligent labors.

It is now some years since I had the honor of appearing before this Court, and although Judge Breese was then in years an old man, yet neither then nor since, down to the time of his death, have we been able to discover any diminution of his mental powers. He seemed as quick to perceive, as patient to hear, and his mind as sound and discriminating to judge, as at any time during the many years in which he has held the scales of justice.

He came to Illinois in 1818, at about the time of its admission into the Union, and his public life, beginning at that period, has been almost continuous through the sixty years in which Illinois has existed as a State. No citizen, living or dead, has had so long a period of public service.

The first office he held was captain of militia, then assistant Secretary of State under Elias K. Kane, then postmaster of Kaskaskia. In 1822 he was appointed State's attorney, which office he held until 1827, when he was appointed attorney of the United States for Illinois, by John Quincy Adams. In 1831 he published Breese's Reports—a book familiar to every lawyer in the State. He served as lieutenant and major of volunteers in the Black Hawk war. In 1835 he was elected circuit judge. In 1842 he was elected to the Senate of the United States, and served as such for six years. In 1850 he accepted the position of member of the Legislature, and was elected Speaker. Soon thereafter he was again elected circuit judge, and from that time to his death, I believe, he held the offices of circuit judge, justice and chief justice of this High Court.

Such is the bare catalogue of the offices he held. I will not attempt to enumerate. It will be for his biographer to describe the great measures with which he has been identified, and the great cases which he has decided.

It would, I think, be difficult to find sixty years of more eventful history than the sixty years which span the life of our State and the public service

of Judge Breese. Did time permit, it would be a pleasing task to compare 1818 and 1878. Then Illinois had a population of some 50,000 (it was 55,000 at the census of 1820), and was on the extreme frontier. Now Illinois is the fourth State in the Union, and her importance is indicated by the fact that, in the last eighteen years, citizens in this State have been elected to the presidency for sixteen of those years.

Coming here to-day to lay upon this altar my humble tribute to the memory of Judge Breese, I am filled with associations and memories of the past. I go back in memory to the old State house at Springfield, and the caucus for and election of United States Senator, in 1842, at which I, as a member of the House of Representatives, had the honor to vote for him. I listen again to his scholarly address, spoken in the hall of the capitol, upon the early history of Illinois. I recall him as the then successful competitor for the Democratic nomination for Senator over his young and brilliant rival, Douglas—Douglas, whose last noble efforts for the Union crowned his life with honor, and over whose dust, reposing upon the shores of Lake Michigan, the State has lately done itself the honor of raising a monument to perpetuate her State pride in his fame. I recall the homely but genial face of that great lawyer, Archy Williams, for whom the Whigs voted at that senatorial election. I remember, too, the gay ball at the State house after the election, the bright eyes, then glowing with youth and beauty, now, alas! grown dim in age or death.

“The mossy marble rests
On the lips that we have pressed
In their bloom;
And the names we love to hear
Have been carved for many a year
On the tomb.”

How many, how very many, then prominent in public and social life, had long before our friend, passed across that mysterious river!

Let me call a few among the names that come thronging to our lips among the distinguished judges and lawyers who, at an early day, gathered around the rough pine tables of the frontier court houses.

The early contemporaries of Breese were Wilson, and Lockwood, and Brown, and Smith, and Douglas, who very early became a leader, and who was admitted to the bar in 1834. There was Richard M. Young, the genial gentleman, a judge and United States Senator; Gov. Thomas Ford, who, when holding court in Chicago, when a case of great wrong was presented, and the point was strenuously pressed that his court had no jurisdiction or power to remedy the wrong, met the argument with the declaration, “The jurisdiction of this court is co-extensive with rascality, and I shall take the responsibility.”

There was Nathaniel Pope, United States' District Judge, a giant in intellect; Justin Butterfield, who, in strength of logic and keenness of satire, had no superior, then or since; there was the silver-tongued Baker, killed at Ball's Bluff; there was the eloquent and heroic Bissell, whose vindication of the Illinois Volunteers in the Mexican war against the aspersions of Jefferson Davis

is still remembered among the traditions of the great speeches in Congress, and who, but for the intervention of Gen. Taylor, might have deprived, in single combat, the late rebellion of its leader; there was John J. Hardin, who fell upon the bloody field of Buena Vista; there was also Gov. Richard Yates, admitted to the bar in 1838; these and very many others, and with them, so simple and unassuming that his greatness was scarcely appreciated, yet towering as high in intellect as in stature, that great, typical man of the West, Abraham Lincoln. Of the men of an early day who still live, there are Judges David Davis, and Caton, and Trumbull, and Treat, and Walker, and Lawrence, and Edwards, and Browning, and Peck, and Judd, and Scammon, and Dickey, and Washburne, and many others, of whom, because they still live, and some of them are present, I can only say, long may their lives of usefulness be lengthened out, even as was his whose name to-day we try to honor.

And speaking of Washburne, recalls a paragraph from his pen in which he graphically characterizes the life, character and services of Judge Breese. Writing from Paris, in 1875, he said: "There is not a man in the State who knows so much of its early history as he does. No man living there has been thoroughly identified with all its history, has been so much a part of it, and who, at the bar, in the Senate, House, and on the bench has so long and so ably illustrated its annals. The Reports of the Supreme Court attest his profound knowledge of the law, the vigor of his intellect, the ripeness of his scholarship, and the peculiar grace of his diction. No judge who ever sat on the bench could touch the very heart and soul of a lawsuit with more unerring certainty; and his opinions will live as long as the jurisprudence of the State shall exist."

In reviewing the life of Judge Breese, another thought has been suggested. It is often said that the days of high moral virtue, of pure, disinterested public service, have passed away, and that this is an age of mere money-getting, vulgar display, and universal corruption. The lives of such as Breese, who wore the ermine for more than fifty years without stain or spot, and who died poor, show how false is such an estimate of the present; and may I not add, that when every morning's newspaper brings to us the name of some martyr for humanity—of some physician, nurse or clergyman, such as Parsons, who gladly give their lives to alleviate human suffering—while such costly services are being rendered, and while such lives as that of Breese are being lived, we will despair neither of the republic nor of humanity.

Mr. ROBERT HERVEY: May it please your honors—Although much has been said that was well deserved, and many and elegant tributes have been paid to the memory of the distinguished dead by those who knew him best and loved him most, yet having always, for many years, experienced the greatest kindness from our lamented friend, I can not permit this last sad occasion to pass without giving expression to my sincere and heartfelt per-

sonal sorrow for the loss which not only the bench and the bar, but the State and the Nation, are now, in the death of Judge Breese, called upon to deplore.

Your honors, the resolutions which have been read in your hearing are no empty sounds, nor the embodiment of mere words of course; they are simple, honest, earnest truth, as every one who knew the lamented deceased well knows. He was all that these resolutions claim for him, a statesman, as well as a jurist of the highest order, he was the peer of many of the intellectual giants who have passed away. A worthy citizen, an eminently just, laborious, courteous and faithful judge; and at all times, and under all circumstances, he was entirely, essentially, unmistakeably, a gentleman.

At the last term of this honorable Court, Judge Breese was in his place on the bench, apparently in his usual vigor of mind and body, diligently engaged in the performance of his important duties; exchanging with his brethren of the bench and with the bar those kindly courtesies in which none excelled more than he.

Little did he imagine on the day when that term ended and the Court adjourned, that even then the bow of the destroyer was bent; that even then he was treading on the dark thresholds of *two* worlds, and little did those who then parted from him with a cordial good-by, think that they were then looking on that face for the last time; that in a few short days those flashing eyes would be dimmed forever, that familiar voice would be hushed to be heard no more, and that all that earth would contain of that well-remembered form would be cold and silent dust. But so it was. And by this last and most terrible sudden instance of mortality which has almost paralyzed our hearts, we are again reminded by how frail and uncertain a tenure we hold our mortal life, and as I look on this assemblage now around me, and feel that no created being can tell who of us, speaker or listener, shall next be stricken down, on whose coffin lid the dull and heavy sound of the falling earth, and the appalling words, "Ashes to ashes, dust to dust," shall next strike on the ears and hearts of the survivors like a knell, am I not justified in saying that this is indeed a speaking warning, and that from the reft dwelling place of the soul of the illustrious departed there issues yet a living voice, crying out in trumpet tones to those who remain behind: "Prepare, and be ye ready, for ye know not when your time cometh."

Alas! alas! The large circle of distinguished men with whose careers and characters we have long been familiar, is rapidly contracting—one by one, and with alarming frequency, they are dropping out. We miss their well known names in the affairs of men. They no longer fight life's battle along with us, or tread the rough paths of the world by our side. "The places which once knew them, know them no more forever." But the world moves on in its resistless course, the clank of the hammer and the shrill scream of the engine, and the noisy hum of business still strike upon the ear, the living fall into the places and obliterate the foot-prints of the dead, and all that remains of those who are gone may be but a green mound or a grave-stone; eyes of affection that fail with wakefulness and tears, and an aching heart here and there which has been left behind to mourn.

Judge Breese is dead. I hardly realize the fact. Every line of that venerable countenance haunts me as I speak; but alas, alas, it is too true! The brave and kind old heart is pulseless now; the well-remembered form is but senseless clay. The laurels which he won by a long and active life of honored citizenship and of public trust and duties faithfully discharged, and which he wore so gracefully and so well, are faded and gone. From the unknown world on which he has entered, no messenger comes back to tell what place he takes amidst the vast throng there waiting for the grand assize.

Time and the occasion neither permit nor require from me more extended remarks, and I hasten to a close. I quit the subject with regret. It is one on which I would fain linger—but ere I resume my seat, may I be permitted to say, and with perfect truth, that in the death of Sidney Breese, one of the judges of this Court, the United States and the State of Illinois have lost a citizen as noble and true-hearted as any who lives in their broad expanse; the seat of justice, an officer worthy of all confidence, esteem and respect, and his brethren of the bench and bar, and a large and sorrowing circle of relatives and friends, a member of their society, whose exalted personal character did him and them more honor than even the high station which he so worthily filled.

“He was a man, take him for all in all:

We scarce shall look upon his like again.”

Worthy and excellent mentor and preceptor—farewell! Deep and dreamless be to thee the sleep of the grave, till summoned to receive that reward which we are well assured shall at last be bestowed on the faithful and the honest heart.

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EX-CHIEF JUSTICE JOHN D. CATON: May it please the Court—The formal announcement in this Court of the demise of its most venerable and one of its most distinguished members, is one of the most solemn and subduing communications which the bar can make to the bench; and this is doubly so to those whose official associations and personal intercourse have led them to respect, to admire and to love him whose memory now occupies all our thoughts, and whose loss fills our souls with the deepest anguish. It tells us, too, that an upright life, abstemious habits and useful labors, if they postpone, can not arrest the solemn summons which must reach us all, sooner or later. Who of us or of you shall next leave a void in our ranks, mortals can not know. For some of us, at least, the time can not be far distant when some kind friend will have an opportunity of making a similar announcement to this Court, and we may fondly hope that it will be in words of indulgent kindness, and be received with sympathetic attention.

It is now more than forty-three years since I first met Judge Breese. He was then in the beginning of his judicial course. I had lately assumed the labors and the responsibilities of a lawyer's life. On the first day we met, he did me a great service by selecting me to defend an innocent man who was indicted for a great crime, the commission of which he had confessed, which

was supported by the positive testimony of the real criminal. I was so fortunate as to find the testimony which established the truth to the entire satisfaction of everybody, and in discharging the prisoner after an acquittal, kind words for the counsel fell from the bench, which were not only great encouragement to the neophyte, but bore substantial fruits thereafter. From the beginning we seemed to understand each other, and so the friendship which was that day born of kindness, has grown with years, nourished and strengthened by official and personal intercourse, till the fiat of time snapped the cord which bound us together, and has left me only a memory to love—but it is a fragrant memory, which shall be sweetly cherished for the time that shall be left me before I am summoned to follow him. Oh! that I may leave such a remembrance, which some kind friend may thus cherish and so revere.

It is now more than thirty-six years since I first became his associate on this bench. Before, I knew the man; I now came to know the judge as well. Although called for a time from judicial life to join the high councils of the nation, he again returned with accumulated learning and ripened judgment, and joined me in the labors and responsibilities of this high tribunal, and here we labored with the senior member of the present bench—him who has longest among you worn the ermine immaculate in its spotless purity, till I withdrew from that exalted place which had been my life's ambition. Surely, then, I knew him well, both personally and officially, and may be allowed to speak feelingly of the value of his friendship, and with an assured confidence of his exalted integrity, of his legal learning, of his great industry, and his conscientious discharge of every duty. Neither the weight of years, nor the burthen of cares and responsibilities, could bow him down or relax his energies, but he bore all manfully and cheerfully to the very last, not thinking of respite from labor, or courting that repose which those who are conscious of long and faithful service are well justified in seeking. He died with his foot still in the furrow, and those who knew him best are assured he would have wished thus to pass away. Laboring to the last in the public service, a grateful public are everywhere demonstrating their appreciation of his labors.

Who, living or dead, has contributed more than Sidney Breese, not only to lay the foundations for the jurisprudence of Illinois, but to build upon them a structure which will be his most enduring monument? His connection with it was at the very beginning—first at the bar and then upon the bench. He always upheld its dignity, and essentially promoted its usefulness. His early professional associates were men of very marked ability, with whom competitive association, instead of discouraging and depressing, served to stimulate and develop his acute and vigorous intellect. Thoroughly read in the fundamental principles of jurisprudence, his discriminating judgment readily applied them to the various affairs of men.

To lose a member from so small a body of men, must, under any circumstances, be profoundly felt by his remaining associates; but when he who was the oldest and the most experienced, upon whose counsel and assistance you could so much rely, is suddenly struck down while almost standing in your

midst, it must arouse sensibilities of which there can be no expression. If his successors can hardly hope at the beginning to fill the place which he here occupied, at least they will find in the record of their illustrious predecessor a bright example, which they may well strive to imitate, and which may stimulate them to increasing efforts to attain his high mark.

That an enduring record may be made, which shall inform those who shall come after us of our estimate of the virtues and the services of the late Sidney Breese, I move the Court that the proceedings now transpiring be spread in full upon its records; and that his family may know how much we loved and revered him whose loss can never be repaired to them, that an engrossed copy be furnished his widow. And I further move, that as additional testimony of respect to the memory of the departed, this Court do now adjourn.

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Mr. JUSTICE SCOTT, responding in behalf of the Court: By the selection of my brethren, the duty devolves on me to express our appreciation of the sentiments of affection the bar have been pleased to express both in the resolutions presented and in the kind words spoken concerning our former associate on this bench. The tribute you bring is beautiful, and is worthy of him whose memory you would honor. In grateful recollection of many acts of personal kindness to me, I desire to present my humble tribute with the offerings others bring to his memory.

The ceremonies of the hour have reference to the memory of the late Hon. Sidney Breese, who died at Pinkneyville, June 27, 1878. He was born July 15, 1800. Thus, it is seen, his life covered more than three-fourths of the 19th century. He lived through that portion of our country's history distinguished for its activities in all that constitutes the material wealth of the State, and it would be strange indeed if the character of a man of such genius and learning as he possessed was not affected in a great degree by the enterprise in the midst of which he lived. The transpiring of the events of the century gave rise to those questions upon the discussion of which his judicial reputation in so large a measure depends. In this presence, it would be a work of supererogation to narrate the principal events of his life. It would be but stating facts with which all are familiar. So fully identified was he with the rise and progress of the State, that his official acts constitute no inconsiderable portion of its history.

My recollection of Judge Breese goes back to the days of my childhood. He was the first judge I ever saw holding court, and I remember vividly his personal appearance when I first saw him on the bench. In his personal bearing, he had that dignity that nature bestows as well as that which comes from the highest culture. He looked like a great man. In mental characteristics he was distinctly original. He had that strong will that gives positiveness to character, and without which there can be no greatness. Nevertheless, he was always a diffident man. His first effort at speaking at the bar was always regarded by him as a most complete failure, and it was with difficulty that he

could be induced to make further effort. The want of success on that occasion was attributable more to his diffidence than to any other cause. That characteristic clung to him during his entire life, and he never was quite able to throw it off, even in his last utterance from the bench. But his will power enabled him to triumph over that which so often embarrassed him, and gave him strength to walk over the men of his State and Nation the intellectual peer of the greatest.

Judge Breese was a man of great learning, in the best and broadest sense of that term. To the studies prescribed by the college of which he was a graduate, he added a lifetime of study. Notwithstanding his constant employment in public life, he found time for the study of classic literature, both in the Latin and English languages. After the close of the labors of the day, extending to a late hour of the evening, I have often known him, in his private room, before retiring, to spend hours in reading standard works in literature and on scientific subjects. It was his constant habit. It is a marvel the amount of intellectual labor he could endure. With him the desire for reading newspapers amounted to a passion, and but few men were as well informed as to current events. Of the faculties of his mind none were more remarkable than his memory, and what is most singular, it suffered no perceptible failure in his last days. Late in life he could repeat, when he chose to do so, choice specimens from the classics, both in Latin and English, which he had not read in the books in more than a score of years. A remarkable instance of his most extraordinary memory was witnessed at the last session he was with us. When the labors of the day, extending to a late hour of the evening, were over, he met a few members of the Court, to whom he repeated every word of a humorous poem of considerable length, and of that kind of composition most difficult to remember. As a conversationalist, Judge Breese excelled most of his contemporaries, and possessed that rare gift of compelling his friends to join with him in the conversation, and possessed in a high degree that civility that afforded them an opportunity to do so. Especially in relation to persons and incidents connected with the early history of the State was his conversation of the greatest interest. He knew every man at all conspicuous in early times, and could state something of his personal history that would give you an insight into his character. It is to be regretted if he has not written his recollections of the men of his time, and of the events occurring under his observation. Of a highly social nature, yet he rarely ever essayed to tell an anecdote, but relished much a good story, provided always it was chaste. Of his literary labors outside of his judicial writings, I am not aware he ever published anything but his volume of reports of the decisions of the Supreme Court of this State, comprising the decisions of that court from its organization in 1819 to 1830. He had, in manuscript, which I have seen, a very interesting account of the first settlements within the territory now comprised in the limits of the State, containing also a graphic account of the discoveries of Marquette and other bold adventurers of that period. Whether it was prepared with a view to publication I have no knowledge, but my impression is it was not.

What relates to his personal history will soon fade from the recollection of the living and be forever forgotten. It is strange, how soon that period will arrive. After the death of a few devoted friends, no one will concern himself as to how he looked or what were his habits or conversation in public or private life. He will only be remembered by his public works.

In two particulars Judge Breese will stand out prominent in history: first, in his character as a statesman, and, second, as a jurist. In the highest, best and most comprehensive sense of the term, he had a passion for politics. Had opportunity been assured to him to gratify his ambition in that department of the public service, it is my belief he would have abandoned his judicial labors at any time. His career as a statesman was brief, but brilliant, and marked by great results. But few possessed the sagacity to discern in the distant future those great measures and plans that would tend to the advantage and prosperity of the Nation. He served but one term in the United States Senate, but it was at a time when it contained Webster, Calhoun, Benton, Clay, and other great men of that period. Brief as was that period, his Senatorial labors will lose nothing in comparison with those of the most distinguished men of that body, if we shall judge by the results achieved. The plan of constructing the Illinois Central Railroad from Cairo to Galena, an enterprise that has done as much, if not more, than any other to develop the resources of the State, was first prominently brought forward by him, and its practicability demonstrated. It was his privilege, from his position in the Senate, to first bring to the notice of the American people that other great measure, the conception of a railroad to the Pacific coast, to connect with the railroads in process of construction from the east, to constitute a great thoroughfare for the commerce of the world across the continent, from ocean to ocean—an undertaking so great in its proportions, that even Benton, bold and adventurous as he was, deemed it impracticable. His report, made to the Senate on that subject, shows a forecast of grand events that were to affect the commerce of the entire civilized world, that was possessed by few of his contemporaries. On the subject of the settlement of the Oregon boundary, a question much discussed in the country during the time he was in Congress, he took a decided stand, and was of that number that was in favor of maintaining the line on 54 deg. 40 min., even by force, if necessary, and in a recent conversation with him he expressed his belief that the position taken ought to have been adhered to, and that it was a surrender of our rights to abandon it.

Few men have influenced in so large a measure the jurisprudence of the State or Nation in which they lived, as Judge Breese. Every one, to some extent, creates the opportunities for success in life. The same means he possessed were within the reach of others, had they possessed the ability to combine them. Genius makes opportunities as well as employs those at hand for successful achievements. We call men great only in comparison with others, and hence we are always looking to see what others have done in the same field of labor. Where the real does not exist, we may conceive the ideal, and institute comparisons. As no one appears anywhere in judicial history who

conforms exactly to the ideal of the true judge, it is no easy task to express the conception of such a character. Some few of the essential qualities readily suggest themselves. Above all he is one that hears a cause patiently, considers it deliberately, and decides with firmness. He will suffer no one to dictate his judgments, nor will he be inquired of on behalf of the State or citizen touching his opinion on any question that may arise, but when the "case happens" he will "do that which is fit for a judge to do." Besides an understanding of the laws he is to administer, he should have an acquaintance with the history of the races, and of the sources whence mankind have drawn all their notions of right and wrong, that he may be assisted thereby in the application of just principles to the affairs of everyday life, as they arise. Blind to everything but the cause of right, he knows no man in the decisions of causes, no matter how humble or exalted his position, nor on account of race, caste or color. He has that independence of character and resoluteness of purpose to declare the mandate of the law, whether popular or unpopular, in harmony with or against public clamor, according to his own convictions. The true judge is one that has the firmness to do exact justice to the king and the subject, or, as the phrase is with us, the commonwealth and the people. One is often as difficult as the other, and an independent, fearless impartiality in that regard is indispensable to establish either government or liberty. In him are found the essential elements of a just character, and these are integrity, purity and charity, in its catholic sense. Mercy is an attribute to justice, and justice is divinest when, "touched with the feeling of our infirmities," it manifests in its sentences that beautiful attribute. The complete code will embrace all the best conceptions of justice and right possessed by the most intelligent and highly cultured peoples, and the true judge will himself be imbued with the same just principles. We may not expect to find in him whose character we are considering, nor in that of any other judge of the present or past ages, all that we might conceive to belong to the ideal judge; but some of the grand essentials do appear in his character. Although making no parade of it, he possessed in a full measure that sterling integrity, that absolute incorruptibility, that insures purity in the administration of the law—qualities that belong to the true judge. His judgments were always distinctly marked by impartiality and even-handed justice. He believed in those fundamental principles, embodied in our organic law, that every person ought "to obtain, by law, right and justice freely, and without being obliged to purchase it," and that he ought to "find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation." He had not that self-confidence possessed by many, yet he was free from that hesitancy that so embarrasses many judges as to destroy, in a marked degree, their efficiency. Although he wrote with unusual facility, yet so careful was he in preparing his opinions, I have known him, when he deemed the case of importance, to write the same over as many as three or four times. His style was singularly perspicuous. As specimens of fine writing, it is my judgment his opinions will suffer nothing in comparison with the best of the most distinguished jurists of this country and of England. In

clearness of expression and splendor of diction they are fashioned after the best models. His composition is usually highly argumentative, and abounds in long sentences, and yet his opinions contain many short and terse but comprehensive sentences, in which one might often "understand a fury" in his words, but it was always those who had done wrong. It was his habit, in writing his opinions, to first make a brief statement of the facts, generally naming the plaintiff and defendant, and then to demonstrate the justness of the decision, which he could do with arguments which seemed irrefragable, from which the conclusion would often appear to follow as certainly as a corollary from demonstration.

Chief Justice Marshall was on the bench for a period of thirty-four years, His opinions, with the other members of the court, are comprised in thirty volumes, exclusive of his decisions on the circuit, many of which were written and published. Judge Breese was a member of our supreme court not quite twenty-three years, and yet his opinions, with those of the other justices, comprise seventy volumes, including the opinions now in manuscript. Some idea of the magnitude of his labors may be obtained when it is stated, as the truth is, he did his full share of the work, and that for the greater portion of the time he was on the bench, the court was composed of three justices. If we except one of his associates still on the bench, he has perhaps written more opinions than any judge who ever occupied the bench, in any of the American States. The exception, if any, is Chancellor Kent, and it is perhaps quite correct to say so many opinions do not appear in his name. It is known that from a sense of delicacy to his brethern, Chancellor Kent, when he was chief justice, wrote many opinions "*per curiam*." There is scarcely a question that concerns the public welfare or the jurisprudence of this great State upon which Judge Breese has not written something, and almost always with great clearness and accuracy. More enduring than a monument of solid granite, are the official reports of the State, to his learning and ability as a jurist. Including the opinions now in manuscript, in which he participated, we will have eighty-nine volumes of reports, with every one of which his name is connected either as reporter, counsel or as justice delivering the opinions. The questions discussed in the sixty years he was in some way connected with the court are of the utmost importance, and are such as would naturally be expected to arise in that formative period of a rapidly growing State, and especially in one that has so suddenly risen to the proportions of an empire in itself.

Sir Edward Coke, although he wrote much, wrote chiefly upon the law of real estate. Most of the abstruse and metaphysical definitions of the various estates at common law were formulated by him, and are still received as the most accurate. Lord Mansfield gave expression to the commercial law of England, and adorned it with his great learning and ability. In our own country, Chief Justice Marshall, with boldness and originality of thought, declared, as of first impression, the solution of great constitutional questions affecting vitally our form of government, and his judgments have ever been regarded

as definitive. In New York, Chancellor Kent gave form and comeliness to the chancery system of that great State, a work little less in magnitude than creating it anew, besides writing largely in its common law courts, and upon text books explanatory of the common law. Story, besides his judicial opinions, wrote text books for all countries where justice is administered, and especially where the common law prevails. But his greatest work is upon a single subject—Equity Jurisprudence.

Since the days of those eminent jurists, other questions of the utmost importance have arisen in the States concerning warehousemen, common carriers, and the control which the legislative department of the State has or may have over railroad and other corporations, but little, if at all, discussed by them. Within a few years Marshall's great opinion in the Dartmouth College case, which declares charters of private corporations to be contracts within the meaning of the constitution of the United States, which declares that no State shall make any law impairing the obligations of contracts, has been the subject of much discussion. What are known as the "granger cases," that arose in 1873 and 1874, in the western States, afforded a pretext for the renewed discussion of the principle of that case. Judge Breese wrote in one of these cases concerning legislative control over persons exercising the occupation of warehousemen in the storage of grain, that afterwards went to the Supreme Court of the United States, and his opinion is written with uncommon vigor, and with a force of reasoning that made that, which to me was the worse, seem the better cause.

As before remarked, Judge Breese's active life covered the entire existence of the State government down to the date of his death, and like those eminent jurists, Marshall, Kent and Story, as from necessity, he wrote much from first impression. His opinions on questions of the period, concerning legislative control over corporations, and the duties and liabilities of railroad and other private corporations, will take rank with the best opinions on these subjects, and become leading cases in all the future. These questions seem to have arisen in this and other western States in advance of the decisions of courts of the older States, on the same subjects. This fact may be attributed largely to the rapid progress and development of the resources of these States, bringing to the surface, in quick succession, questions of the gravest importance affecting all property rights, public and private interests, international and local commerce, railroad and other private corporations, in advance of the same questions in the older commonwealths where their growth has been steadier and of longer duration. On the subjects discussed it may well be believed his opinions will be of equal value in their bearing on the welfare of the generations to come, with the writings of the best of the older English and American jurists. Important as they are, the occasion will not justify me in dwelling longer on his judicial writings.

There are some features in his later life upon which his personal friends will delight to dwell. Although full of years, there was no apparent diminution in his intellectual strength nor of his large social qualities. Nearing the

close of his life, it was noticeable that whatever severities there may have been in his character, induced by the conflict of life, gave way, and in their stead came those amenities and gentler qualities that so adorn character. Many there are, who enjoyed an intimate companionship with him, who will long remember, as his life drew near its close, it abounded in those beautiful graces that make old age so lovely. He died suddenly, in the midst of his labors, and with no previous sickness. "In the full strength of years" he fell asleep,

"Like one who wraps the drapery of his couch
About him, and lies down to pleasant dreams."

He rests from his labors, but how truly can it be said of him, his works do follow him. His fame as a judicial writer will endure as long as the common law is administered anywhere among the nations of the earth, and the beneficent principles his learning and ability assisted to maintain will aid in establishing right and justice in behalf of the humblest as well as the most exalted of our race, so long as our civilization shall stand.

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Mr. JUSTICE WALKER: It was my fortune to have been long and intimately associated with Judge Breese on this bench, and it is, therefore, fit and proper that I should add a word to his memory.

It would be useless to attempt to recount the many and important acts of his public life. His long and active life was so full of incidents that it would require a volume to present them to the public, nor is it important that they should be referred to here, as they are familiar to all who are acquainted with the public affairs of our State in its past history. Nor does his character need eulogy, as it is prominent from what he has accomplished.

He was largely endowed by nature with a vigorous and comprehensive mind, well disciplined by a liberal education; but such an intellect did not need the education of the schools to enable him to take high rank among his fellow men. He was destined to take an active part in public affairs, and to become conspicuous for his ability and strength. He grasped and comprehended truths in their full scope, as applied to human action. He sought and mastered the great principles underlying all questions connected with government, law and civilization.

He cared little for forms where right and principles were involved, looking almost entirely to principles that should govern. His intellect was massive and vigorous, rather than quick and acute, never regarding or being attracted by nice or impalpable distinctions. His convictions were deep and permanent, and he never wavered or halted when an opinion was once formed, and yet, he was not always self-reliant in the application of legal principles.

His nature was strong, ardent and impulsive. He had great mental energy and indomitable will. His investigations were direct, and his mode of reasoning strictly logical. His plan of analysis was large, and his perception of

facts was clear and remarkably comprehensive, with a singular facility for freeing a question from all extraneous matter. His vigorous intellect, his indomitable will, and his fixedness of purpose rendered him successful in most of his purposes, and he therefore seldom failed in what he undertook to accomplish—in fact, he possessed all of the elements that command success in a high degree.

With such high intellectual endowments, such steadiness of purpose, and untiring energy, it would have been singular indeed had he not impressed his opinions and principles on the institutions of his State, or had he not contributed largely to the development of its material greatness. He came to the State when a young man—not more than of age—and when it was just admitted into the Union, when the savage roamed unmolested over the greater part of its broad prairies, and when it was but a wilderness. He lived to see it developed into the fourth State in the Union, and almost into an empire. To this vast change he contributed as much as any other person in the State and National councils. He was intimately connected with almost every great and important measure that has been adopted to produce such unprecedented growth in population, wealth, education, commerce and material resources. His active, broad and comprehensive mind was ready in the legislative councils to seize upon and apply the policy best calculated to promote these great ends.

No other citizen of the State has been so constantly trusted by the people in the discharge of public duties. From his first becoming a citizen of the State he has held offices of public trust. He was State's attorney, a member of the General Assembly, and Speaker of the House. He was United States Senator for six years. He was repeatedly on the circuit bench, and was twice a member of this Court, the latter time over twenty years, in all more than twenty-two years. He was twice Chief Justice of this Court. In every position he occupied he discharged the duties of the place with credit to the office, honor to himself, and satisfaction to the public. In his long and successful career on this bench, he contributed largely in establishing our system of jurisprudence. Few men have prepared and announced from the bench more opinions, in this or any other country, than have come from his pen. Many of them are marked for clearness, force, logic and finished expression. Few judges have shown more ability in constitutional, commercial, revenue, chancery, corporation, criminal and real estate questions. He was not inclined to yield assent to mere authorities, but followed the rules and maxims of the law, and never yielded assent to a proposition unless he believed it was based on sound legal principles. Hence he relied on demonstration and logic, rather than adjudged cases.

He was laborious and untiring, whether on the bench, in conference, or in the preparation of opinions. He was capable of doing a vast amount of intellectual labor in a short period of time. It was a matter of surprise that he could accomplish so much and so well in so short a period. This was a marked feature of his character from middle age to the end of his successful career.

His acts and name are so intimately interwoven with the history of our State that it can not be truly written without giving his history from early manhood to old age. He has achieved a name that must live and be known as long as the history of the first fifty years of our State shall be read. With our profession his name will be familiar, and revered by all of its members as long as the first ninety volumes of our Reports shall be read, and his opinions studied.

His name is national as a statesman, and no less so as a jurist. It is not likely that it will grow less distinguished when his ability and worth shall be fully tested in the crucible of time. Having discharged all of his public duties with marked ability, and having conferred honor on his State, he has died in the fullness of his years, honored and sincerely regretted by all. I doubt not that public opinion will accord to him a place in the foremost ranks of the great men of our State, whether as a statesman or jurist, as he truly deserves. He died in office, leaving none of his official duties unfinished, being punctual to the last in the faithful discharge of every duty and official requirement. He needs not a statue of brass or marble to perpetuate his name. It will live in the history of the times in which he lived and took such an active part.

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THE CHIEF JUSTICE: The resolutions offered by the bar are accepted, and are ordered to be spread upon the records of the Court, together with the proceedings of to-day.

As a further mark of respect to the memory of our late associate, this Court will now adjourn.

The Court then adjourned.

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BY NORMAN L. FREEMAN,
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