

IN MEMORIAM.

JOSEPH M. BAILEY.—JOHN D. CATON.

PROCEEDINGS HAD IN THE SUPREME COURT OF ILLINOIS, HELD AT
OTTAWA, ON SATURDAY, THE 28TH DAY OF MARCH, 1896,
BEING OF THE MARCH TERM OF THAT YEAR.

The Hon. JOSEPH MEAD BAILEY, one of the Justices of this court, died at Freeport, Illinois, on October 16, 1895. The Hon. JOHN DEAN CATON, formerly one of the Justices of this court, died at Chicago, Illinois, on July 30, 1895. At the March Term, 1896, of the court, held at Ottawa, on the 28th day of March the following proceedings were had:

Judge S. P. SHOPE, on the death of Judge BAILEY, addressed the court:

If your Honors please—The duty has been imposed upon me, as a member of the bar of this State, to present to this court the memorial adopted at a meeting of the Chicago bar in respect of the life, services and death of that distinguished citizen and judge, JOSEPH MEAD BAILEY. That memorial is as follows:

“Justice JOSEPH MEAD BAILEY was born in Wyoming county, New York, in the year 1833. After attending the district school and completing his education in the University of Rochester he studied law in the city of Rochester, New York, was admitted to the bar of that State in 1856, and the same year came to the State of Illinois and commenced the practice of his profession at Freeport. He served his district in the legislature from 1866 until 1870.

In 1877 he was elected judge of the twenty-sixth judicial circuit of Illinois, and continued a judge of that court until he was elected to the Supreme Court, in 1888. In 1878 he was assigned by the Supreme Court to duty as judge of the Appellate Court for the First District, and from that time until his election to the Supreme Court he continued in active service as judge of said Appellate Court. From June, 1892, to June, 1893, he served as chief justice of the Supreme Court of Illinois.

"In his relations as lawyer, as legislator, as judge of the circuit and as justice in the courts of review of this State he was always industrious, learned and faithful in the discharge of his duties; in his relations as husband and father he was kind, prudent and affectionate; as a citizen, patriotic and conservative; and in his intercourse with his brethren of the bar he was frank, courteous and obliging. His opinions as judge of the Appellate Court and as justice of the Supreme Court are full, comprehensive, satisfactory and convincing, and show a careful study on his part of all the facts in the record and a thorough consideration and understanding of the legal principles applicable to the case. In his death the State has lost a good citizen, a great judge, and those who enjoyed the privilege of his intimate acquaintance, a true and valued friend.

"This association adopts this brief memorial in sincere respect for his memory and in sympathetic condolence with his family and friends."

Judge SHOPE, continuing to address the court, said:

Standing in this presence to-day, after the lapse of sufficient time for the poignancy of our grief to become in some degree assuaged, we are enabled to take a calmer view of the life and services of the great lawyer in honor of whose memory the resolutions were passed which I have just read in your hearing.

I had the pleasure of making the acquaintance of Judge BAILEY in the summer of 1857. We were then just commencing our professional careers, each ambitious to attain proficiency and dignity in the profession. At that early day he gave decided evidence, as I had occasion to know, of the painstaking, careful study and scrutiny of his case which ever after characterized him at the bar and upon the bench. I found him genial, warm-hearted and obliging, but somewhat reserved, and wholly indisposed toward all those dissipations in which, unhappily, too many of our cotemporaries were

prone to indulge. I knew him on until his death, and in every walk of life he fulfilled the bright promise of his young manhood. He had early acquired habits of close study and thought, and having a mind singularly analytical and logical, the mastery of the common law and its mode of procedure soon marked him at the bar as a most successful practitioner. His intimate knowledge of the principles of the law, combined with great tact and knowledge of affairs and of men, made him a formidable antagonist, and it surprised no one that he very soon went to the front ranks in his profession. As a practitioner he was always ready, evincing a thorough knowledge of his case and of the principles of law governing it, and won the confidence of the jury and court by his eminent fairness and uniform courtesy towards his opponents. He was singularly self-poised, and took the assaults upon his positions with unruffled temper and parried them by superior knowledge and skill.

He was three times elected to the circuit bench, and enjoyed at once the confidence and esteem of the bar and people. Within a year of his first election as circuit judge he was chosen by this court as Appellate Judge for the First Appellate District. Of his work upon that bench, as well as of his work subsequently upon this, the records speak more eloquently in his praise than anything that can now be said. He was not only a profound lawyer, but he had, by wide and extensive reading and accurate study, drawn copiously from the great storehouse of knowledge, and was equipped for his work by a broad and liberal education,—an education in nowise limited to academic study, but the result of persistent and methodical courses of study and close thought, continued during his entire career. He came to the bench with a thoroughly well-trained mind, and equipped at all points for the discharge of the public duty.

His indefatigable industry and preparation for his work enabled him to perform a great amount of work in a limited time,—a qualification eminently required, if not absolutely essential, in a judge of this court. No one who knew Judge BAILEY'S qualifications, or had opportunity to observe his industry and methods, was surprised that he kept the work of this court, arduous and exacting as it is, well in hand. He carried into his discharge of these arduous duties that uniform courtesy and kindly consideration for the bar and for his associates that ever characterized him.

He was strong in his convictions, and had the courage always to express and defend them, whether at the bar or in the conference room. He made up his mind after such investigation and thought as the circumstances rendered possible, and, guided by an intuitive sense of right, came to his conclusions. He had always the courage of his convictions, and demanded everywhere the right to judge of the quality of his own acts by the light he could obtain, yet always with gentleness and courtesy accorded the same right to others. Usually firm in his convictions, he listened willingly to argument, impartially weighed it and yielded readily when convinced. No judge had greater respect for or yielded more readily to authority than he did. That great question, "What is the truth?" seemed ever present before him, and he sought its solution with conscientious diligence. He filled the definition of Lord Bacon, that "Judges ought to be more learned than witty, more reverent than plausible, and more advised than confident; and above all things, integrity is their portion and proper virtue." His opinions, enunciating those great principles which he had so well learned and which lie at the foundation of the progress of the race, are monuments to his great industry and learning, and will be read and followed long after the identity of the hand that wrote them is forever lost.

As a member of the legislature he took high rank, and by his untiring industry and devotion to the interests of the public ended his legislative career with added honors.

In private and social life Judge BAILEY was most estimable. Retiring in disposition, he was, by those who knew him least, sometimes regarded as distant and unapproachable; but to those who knew him well he was of most genial disposition, and was always ready to meet every advance with cordiality. He was warm-hearted and sincere, and to those whom he loved or who had won his confidence and esteem, helpful and kind always.

In his family he was a prince, but a prince with all those qualities of heart which make home all that is lovable and beautiful. His deep affection for his family, while never ostentatiously displayed, was one of the characteristics of this man, who was great enough to recognize everywhere that love is the first of God's laws. No one associated with him, following the death of his son, could question the great depth of sorrow that filled his soul. While, with a meekness and submission born of an unalterable faith in the good-

ness of the Supreme Ruler of all, he went about his duties day by day, yet much of his elasticity was gone,—a light had gone out of his life, never more to be lighted this side the grave.

The character of this strong man was simple and pure. His great strength, his poise of character, came from and were based upon an unalterable conviction of the truth of christianity. This he carried into his life and exemplified at his death.

I cannot disassociate thought of his life from that of an unfinished column, which, though replete with strength and beauty, is left by the builder before the shaft has risen to the high and proportions designed by the architect. He was a loving and lovable man, a true and helpful friend, a great and learned lawyer and judge. In his death, those of us who, by long association, learned to know and love him, have met an irretrievable loss; the State and the public at large have lost a most valuable public servant; the law one of its ablest expounders, and truth and purity an able, fearless and untiring advocate and defender. He has solved the problem, not of death, but of life, and, as we may believe, realized the full fruition of his faith. To such an one we instinctively address ourselves, "Say not good night, but in some brighter clime bid us good morning."

I move your Honors that the resolution of the Chicago bar, which I have read, be spread upon the records of this court.

Mr. JUSTICE WILKIN responded:

Few relations in life bring men into closer touch with each other than that of associates on this bench. The consideration of an almost endless variety of questions presented for decision, and their investigation and discussion, soon bring to light the personal characteristics of every member of the court. With more than seven years of such opportunities to form an estimate of the character of our deceased brother BAILEY as a lawyer, man and judge, we do not hesitate to give our unqualified assent to what is said of him in the resolutions just read. It is neither injustice to others nor mere extravagance of expression to say, that in proportion to his term of service no judge on this bench has more industriously, earnestly or ably performed his duties. Few, if any, have rendered more valuable services to the bench and bar of our State. When he came to this court he was not only equipped with a strong legal mind, thoroughly educated and broadly cultured, but with a ripe

experience in judicial work. It would have been difficult to find a man in Illinois better qualified for service in its court of last resort in 1888, when he entered upon its duties. It is often, and truly, said, "the best lawyers do not always make the best judges." To patiently investigate the facts of every case and judicially apply the law requires more than mere learning in the profession or ability to successfully try cases at the bar. Judge BAILEY was not only an able lawyer, but he possessed the judicial mind and temperament in an eminent degree. In the examination and decision of cases he sought but one end—the correct legal conclusion. No matter how complicated the facts or difficult the ascertainment of the law, his mind was only satisfied after he had thoroughly investigated the whole case and honestly and conscientiously believed he had found its correct solution on legal principles. To the accomplishment of that purpose he bent all his energies with a painstaking industry seldom equaled. To say he made mistakes is but to recognize the painful truth that human judgment, however enlightened and however carefully expressed, has always been and ever must be fallible. That he earnestly maintained a position once assumed, but evidenced his sincerity in the belief of its correctness. In doing so he was never dogmatical, but always considerate of opposing views and respectful to those entertaining them. It is no exaggeration to say he never spoke unkindly or ill-naturedly of any one. Among his many splendid traits of character, his self-control and uniform courtesy towards others were most marked. He was just, generous and forgiving at all times and under all circumstances. His promotion to the Supreme bench was not unsought. It was, in his own language, "the realization of a long-cherished ambition." Neither did he enter upon its duties feeling that other opportunities might tempt him to leave it. He often said, "I hope to spend the rest of my active life on this bench." That wish he was permitted to realize. For months he performed his full share of our work in the shadow of the death which he knew must soon overtake him, and he only laid down his pen a few weeks before the final summons came. To human conception his death seems untimely, but it is gratifying to know that he met it with unflinching courage and with a christian's faith and hope, leaving to his family and the people of this State the legacy of an honorable name and an exemplary life.

Judge S. P. SHOPE said, concerning the death of Judge CATON:

If the Court please—The following memorial, commemorative of the life and services of one of Illinois greatest and most useful men, has been prepared by the committee appointed for that purpose, as expressive, in some degree, of the sense of the bar of the State, and I have been requested to present it to your Honors and ask that it be spread upon the records of this court:

"JOHN DEAN CATON was born March 19, 1812, in Monroe, Orange county, New York. His ancestry emigrated to this country before the revolutionary war, his father serving in the American army. He spent the early years of his life upon a farm, and in poverty. At the age of about fifteen he was apprenticed to a saddle and harness-maker, with whom he remained for a considerable time. His eyesight becoming impaired, he was forced to leave that employment and again return to the home of his widowed mother, who had in the meantime removed to Utica, New York. To assist in the maintenance of the family he hired a horse and wagon, and became a common carrier between Waterville and Utica.

"In 1829 he rejoined his mother, and entered the academy at Utica, and applied himself assiduously to studying the common branches of an education, and that of surveying. He became so far proficient in surveying that he did some work as surveyor, and thereby added to his otherwise scanty means of support. The winter of that year he taught school, and the following summer again hired out on a farm, and the succeeding winter entered upon a classical course of study. In December, 1831, he entered a lawyer's office as a student of law. Having acquired the rudiments of a legal education he came west, arriving in Chicago June 19, 1833, and was the first, but one, to offer his services as a practitioner at law in that city, and brought the first suit instituted in the circuit court in that county. In the fall of 1833 he obtained a license to practice law, from Judges Lockwood and Smith, then judges of this court. In 1835 he was married, and in 1836 erected the first house on the 'school section' west of the Chicago river. His health having, to some extent, failed, in 1839 he moved to a farm, where he resided until 1842, meanwhile, however, keeping up his practice in the neighboring counties. In the latter year Judge Ford was elected Governor, and Mr. CATON was appointed as his successor upon the Supreme bench. He was then thirty

years of age. At the expiration of the short term for which he was appointed John M. Robinson was chosen to the position. Upon the death of Judge Robinson, the following April, Judge CATON was again appointed and commissioned as his successor, and was subsequently elected by the legislature. In 1848 the judicial system was so far revised that the Supreme Court was composed of three judges, elected by the people. Judges Samuel H. Treat, Lyman Trumbull and JOHN DEAN CATON were the first chosen under that constitution. By law the judges were to cast lots for length of term. Judge Trumbull drew the short term, Judge CATON the intermediate term, the long term falling to Judge Treat. Judge Treat resigned in 1855, and Judge CATON succeeded him as chief justice, and so continued until the expiration of his commission. He was re-elected in 1857, and again became chief justice, and continued to occupy that exalted position until 1864, when he resigned.

"After an uninterrupted service of twenty-two years, Chief Justice CATON, in the vigor of life and with mental powers unimpaired, retired from the active duties of his profession to indulge in other pursuits less exhausting in their nature and more congenial to his tastes. He had early learned to economize his time, and, notwithstanding the arduous duties of his judicial position, was enabled to turn his attention to other pursuits and to identify his name with many of the leading enterprises of the day, without in the slightest degree interfering with the discharge of the public duty. As early as 1849 he became connected with telegraph operations, from which, in connection with his other enterprises, he amassed a large fortune. In addition to his great erudition as a lawyer, his vast knowledge of men and affairs, he was a practical and sagacious business man, capable of originating and directing the most complex business enterprises.

"After his retirement, and especially after about the year 1870, he devoted much time to travel and to literary and scientific pursuits. His literary tastes and laborious habits forbade that he should abandon letters and devote his entire time and attention to the many business enterprises in which he was engaged. He turned his attention to writing upon literary and scientific subjects, in a style at once captivating, easy, clear and unaffected. He has left much of a high order as the result of his great mental activity, methodical courses of study and keen appreciation of the subjects

falling within his attention. His work while upon the bench will, however, have the greatest attraction for students of the law. He was surrounded by a great bar, and rose equal to the just expectations of all his friends. He entertained always a high appreciation of the profession and of his official position, and ever sought to bring credit and honor to both. No more fit illustration of the lofty thought of this distinguished jurist can be found than his own words in his address to the bar, when, on retirement from the bench, he said: 'I fully appreciate that this (the bench) is a place worthy of any well-regulated ambition. A wholesome desire for an enduring fame may here find a theater in which it may toil to a useful purpose, and with the well-grounded hope of attaining so desirable an end. I resign the great trusts which have been reposed in me, with the comfortable reflection that I have discharged them with fidelity and with the utmost ability with which I have been endowed.'

"No one familiar with the history of the Supreme Court of Illinois from 1842 to 1854 will in the slightest degree question the entire correctness of this last sentence. Those who had gone before him had laid broad and deep the foundations of that great system of jurisprudence under which the wilderness of three-quarters of a century ago has become one of the foremost States of the American Union. Judge CATON, coming in the vigor of his young manhood to the bench, thoroughly imbued with the principles of the common law, built upon the foundation thus laid, wisely and well, and secured to us the certain adoption and retention of those great fundamental principles of law upon which the security of life, property and individual right so securely rests, as well as that direct and simple mode of procedure known only to the common law, and which has received the sanction of the centuries. He was indefatigable in his labors, bringing to bear at all times his highest and best powers, discharging every duty with a sturdy honesty of purpose, born of an intuitive sense of right. He was solid, rather than brilliant, and reached results by methodical processes, and, having great power of analysis and being capable of great endurance in investigation, he reached conclusions which will stand the test of time. We point to his life and achievements with pride, and as worthy of emulation. He died of paralysis, at his home in Chicago, July 30, 1895, at the age of eighty-four years.

"Thus passes away another of the great men of the State. He shared largely in promoting its progress and was instrumental in shaping its destiny. The members of the bar, adopting this brief memorial, do so in sincere respect to his memory, and in sympathetic condolence with his immediate family and friends."

Judge SHOPE, continuing, said:

If your Honors please—Brief as this memorial is, it tells of a successful life; of success born of high ambition and arduous labor; of the rewards that unremitting toil and strict integrity of purpose, coupled with ability, always bring. In this presence it would be a work of supererogation for me to further allude to his work upon the bench or at the bar, or, indeed, to amplify upon his work or life in the broad fields upon which he entered and so signally succeeded. They are familiar to you as household traditions. He lived a life of activity and usefulness, and died at a ripe old age, full of honors. He did much and deserved well, and received the encomiums and commendation of his fellow countrymen.

How true it is that the longest life, filled with ceaseless activities, is but a span. Our association with our fellows is epitomized in the simple words, "hail and farewell." In the morning of life we greet them; they go a little way with us; but the evening comes, and, though it be illumined by the star of hope, we bid them a long farewell. His life, so full of cares and labors, mayhap of sorrows, of successes, of joys, of triumphs, has ended. It is not to be supposed that, even in later years, he enjoyed only pleasure freed from the cares of life. As he said in the presence of this court when speaking of another who had fallen, "With all our joys are mingled strains of sorrow." And may we not say here of him as he said on the same occasion: "Happiness unalloyed is reserved for that brighter and better world promised to those who act well their part on earth, into the full fruition of which those who knew him better doubt not he is accepted."

I respectfully move your Honors that the memorial I have read in your presence be spread upon the records of this court.

Mr. CHIEF JUSTICE CRAIG responded:

Judge CATON resided in this State so many years, and was so well known by the people of the State, that what the court may say in regard to him will add but little to his high standing as a

citizen or his eminent ability as a jurist. He came into the State early in the thirties, when a young man, and located in Chicago, then a small village, to practice his chosen profession. His energy and ability soon filled his office with business, and it was but a short time before he demonstrated that he was able to compete successfully in the trial of causes with those who were his seniors in years and practice. In 1842 his high character as a citizen and his reputation as a lawyer had become so well established that he was appointed an associate justice of the Supreme Court of the State. He at once entered upon the discharge of the duties of his office, and through successive elections he remained on the bench twenty-two years, resigning in 1864, when he was succeeded by the late Judge Beckwith. His opinions while on the bench will be found in the Supreme Court Reports, beginning with Third Scammon and ending with the thirty-third volume of the Illinois Reports, and it may be truthfully said of his opinions that they not only lay down the rules of law accurately, but they are logical, vigorous and filled with practical common sense, and whenever read they reflect the mind and hand of the great judge who produced them.

Judge CATON was not merely a lawyer, but he possessed fine business talent, and his superior knowledge of the business affairs of men enabled him to determine with great facility the rules of law which should be applied to a transaction which arose in court for determination. When he was first appointed to the bench the State was new, and but few questions of importance had been settled by the Supreme Court of the State, and it devolved upon him and his associates to settle questions which in a great measure determined the future policy of the State. He, as the sequel shows, was equal to the task, and I think that I am safe in saying the prosperity of our State in a great measure results from the integrity and wisdom of the judiciary while he was honored with a seat on the bench. Justice Breese, one of his associates on the bench for several years, in speaking to me in regard to Judge CATON, said: "In the decision of a case where a question arose which he had not investigated and did not know definitely what the law was, he always knew what the law ought to be."

But it will not be necessary to speak further in regard to him. His work speaks for itself. His friends may erect a monument to perpetuate his memory, but that monument will crumble and decay, but Judge CATON'S opinions while a member of this court

may be regarded as a monument erected by himself, which will endure so long as our present system of jurisprudence exists.

As a memorial to our deceased brethren the resolutions presented will be spread at large upon the records of the court, and with them will be recorded the remarks by which their presentation has been accompanied. As a further mark of respect for the deceased it is ordered that court do now adjourn to court in course.

GUSTAVUS KOERNER.

PROCEEDINGS HAD IN THE SUPREME COURT OF ILLINOIS, AT
MT. VERNON, ON THE 7TH DAY OF MAY, 1896, BEING
OF THE MAY TERM OF THAT YEAR.

The Hon. GUSTAVUS KOERNER, formerly one of the Justices of this court, died at Belleville, Illinois, on April 9, 1896. At the May term, 1896, held at Mt. Vernon, on May 7 the following proceedings were had:

Upon the convening of the 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 KOERNER, formerly one of the Justices of this court."

JAMES M. DILL, addressing the court, said:

May it please the court—At a meeting of the bar of St. Clair county, held in the circuit court room in the city of Belleville on the 13th day of April, 1896, the Hon. B. R. Burroughs, Judge, presiding, a memorial and resolutions to the memory of Governor KOERNER were adopted, and thereupon the court appointed a committee of three, composed of James M. Dill, Marshall W. Weir and John B. Hay, with instructions to present the memorial and resolutions to

this court at its May term of this year, and in the discharge of this duty the committee now appears in this court and begs to present the memorial and resolutions, which are as follows:

"GUSTAVUS KOERNER, our departed professional brother, was born November 20, 1809, at Frankfort-on-the-Main, a free city of Germany, and died at Belleville, Illinois, on Thursday, April 9, at 7:30 o'clock A. M., 1896. His father, Bernard Koerner, was a public-spirited citizen, a member of the legislative council of that city, and by occupation a publisher. Young KOERNER was a student at Heidelberg in 1832, when the public mind of Germany was stirred and agitated by sympathy with the revolution of 1830, which dethroned Charles X and made Louis Philippe his successor as king of France,—just as Germany, eighteen years afterwards, in 1848, was again stimulated to political reform by a revolution which paved the way to the present French republic. The former revolution made KOERNER, with many of his associates, an exile from his native and a citizen of this his adopted country, as the latter revolution rendered the same service to Carl Schurz, Frederick Hecker, and many of their associates.

"KOERNER, while a student and but little past his twenty-first year, became a member of a secret political society called the 'Burschenschaft,' composed largely of university students, and corresponding in its aims for reforms, on republican lines, with the Carbonari of Italy and France, whose membership included the immortal names of Mazzini and Garibaldi. In the outbreak of this German society on the 3d of April, 1833, in Frankfort, young KOERNER was wounded. This attempt at revolution was vigorously suppressed by overwhelming military power, and our hero sought, and after many vicissitudes found, safety in the land whereof Byron writes, 'One freeman more, America, to thee.' In the same year he settled in St. Clair county, where he has lived ever since,—a period of sixty-three years,—nearly all the time in Belleville.

"In 1836 he was honored with the post of messenger to Washington by the Electoral College of Illinois to carry their vote in favor of Martin Van Buren. Here, during the winter, Congress being in session, he saw many of our statesmen of sixty years ago,—Van Buren, Clay, Webster, Calhoun, Jackson,—and made such an estimate of them as was valuable to him in his own public life. While a law student at Lexington, Kentucky, he visited Clay at his home, who received him cordially and manifested great interest in his

welfare, tendering him any service in his power. This generous and brave man, by the magnetism of his wondrous personality, impressed the young exile as he did all who came in contact with him.

"After taking out a diploma from the Lexington Law School,—the same from which William H. Bissell afterwards received his diploma as a lawyer,—KOERNER entered upon the practice of law, first in partnership with the late Adam W. Snyder and afterwards with the late James Shields, and continued this practice in conjunction with his son, Gustavus A. Koerner, almost down to his very last day. In 1842 he was elected to the legislature of Illinois, where he first drew the attention of Abraham Lincoln. This most competent judge of men always held him in high esteem, as shown by his appointment as minister to Spain,—a post which he filled with marked ability and to the full satisfaction of Seward and Lincoln.

"While a justice of the Illinois Supreme Court, then composed of nine justices, who held, by assignment, the circuit courts, after the old English system of *nisi prius*, KOERNER held the circuit court at Belleville. Before him came the slave case of Harry Beard against Vital Jarrot, which involved the question whether Illinois was a slave State. The jury decided, by their verdict, that the plaintiff was a slave, as did two subsequent juries,—verdicts inspired by the same pro-slavery prejudices which ten years afterwards dictated at Washington the Dred Scott decision. The first of these iniquitous verdicts Judge KOERNER promptly set aside, and in doing so he displayed, in spite of popular prejudice, a manly independence and fearlessness rising to heroism. He broke with his party on the question of slavery. On the Union question he was a most efficient supporter of Lincoln and the war. He may be called the creator of the gallant Forty-third regiment, which, under Col. Raith and Col. Engelmann, did such effective service. His services on Fremont's staff were never properly appreciated except by the few, who, like his associate, Owen Lovejoy, were with him and saw the work done.

"Lord Coke tells us when a great lawyer dies much learning dies with him. KOERNER was a scholar as well as a lawyer. His reading was vast in its range. It might be said of him, with equal truth, as Senator Mills of Texas said of Henry George, 'He reads everything and remembers all he reads.' The best literature of America, England, Germany and France was in his possession, and this read-

ing embraced every branch of learning, law, history, politics, biography, science and *belles-lettres*. In *The Open Court* of Chicago there lately appeared from his pen the most discriminating criticism that the public has seen of the celebrated novel 'Trilby.' He, only a few months ago, gave to the world the very best exposition and explanation of the Monroe doctrine as it was understood by its authors, James Monroe and John Quincy Adams, and as the illustrious George Canning, as prime minister of England, suggested and proposed it to our ambassador, Richard Rush.

"As a lawyer, we who practiced with him well knew and appreciated the subtlety and profundity of his intellect, its logical compactness and the learning which illustrated his discourses. As a man, a citizen and a neighbor, in public or private life, we have to admire, and imitate if we can, the unswerving, unwavering steadfastness of his career, 'Like unto a star—without haste, yet without rest.'

"Now, therefore, while we bow in sorrow to the will of an all-wise Providence,

"Be it resolved by the members of the St. Clair county bar, That by the death of GUSTAVUS KOERNER this bar has lost one of its ablest members and most conspicuous ornaments; the public has been deprived of a statesman, patriotic and profound; literature of a conscientious critic and a competent contributor; the people of an unselfish and genial friend; society of a member, illustrious and honorable; the family of a parent, kind and indulgent.

"Resolved, That a copy of these resolutions be spread on the records of the courts of this county, and that, on the order of the approval of these resolutions by the court, the court stand adjourned for this day."

Mr. DILL, continuing, said:

The committee asks that the memorial and resolutions be accepted by your Honors, and that they be ordered spread upon the records of the court. In this connection the committee desires to say this tribute is the product of the pen of Gen. Nathaniel Niles, who had known the deceased intimately for nearly sixty years.

By the permission and indulgence of the court I desire to offer my humble tribute to the memory of the deceased.

"What constitutes a State?
 Not high-raised battlement or labored mound,
 Thick wall or moated gate;
 Not cities proud, with spires and turrets crowned;
 Not bays and broad-armed ports,
 Where, laughing at the storm, rich navies ride;
 Not starred and spangled courts,
 Where low-browed baseness wafts perfume to pride.
 No:—Men, high-minded men,
 With powers as far above dull brutes endued
 In forest, brake or den,
 As beasts excel cold rocks and brambles rude;—
 Men who their duties know,
 But know their rights, and, knowing, dare maint
 Prevent the long-aimed blow,
 And crush the tyrant while they rend the chain.
 These constitute a State."

The worth of a State, in the long run, is the worth of the individuals composing it. This is the observation of John Stuart Mill. It is also true that the men and the women who are born into the world gifted with the high commission of genius, have the divine right of shaping the destinies of the race.

I agree with the gnarled old Scot, Thomas Carlyle, that men of genius are the special gifts of Providence—given to guide our steps along the dimly-defined and difficult pathway of human progress. These men,—high-minded men,—constitute a State. Yea, more; they make it, they shape it, they control it.

Intuitively we kneel at the shrine of genius, whenever and wherever it is revealed, in any of its varied and manifold forms. Shall we call this hero-worship? Shall we call it man-worship? No. We are simply recognizing a fact—a truth plainly visible in the entire empire of nature. Inequality is the rule,—equality the exception. One mountain is loftier than another; one tree is larger than another; one animal is stronger than another; one river is broader, deeper and more majestic than another; one star different from another in magnitude and in glory. If we survey the whole domain of nature we find inequality existing everywhere. So of the moral, intellectual and physical gifts of men. Some are born wise and some foolish. In energy, in wisdom and understanding we are unequal. The charm of beauty, the monstrosity of ugliness, are both the donation of nature. The philosophers, sages, scholars, orators and poets whose names sparkle in the firmament of wisdom are all the unequal products of nature. The divine gift of genius is the bounty of the favored few. No university of learning, however great, can add anything to the intellectual or brained force

of its pupils. The lapidary can polish the diamond and bring out its marvelous brilliance and beauty, but the diamond itself must be the product of the laboratory of nature. Base metal may be polished, but it is beyond the skill of the artisan to convert it into pure gold.

We are all creatures of limitation. Each has a horizon beyond which he cannot pass, a boundary which he may not overleap. A measure the capacity of which is one pint will not contain a quart. All a man can hope to accomplish is to fill the measure of his limitation. Shall we murmur and say that this is the hard cast-iron of predestination? No. A thinker is not responsible for the conclusions forced upon him by the unanswerable logic of facts.

We are assembled for the purpose of offering our tributes of respect to the memory of Governor KOERNER,—a man of whom we take pride in saying that he was eminent as a lawyer, statesman, jurist, scholar, linguist and writer. This eminence we gladly accord to him. How can we account for his many gifts and his great superiority? It is true that his scholastic training was thorough and complete. All that the schools could give was given to him. He was graduated with the highest honors of his class from Heidelberg, one of the greatest seats of learning in Europe. But all that can be said of him in this respect can be said of thousands of other young men, many of whom in after life accomplished very little. Can it be accounted for on the score of environment and fortuitous circumstances? Surely not, because this arena was equally open to many others. Great men are not the product of circumstances. The most illustrious men are frequently born in humble station. This observation had passed into a proverb among the Romans more than twenty centuries ago. The anointed leaders of men,—the favored, gifted few,—are without ancestors. They are christened and baptised at the fountain of Genius.

As members of the legal profession it is proper that we should speak of Governor KOERNER as a lawyer and a judge. He came to the bar of Illinois sixty years ago. He won distinction at the bar among men who achieved imperishable fame in the service of the State and the Nation. Lincoln, Douglas, Trumbull, Shields, Breese, Palmer, Adam W. Snyder, and many others, were his associates. For several years he was one of the justices of this court, and with a master's hand he helped to build the magnificent structure of our jurisprudence.

In 1885, in the Illinois House of Representatives, on the occasion of the death of the Honorable Pinckney H. Walker, one of the judges of this court, I said:

"Few persons outside of the legal profession have any adequate conception of the labors imposed upon a minister of justice. So vast, so varied, so complex are the affairs of a civilized community, that he who sits as a final arbiter of the law must necessarily assume responsibilities of the gravest character. Uprightness of character, purity of motive, breadth and depth of culture, a complete comprehension of underlying principles, and, with all, a patient, painstaking industry and a thorough mastery of details, are essential requisites and qualities which must be possessed by the judge of a court of last resort. The sources of the law are numerous,—civil, common, ecclesiastical and statutory,—forming, when properly understood, a harmonious whole. Legislators, composed mainly of raw recruits from the people, who have devoted comparatively little time to the study of State-craft, find it an easy matter to make and unmake the law. Abstract theories and propositions are easily stated. It is much easier to prescribe than to take; easier to cut out than to fit; easier to hew the timber than to frame it together. The temple of justice is a structure of manifold proportions and apartments, but of exquisite beauty and symmetry,—the growth and production of ages,—built upon the solid masonry of wisdom and experience. New material cannot be put as mere patch-work into this edifice. It must be labored into proper shape, so as not to mar the beauty of the structure. This labor must be performed by courts of last resort. It is, indeed, a herculean task. He who devotes his life to this great labor, and does his work with the skill and ability of a master, has won his claim to the gratitude of men. Other callings may present greater attractions and open broader avenues to fame. The leaders of armies, the possessors of the divine gift of eloquence, politicians and men of genius in literature may attract a larger share of popular applause; but certainly none do more for the real cause of humanity than the hard-working, pure-minded judge."

These remarks apply as well to Judge KOERNER as to Judge Walker.

But it was in his capacity as lawyer that we knew Governor KOERNER best. As a member of this great and learned profession

he stood deservedly at its head. His knowledge compassed the science of the law in its uttermost heights and depths. He knew all that was knowable. In his intercourse with his associates his manner, bearing and discourse always bespoke the true and perfect gentleman. He was, indeed, justly styled the Chesterfield of the Belleville bar. In this regard he has bequeathed to us a priceless example. We can only hope to imitate, not to excel, it.

But his real greatness lies above and beyond the domain of the law, considered as a technical science. He was a lawyer and much more. He ascended to and made his habitation in the higher regions of thought and of action. During the four-score and six years of his life he was a student always, even unto the very day of his death. *Labor omnia vincit*. He accepted this hoary maxim as the rule of his life. He knew that labor could conquer all things within the range of possibility. In this sign the mental hero must conquer. Faith without works is vain. Genius without labor is a mockery. The unwrought diamond is a dull, gray, lustreless stone.

He was familiar with the literature of Europe and America. He was a master of at least four great languages,—the Latin, the German, the French and the English,—and, like Gladstone, one of his favorite pastimes was the reading of the Iliad in the language of Homer. He could repeat from memory, in the Greek language, perhaps more than half of this great poem, and while at Madrid held consultations with the Spanish minister of justice in the Latin language, for the reason that the Spanish minister could speak neither French, German nor English, and our minister could not speak Spanish or Italian. He was more than a student of languages. On the contrary, he used them as a skilled mechanic uses his implements. They were to him a means, not an end. He was not only familiar with the thoughts and inspirations of Europe and America, but he was, to a perceptible extent, an inspirer, a creator and a framer of them. The productions of his laborious pen were read and studied both in Europe and America.

It is true he achieved distinction as a place holder, as a legislator, a judge, a Lieutenant-Governor of his State, and as a minister and representative of his nation at the Spanish court he won a deserved distinction; but his true fame and the real castle of his distinction are built upon higher grounds. He was a soldier,—yea, more; a commander,—in the great army of thought. He was a torch-bearer and a leader in the pathway of knowledge. In hon-

oring him we not only honor ourselves, but offer a just tribute to the cause of humanity.

MARSHALL W. WEIR addressed the court:

May it please the Court—When I was admitted to the bar of this State there was one lawyer practicing in our courts who was eminently conspicuous for his legal ability, scholarly attainments and refined deportment. He was then what he continued to be—the leader *par excellence* of our profession. We assemble to-day to do honor to the memory of that one, so recently taken from us by death,—the Hon. GUSTAVUS KOERNER.

This occasion seems to me to be a particularly sad one. But few, if any, here present can remember a time when Governor KOERNER was not a prominent lawyer. Probably none of us remember a time when he did not exercise a marked influence in the affairs of our State. For more than three-score years he was identified with our State and national history. He was by nature generously endowed with mental capacity, and by education and continuous study he brought to the discharge of his duties a very high degree of intellectual culture and literary attainments. He was a ripe scholar and polished gentlemen, a statesman, jurist and diplomat. He served with credit to himself and to the people in the Illinois legislature. He shed lustre on the jurisprudence of our State by his service as one of the judges of our Supreme Court. As Lieutenant-Governor he presided over the deliberations of the State Senate. At an important period in the history of our country he represented our government as minister to Spain. In all positions and at all times he was true to himself and to his adopted country.

He received an excellent education in early life, taking the degree of LL.D. from the historic University of Heidelberg. He brought to the practice of his profession a mind thoroughly trained in the broad, underlying principles of law. He was more than a lawyer. He had attained the lofty conceptions of law had by the old Roman lawyers. They looked upon law as a branch of ethics whose foundations lay in right reason and the unalterable feelings of human nature. They believed it was as Cicero has portrayed it—not a thing thought out by the ingenuity of man, not a decree of the people, but an eternal entity, coeval in its origin and harmon-

izing in its operations with the divine mind; that it was the recorded morality of a nation—a rule of social duty not less than that of civil conduct; that it was the sacred embodiment of the public will and understanding; the unanimous assent of a great people to the principles of a refined equity and enlarged benevolence, reduced to practice in the daily concerns of life with the precision, the consistency and uniformity of an exact science.

He did not relax his studies on being admitted to the bar. As was truly said by a great Roman poet:

"Nil sine magno,
Vita, labore, mortalibus dedit."

And by one of our American poets:

"The heights by great men reached and kept
Were not attained by sudden flight;
But they, while their companions slept,
Were toiling upward in the night."

He was a student all his life. He himself said in this room, on a similarly sorrowful occasion, "The men of the greatest genius, in all ages and in all countries, have generally been the hardest workers." During the most active period of his professional life or the most pressing cares of public duty he never lost his interest in general literature. He was a great admirer of Homer, and continued to study that author, by way of recreation, in the original, up to a late period of life. At one time he had a mass of his own notes on the Iliad.

He was deeply interested in the cause of education and the uplifting of the people. Some who did not know him well, thought him, perhaps, exclusive and aristocratic in his ways. But he was not. That thought was but the tribute instinctively paid by less favored minds to his superior endowments. He was especially interested in the Belleville Public Library, and was one of the original founders thereof, and since its establishment to the day of his death served constantly as president of the board of directors. One of his chief pleasures during his last years was found in that library. It was my pleasure to meet him there frequently and elsewhere. On one occasion I remarked to him that I was about to visit his old University town,—Heidelberg,—and asked what he could suggest to me as objects of interest there. His countenance lighted up as he exclaimed: "Oh, everything! Everything!" But soon realizing that the sweet memories which he retained of that place could not be transferred to my mind on

sight of the city, he went more into detail, naming, of course, among other things, the University.

Born and reared in the city of Frankfort-on-the-Main,—a free city, though more or less under the influence of neighboring monarchical forms of government,—his mind became early imbued with the principles of republicanism. The cause of freedom ever found in him a zealous friend. He was one of the founders and promoters of the party in this country which resulted in making freemen of all who breathe our air. Patriots struggling for human freedom had a passport to his affections. He met Louis Kossuth in St. Louis in March, 1852, on the occasion of that patriot's visit to this country. The great Hungarian endeared himself to him at once. He was charmed with Kossuth's versatility of language, his sweet voice, his keen insight into motives, his close observation and deep reflection, and the justness of his judgment of men and affairs. He afterwards wrote: "Of one thing I am certain: No man could leave Kossuth without being conscious that he had been in the presence of a great man." That judgment of his on Kossuth is mine on himself. I have often felt when with him that I was in the presence of a great man. He was great. His qualities of heart and head made him great. No one who ever knew him but must revere his memory.

Though passed from our sight, let us not think our friend is no more. Job propounded a question which in all ages has been of profoundest interest to thinking men: "If a man die shall he live again?" Cicero, who lived before the advent of the Man of Galilee, said: "If I err in believing that the souls of men are immortal, I am glad thus to err, and am unwilling that the error in which I delight shall be wrested from me." A century later another orator of equal learning and no less renowned said: "This mortal must put on immortality. * * * Then shall be brought to pass the saying that is written, Death is swallowed up in victory. O Death, where is thy sting? O Grave, where is thy victory?"

FRANKLIN A. McCONAUGHY addressed the court:

If your Honors please—In view of the wide difference in our respective ages it was not given to me to be a personal witness to the earlier and more active period of the career of GUSTAV KOERNER, but in later years abundant opportunity was afforded me to test

and prove his wide capacity, his varied accomplishments and the versatility of his mind. History and the traditions of his home supply the rest. It will be recorded of him that all the various public functions which he was called upon to perform were discharged with marked ability, a stern adherence to a rigid idea of duty, and a lofty and enthusiastic patriotism. His private life was singularly blameless, pure, regular and exemplary, and his accomplishments were as broad and varied as the field of science, law and letters. No act or word in his public or private life is known which can cause a blush to rise on the cheek of any of those who bear his name. They may well be proud of the culture and achievements for which it was and ever will be distinguished.

It has occurred on such occasions as this, that to the man who, with Othello, can fearlessly say, "Speak of me as I am," the ancient and inexorable maxim, *De mortuis nihil nisi bonum*, operates more as a shadow than as a shield. It has through this come to be believed that every epitaph is a lie, and that all eulogy is half made up of extravagance and half of concealment,—one-half of *expressio falsi* and the other half of *suppressio veri*. It is well known that no man is absolutely perfect, and it might be better, and what is said be more fully accepted, were the trifling failings, lapses and weaknesses generally mentioned and everything told as it is. Then, in the case before us, where nearly all there is to say is good, and it is so proclaimed over his last resting place, it would be believed, indeed, not only by those who, with us, are living witnesses of its truth, but by those who shall come after us.

Of all those who have sought our shores from other lands since the foundation of our republic, KOERNER belonged to a class who have contributed most toward the advancement and the perpetuation of our free institutions. Thrown off their own shores by revolutionary upheaval brought on by their struggles for liberty, they came unimpelled by a single sordid hope or desire for pecuniary betterment of their fortune's estate, but a genuine love of freedom. They gathered the scattered remnants of their fortunes,—their cherished Penates,—and came to us, sacrificing friends, family, home; their social positions and the yearnings of their ambition. Like the patriot and poet who bore KOERNER'S name a score of years before, his restless sword ever irresistibly leapt from its scabbard at freedom's every call,—there, in the land of his nativity; and here, in the land of his adoption.

How delightful is even the memory of a man moved by a lofty sentiment! It breathes upon us with a refreshing sweetness, wafted into our sordid and selfish world from the Arcadian clime of youthful imagination, laden with the perfume of the flowers of life's spring time.

It is not known to those even who knew KOERNER best and most intimately, what hopes, if any, he may have entertained of anything in that mysterious realm beyond the grave. If such there were, they were never intruded on others, nor did he intrude upon or question such hopes or beliefs in others. That liberty, in this as in all things, which he demanded for himself he fully accorded to others, and if a reward waits on men whose lives have been correct and according to the highest standard, KOERNER is secure.

Thus, full of years, of honors and usefulness, his life is finished. Like Newcome, (the most superb character in the greatest English fiction,) to the last call he has made the last response,—*Adsum*.

Mr. JUSTICE BAKER, on behalf of the court, responded:

I am requested to express, in behalf of the court, our appreciation of and cordial concurrence in the sentiments expressed in the memorial and resolutions presented and in the remarks by which they have been accompanied. It is meet and proper that the members of the bar should ask that there should be spread upon the records of this court a testimonial of their affection and esteem for the late GUSTAVUS KOERNER, who at the time of his death was, as we believe, the oldest practicing lawyer at the bar of Illinois. And it is also meet and proper that we, his successors upon the bench of this court, should pay honor to the memory of the last survivor of the justices who sat here and presided in the Supreme Court of the State prior to the re-organization of the judiciary under the constitution of 1848.

Judge KOERNER was first admitted to the bar of this court in the year 1835. He was then a young man, but perhaps few young men, either before that time or since, have come to this bar better equipped for the duties assumed. He had the advantages of a thorough education at the University of Heidelberg, and was already well read in the principles of both the common law and the civil law. That he at once won and enjoyed the confidence of his fellow-citizens and clients, and speedily stepped into what was for that

early day a large practice, is easily ascertained from a cursory examination of the earlier volumes of the Reports of this court.

Ten years after the admission of GUSTAVUS KOERNER to the bar, and on April 2, 1845, he was appointed by the Governor to be a justice of the Supreme Court of the State in place of Justice Shields, who had resigned, and on December 19, 1846, he was elected by the General Assembly to fill the same office. He retired from the bench in September, 1848, upon the re-organization of the judiciary of the State under the new constitution that was adopted by the people in that year. Thus he was a justice of this court for a period of about three years and a half. His opinions are reported in the second, third and fourth volumes of Gilman's Reports. The amount of business in the court at that time was comparatively small, and the duty of holding courts upon the circuit also devolved upon the justices. The opinions that he wrote while here, indicate that he was an educated lawyer and an able and just judge. The State was then in its infancy; the courts had established but few precedents; the questions that arose were largely questions of first impression, and the labors of the justices were both difficult and responsible; and it may be said of Justice KOERNER that he well performed the work of establishing precedents for his successors.

In the course of his long and laborious life, Judge KOERNER filled with honor and credit to himself, and to the welfare of the people, several important public offices other than that of a justice of this court. He was for one term Lieutenant-Governor of the State, and for a number of years he represented the government of the United States as minister to the court of Spain.

But it was as a lawyer at the bar that the principal life-work of Judge KOERNER was done. With but a few intermissions he was engaged in the active practice of the law from 1835 until his death, in the early part of the present year,—a period of more than sixty years. As already said, he started out in his career well read in the fundamental principles of jurisprudence, and so long as he lived he continued to add to his knowledge of the law. His mind was stored with choice literature, and he had a vast fund of general information at his command. He was a safe counselor and a man of most excellent judgment. He was a kind and courteous gentleman in his intercourse with both the bench and the bar. He was thoroughly honest, conscientious and reliable, and

known to be so by the courts, by his brother lawyers, by his clients and by his fellow-citizens. He well and nobly performed all the duties that devolved upon him as a lawyer, as a judge, as a citizen and as a man, and then, having lived more than four-score years, he was gathered unto his fathers.

We deeply sympathize with his immediate family, his surviving relatives and his sorrowing friends.

The resolutions submitted will be spread upon the records of the court.

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