

BOEHM v. PORTER.

Decided July 3, 1891.

1. *Tax sale—Wrong day.*

Under the act of February 19, 1869, extending time for assessing and collecting taxes for 1868, where the tax book was delivered to the collector on March 20, 1869, a sale of delinquent lands on August 2 following was at a date later than the law authorized, and therefore void.

2. *Taxes—Levy.*

A levy of county taxes in 1869 for the year 1868 was illegal (following *Parr v. Matthews*, 50 Ark., 390).

3. *Cancellation of tax title—Reimbursement of purchaser.*

In a suit to cancel a title acquired under sale for the taxes of 1868 the statute does not require of the owner payment of an illegal levy, nor of interest at a higher rate than 6 per cent. per annum.

APPEAL from *Arkansas* Circuit Court in chancery.

JOHN A. WILLIAMS, Judge.

W. H. HalliBurton for appellant.

Gibson & Holt for appellee.

MANSFIELD, J. This is a suit in equity to quiet the title of the plaintiff Boehm to two tracts of land situated in township 2 south, range 4 west, in the county of Arkansas, and to cancel a tax title thereto held by the defendant Porter. One of the tracts is part of section 33, and the other is a sub-division of section 34. Both were patented to the State under the act of Congress of September 28, 1850, and were sold by the State in 1859 to Samuel P. Johnson, who conveyed them to the plaintiff in the year 1885.

The complaint states that the defendant claims title to these lands under an Auditor's deed conveying them to his vendor as lands forfeited to the State for the non-payment of taxes for the year 1868; that there was no legal assessment, return of delinquency, advertisement or sale of the lands, for the taxes of that year, and that the forfeiture to the State was therefore void and passed no title; that the

plaintiff has tendered to the defendant a sum sufficient to reimburse him for the sum paid on the purchase of the lands and for all taxes subsequently paid thereon, and that the tender was refused.

The defendant by his answer claims title to the land in section 33 under a conveyance executed to him in 1886 by N. B. Price. He alleges that Price purchased that tract at a sale thereof made in 1876 for the taxes of 1873, 1874 and 1875; and that, having at the proper time received the clerk's deed for the land, he subsequently obtained a decree of the Arkansas circuit court confirming the sale.

The answer admits that the defendant's title to the tract in section 34 was acquired by conveyance from W. M. Price, and that the latter held under a deed executed by the Auditor of State on the 20th day of February, 1872, pursuant to a sale of that tract as land which had been forfeited to the State for the non-payment of taxes. But it denies that the forfeiture was illegal, and avers that the land was regularly assessed, returned delinquent, advertised and sold in the manner provided by law. The several deeds relied upon by the defendant are made exhibits to the answer.

As a further defense applicable to both tracts, the defendant pleads the statute of limitations of seven years and also the statute providing that actions to test the validity of tax sales shall be brought within two years from the date of the sale.

The chancellor found that the sale of the tract in section 33 was confirmed by the decree mentioned in the answer; and as to that tract the plaintiff was denied any relief. But he found that the tract in section 34 was sold for non-payment of the taxes of 1868, and that the sale was made on a day not provided for by the law. On this finding it was adjudged that the sale thus made was void. And the court having also found that the defendant and his vendor had paid on said tract taxes which, together with interest thereon at the rate of 25 per cent. per annum, amounted to the

sum of \$305.35, a decree was entered fixing a lien on the land for the payment of that sum, and directing a sale to satisfy it in the event of the plaintiff's failure to make the required payment. Both parties have appealed.

In the abstracts filed here by counsel, no facts are stated which could have justified the chancellor in finding that the plaintiff's action was barred by the seven years' statute of limitations. The two years' statute has no application to this case, so far as the plaintiff's suit is, to avoid the sale of the land in section 34. See *Radcliffe v. Scruggs*, 46 Ark., 96.

Nothing affecting the validity of the sale of the tract in section 33, made by the collector in 1876, is alleged in the complaint or disclosed by the proofs on which the cause was heard. Nor does the abstract or brief of the appellant point out any ground or objection whatever to that sale or to the deed of the clerk made pursuant thereto. The deed contains all the usual and necessary recitals of such a conveyance, and no defect sufficient to avoid it is discovered on its face. It was sufficient, in connection with the conveyance executed by Price, to establish a *prima facie* title in the defendant; and, in the absence of evidence impeaching the sale, he was under no necessity of relying upon the decree confirming it. Independently of that decree the evidence showed that the plaintiff's vendor had been divested of title to the land in section 33, and it is therefore unnecessary to decide whether the proceeding for confirmation is open to any of the numerous objections which counsel for the appellant have urged against it. The decree of the court below, so far as it relates to the land embraced in the clerk's deed, is without error, and it is to that extent affirmed.

The evidence shows that the land in section 34 was forfeited to the State on the 2d day of August, 1869, for the non-payment of taxes levied for the year 1868. The tax proceedings, on which the forfeiture was based, were had under the act of February 19, 1869, entitled, "An act to aid in assessing and collecting taxes for the year 1868;" and

1. Tax sale
upon wrong
day.

under a provision of that act the Auditor extended the time in which the assessor could make return of his assessment until the 8th day of March, 1869. The assessment lists were filed on the 1st day of March, 1869, and on the 9th day of the same month the county court made its levy of county taxes for the year 1868. The tax book was delivered to the collector on the 20th day of March, 1869, and the act provided that he should make out and return a delinquent list of lands, on which the tax remained unpaid, within ten days after the expiration of sixty days from the time at which he received the tax book. The act further provided that the clerk should, immediately after the delinquent list was returned, publish the same for at least three weeks, with a notice attached to it that the lands it embraced would be sold on "Monday next succeeding" the three weeks' notice. It was proved that some of the sheets or pages of the delinquent list had been worn or torn off, and it did not appear when it was filed. But, nothing being shown to the contrary, the Auditor's deed is evidence that the list was filed within the time prescribed by the statute; and, that time having expired before the 1st day of June, if the clerk had complied with section 14 of the act by publishing the list "immediately," the sale would necessarily have taken place in June or July. So far then as appears from this record, the sale was at a later day than the law authorized. But it was void upon another ground which was clearly established by the evidence.

2. When tax
levy void.

In *Parr v. Matthews*, 50 Ark., 390, it was held that the act of February 19, 1869, made no provision for the levy of taxes; and that the power of the county court to levy taxes for 1868 expired with that year, under provisions contained in the act of July 23, 1868. The sale in question here was, as we have seen, made for the payment of a county tax levied for the year 1868 in March, 1869. It was therefore void, and the court did not err in so adjudging.

It is not clear from the language of the decree whether it contemplates the payment of all or either of the taxes for the non-payment of which the land was forfeited. The land was legally assessed and returned delinquent for the year 1868. A lien for the State taxes of that year, together with a penalty of 25 per cent. upon the amount of such taxes, had thus attached, under section 10 of the supplemental act of 1869, at the time of the illegal forfeiture. As the amount thus due to the State was paid in the purchase of the land at the Auditor's sale, it should be paid to the defendant, and its payment should be provided for in the decree cancelling his title. But the county tax was an illegal exaction which created no charge upon the land and which the plaintiff was never under any obligation to pay. The reimbursement of that tax ought not therefore to be required of him as a condition of obtaining the relief he seeks in this suit. *Worthen v. Badgett*, 32 Ark., 496.

3. Cancellation of tax title.

The court properly required the plaintiff to reimburse the defendant for all taxes paid on the land by the defendant or his vendor subsequent to the date of the latter's purchase. And the tender made by the plaintiff does not appear to have been such as to stop the accrual of interest on the sums the defendant was entitled to receive. *Cole v. Moore*, 34 Ark., 589; *Hamlett v. Tallman*, 30 Ark., 505. But it was error to compel the plaintiff to pay interest at the rate of 25 per cent. per annum. Section 75 of the act of July 23, 1868, providing for the payment of interest at that rate to the purchaser of lands sold for taxes, applies only to actions to recover the possession of such lands. And, upon a bill to set aside an illegal sale made under that act, equity will impose upon the land owner no harder terms than those provided for in section 72. That section is as follows: "Upon the sale of any land or town lot for delinquent taxes, the lien which the State has thereon for taxes then due is transferred to the purchaser at such sale, and if such sale proves to be invalid on account of any irregularity in the proceedings of any officer having any

duty to perform in relation thereto, the purchaser at such sale is entitled to receive from the proprietor of such land or lot the amount of taxes, penalty and interest legally due thereon, and the amount of taxes paid thereon by the purchaser subsequent to such sale; and such land or lot is bound for the payment thereof." This does not require the payment of an illegal assessment or interest at a higher rate than 6 per cent. per annum.

So much of the decree as affects the land in section 34 is reversed; and the cause with reference to that tract will be remanded for further proceedings in accordance with this opinion. The court below is directed to enter a decree setting aside the tax sale of said land and cancelling the defendant's title thereto. But such decree must establish a lien on the land in favor of the defendant for the sum due upon it at the time of its forfeiture for the State taxes of 1868, and the penalty which had accrued thereon, with interest on said sum at the rate of 6 per cent. per annum from the date of the Auditor's sale; also for the several sums paid by the defendant and his vendor in discharge of taxes lawfully levied upon said land since the 20th day of February, 1872, with legal interest upon each of said sums from the date of its payment. And the court will, by appropriate order, direct that, in default of the payment of said sums and interest to the defendant within sixty days after the entry of said decree, the land shall be sold for the satisfaction of the lien thus to be established. Such sale shall be made and conducted in the manner provided by law for judicial sales of real estate. And, after the payment of the sums due to the defendant, the residue of the proceeds thereof, less the amount of any costs directed to be paid out of the same, shall be paid to the plaintiff.

admired than was he by the people amongst whom he lived; while he lived they believed, and since he has died they still believe, that there was no position so high or so honorable that he might not have attained had he so desired, and they feel now that in his death they have lost one of their dearest friends, and the State one of its brightest jewels.

When I first knew him he was not 39 years of age, yet at that time he stood in the front rank of his profession in that circuit, and had at his command the respect, the confidence and the affection of all who knew him, and no one more richly deserved it than he, for—

“ His life was gentle, and the elements
So mix'd in him that Nature might stand up,
And say to all the world, ' This was a man !' ”

There was never a more devoted husband, dutiful son or affectionate and indulgent father and brother. In all of these relations he was kind, gentle, loving and self-sacrificing, and in neither did he ever fail in the performance of a single duty. From early boyhood his cares were many and his responsibilities great, but he bore them all with that magnificent courage and power that characterized his actions all through life.

In his social life he was kind, genial and entertaining, and always considerate of the feelings of others.

He possessed the power of fascinating men of all classes and ages, and of winning and retaining their affections. With the members of the bar he was especially popular; to the younger members he was as an elder brother; for while his success in the profession was assured, he never forgot the difficulties he had had to overcome to gain his position, and he was ever ready to assist the struggling young lawyer who came on behind him. He was kind and courteous to them in the court room, and helpful to them whenever he could consistently be so. It was to him they constantly applied for advice and assistance in their profession, and this he always cheerfully gave.

I have known him while out on the circuit, time and again, to spend half the night with some young lawyer assisting him in unravelling some intricate case, or in preparing some difficult precedent, and this, too, without fee.

There was nothing of envy or jealousy in his disposition. Could he have lifted them all upon a level with himself, he would cheerfully have done so; and had they outstripped him in the race, he would have been the first to congratulate them on their success.

He was almost Quixotic in his ideas of his duties to his friends. There was no sacrifice too great for him to make for them. To them his time, his strength and his purse was always theirs to command; whenever their interests were involved, he was ready to defend or assist them; and that, too, without solicitation upon their part.

I knew him on one occasion to leave Waldron, in Scott county, and ride to Fort Smith, a distance of fifty miles, in the night time, in order to get money to send to a friend of his boyhood in a distant state, who was sick and in need, and who had applied to him for help. This kindliness of heart was not confined to his friends alone. The unfortunate, distressed and afflicted, no matter from whence they came, found in him a ready helper. One of the prominent traits of JUDGE SANDELS' character was the strong individuality and manhood of the man. In whatsoever company he was found, he was either an equal or a leader. He freely and openly expressed his opinions upon all matters when called upon so to do, and yet so reasonable and just was he that I never knew any one to take offense at him, although they or their measures may have been the objects of his adverse criticism. He was never guilty of a small or ungenerous act, and could not tolerate such conduct in others. There was never a man of stricter integrity or more unswerving honesty. I knew him intimately for eleven years, and dwelt in the same community with him, and I have never yet heard any one question his integrity, his honesty or the purity of his motives.

While he was warm-hearted and generous to all, yet when a duty was to be performed he was as adamant. He was a man of indomitable will, undoubted courage and wonderful self-control, and yet withal, as gentle and loveable as a woman.

While he was ever ready to listen to and alleviate the troubles of others, his troubles were his own, and were to be suffered alone. He never imposed them upon others. No matter how hard the blow, he met it with a dauntless front and a superb self-control. I have seen him, under circumstances that I had thought would break down the strongest man, face the world with a calm and unruffled countenance. It was not because he did not suffer, but it was because of his strong determination to suffer alone and not impose his sorrows upon others.

As a lawyer he was entitled to high rank in his profession. I think he was the best lawyer for his age I ever knew. As a practitioner he was wonderfully successful, both before the courts and the jury; as a counselor he was wise and cautious; as a judge his record in this court will attest his fitness for the position.

His abilities were so equalized that it is difficult to say whether he excelled most as a practitioner, a counselor, or a judge; whether he was greater as a civil or a criminal lawyer. When he was appointed to the responsible and difficult position of United States Attorney for the Western District of Arkansas, the court in that district, having at that time exclusive criminal jurisdiction over the larger part of the Indian Territory, was the largest criminal court in the world. His friends, who knew how little of criminal practice he had done (for that branch of the law was never to his liking), trembled for his success. But their fears were groundless. He grasped the situation with the hand of a master, and was soon as much at home there as he had been in the civil practice.

Mr. Garland, who recommended his appointment to that position, says of him in a letter received by me since his

death: "I know of no one who combined the elements of practical and useful work in a higher degree than he." In reference to his appointment, Mr. Garland in the same letter says: "In very truth the appointment was made with much misgivings, as I knew so little of him. But soon I found I had made no mistake, and still later on I found I had made a most unquestioned and unquestionable success, and in the end I discovered that no appointment in that or in the other departments more thoroughly justified the wisdom, or whatever else it was, that brought it about, than that. There is no flaw or gap in ability, integrity or fidelity in his management of the affairs of that office." And this sentiment is re-echoed by all who are familiar with his conduct of the affairs of that office.

To the courts, Judge SANDELS, when a practitioner before them, was always respectful and courteous. For, no matter what his estimate of the person who occupied the position might be, it was to the office that he paid tribute, as Judge Parker said of him at the bar meeting held at Fort Smith: "Like the true American he was, he believed the only earthly king fit to reign in this world is the law in its purity and strength."

Since his death I found among some private papers of mine some expressions of Judge SANDELS upon this subject that I am constrained to read here.

He was one of a committee appointed to draft resolutions on the occasion of the memorial services held at the Federal Court at Fort Smith, in memory of Chief Justice Waite. He drafted the resolutions himself, and I have the original in his handwriting. Referring to Judge Waite he used the following language:

"As a man he was pure and simple. He had no complex mechanism. The child, as well as the statesman, could know, understand and love him.

"His manhood was of that stalwart kind that knew neither variableness nor shadow of turning. His rugged honesty

was such that no friend or enemy ever impugned the purity of his motives. And his discriminating judgment was such that few questioned the correctness of his conclusion. *

* * * As a citizen he was the highest type of American civilization. He was honest in his dealings with his fellow-man. He loved his country. He obeyed the law.

“But it was as a judge, as the Chief Justice of the grandest court on earth, that he achieved his greatest distinction and built the foundation of an enduring fame. With the clear and comprehensive grasp which gave him prominence among lawyers in early life, he broadened and deepened in later life and became the ideal American judge. He did nothing by indirection—he was not a posturer or phrase-monger. He never adopted or countenanced the tricks or devices of time-serving practitioners and judges, but his walk was upon the mountain ranges of the law.”

I do not think it would be too much to say of him that when with his pen he drew that picture of an ideal judge, he did but imprint upon the pages his own image.

But great as he was, gifted as he was, brilliant as were his prospects, a Providence, whose wisdom we do not dare to question, has taken him from us. In the morning of his life he was cut down, for he had not yet reached his fortieth year. But be it said that when that summons came he met it, as he had met all other trials, with a cool and courageous front, and stepped forth into the unknown without fear or trembling. Yet, stern and relentless as death is, it cannot wholly conquer such a man. The better part of him survives the grave.

To few men has it been given in so short a time to win so much of greatness and to leave behind so brilliant a record. And this record is the legacy he has left his family and friends, a legacy “more to be desired than gold; aye, than much fine gold.”

Mr. Read thereupon read the resolutions of the Fort Smith bar, as follows :

RESOLUTIONS OF THE FORT SMITH BAR.

TO THE HONORABLE COURT: Death has cast a gloom over our commonwealth and saddened the heart of our community. It has destroyed the hope of a grand people.

In the mortal absence of M. H. SANDELS the bar of this city suffers a loss unspeakable and irreparable, these honorable courts are deprived of a faithful friend, the Supreme Court loses a most highly esteemed associate, and our community mourns a vacancy which will forever remain.

On the 12th day of November, in the year of our Lord 1890, this gifted spirit returned to Him who gave it, and today we have come to speak of one whose name we can never forget, and whose great character has forever stamped itself upon the lives of all who came within the pale of its influence.

While eyes dim and lips quiver at the thought of such a loss, the heart of a community glows with pride to know that its honorable member has left a heritage of brilliant achievements, conscientious efforts, humane influences and unsullied integrity.

As a man, he was the steadfast friend of right and the implacable foe of wrong. He scorned deceit, despised duplicity, and detested moral cowardice. He was always sincere in opinion, candid in speech and decisive in action.

As a friend, his friendship was warm and rich, was never withheld when worth deserved it, but never bestowed for selfish advantages.

As a counselor, he was sought with uncommon frequency and eagerness, and always to be trusted.

As a judge, he was conscientious, able, dignified, industrious and incorruptible. He was governed only by established law and natural justice, and neither friend nor foe could affect his reverence for the sanctity of his supreme office. He studied and suggested reforms for the expedition of business, and aided their success by his own increased labors, which hastened his untimely end.

He was elected April 2, and commissioned May 17, 1889, to fill the vacancy occasioned by the death of Mr. Justice William Smith, who died December 18, 1888.

Though occupying this high office but a short time, his conduct so plainly manifested his fitness that, in September last, during his enforced absence, an appreciative people re-elected him without any solicitation or effort upon his part.

He was called from the private duties of his profession, and yet found ready to assume and discharge the work of the judiciary with an efficiency and excellence that could be ascribed only to genius. His wonderful mind readily performed, without special judicial training, all that is ordinarily achieved through long experience upon the bench. His honorable associates esteemed him greatly and will sorely miss him.

We shall all miss him, and his place cannot be supplied. The highest and humblest have lost a friend they can never forget. No man in the community was more universally loved and respected for true, honest, exemplary, noble manliness. As long as he is remembered his influence for good will be felt and recognized.

In the home, so sacred, so dear to his great heart, his fidelity, devotion and purity was beautiful to contemplate. He was born August 13, 1851, near Williamsport, Maury County, Tennessee, and became the virtual head of his reverend father's family at the early age of eleven years. As a lad, circumstances placed serious responsibilities upon his young life, and he bore them then as, later, he bore greater ones. As husband, father, son and elder brother, he was revered and loved by a happy household whose confidence and approbation he cherished above all things.

Resolved, therefore, That in the death of Judge SANDELS, his little children, who, within a twelvemonth, have lost father and mother, and his mother, brother and sister, have suffered an affliction which calls for the sincere sympathy and condolence of his friends; that our State has lost a

most noble and useful citizen; our Supreme Court an able and upright Justice; our bar a lawyer of the highest rank, and our courts a faithful and valuable friend.

Resolved, further, That a copy of these resolutions be presented to the family of Judge SANDELS, one to the Circuit Court and one to the United States District Court for the Western District of Arkansas, for permanent record, and one to the press for publication; and that a committee of three members of this bar be appointed to present them to the Supreme Court of the State.

JOHN H. ROGERS,
C. M. COOKE,
T. P. WINCHESTER,
JAMES F. READ,
J. H. CLENDENNING,
THOMAS H. BARNES,
J. B. FORRESTER,
C. E. WARNER,
W. M. MELLETTE,
P. J. M. MCGREEVY,

Committee.

In presenting the resolutions adopted by the bar of Little Rock, Mr. George B. Rose said:

MAY IT PLEASE THE COURT: I have been commissioned by the bar of this city to present its resolutions upon the death of MONTI H. SANDELS, late an Associate Justice of this court. Rarely in the history of the State have we had occasion to mourn so great a loss. When one advanced in years is called to mingle with the dust, we fold the hands upon the honored breast and scatter the flowers upon the coffin-lid, sadly, regretfully, but still with resignation. We feel that life's work is finished, and that the arm which has so long battled for the right has at length found that rest which it would be vain to seek elsewhere, and for which perchance it has long yearned. Standing in sorrow beside the new-made grave, we think of the many virtues of our departed friend, of the good that he has done, of his long

career of usefulness, and it seems he has but laid down to sweet dreams after the achievement of his life's purpose.

Not so with him who has now departed. He has been stricken down, he has been wrested from us, at the very outset of his career. Time had traced no lines upon his expansive brow, nor dimmed the lustre of his piercing eye. He was but a young man, a very young man to hold a seat upon this bench. He was with us but a little while, just long enough to reveal to us the depth of his learning, the quickness of his perception, the accuracy of his judgment, then he was hurried away, leaving a void which can never be filled. He was one of the few who are born to be great judges. He was a natural jurist. He seemed to know the law by intuition. Without apparent effort, he could resolve its difficult problems, and his laborious investigation of the books served usually but to confirm the accuracy of his first impression. And when the conclusion of the court was reached, and the task of embodying it in fitting words was assigned to him, none could surpass the clearness and force of the language which he employed. Few are the opinions that he has left us, painfully few; but as, when we discover some broken fragment of a Greek statue, we know from the perfection of what remains that it was fashioned by the hands of a master, so he who in times to come shall have recourse to our reports will understand that a strong man has passed from among us, and will marvel that he should have left so brief a record of his powers.

It is more than useless to address your honors upon the merits of the deceased. With four of you he was in daily contact, and the fifth had been his lifelong friend. When you went to your task in the morning, he was there, always among the first, diligent in labor, patient in research, grappling as a master with the most intricate questions, and with his luminous intellect throwing a flood of light upon the obscurities of the law. And most of all you will miss the sincere friend, the man who was beloved by all his associates on the bench, and whose kindness nothing could alter. He

was a strange man, stoical, undemonstrative, self-restrained to a very extraordinary degree, and yet there was about him a something, a charm of manner, a depth and sincerity of feeling unexpressed but yet understood, an utter unselfishness, that drew men strongly to him. He was one of those who clasped his friends with hooks of steel, and warmly was his affection returned. He is now gone; he has departed to that far land whose secrets we can penetrate only through the valley of the shadow of death. When you look upon his vacant chair your hearts must grow heavy with the sense of your loss; and, turning sadly to your tasks, the burden of official responsibility must press upon your shoulders with a new weight. In your perplexities you will look in vain for the clear intellect that has so often aided your deliberations, and with a heavy heart you will think of him who sat for so short a time with you upon this bench, but who in that brief period has made so profound an impression upon us all.

From his accomplished sister, his tender nurse through his long illness, and upon whose youthful shoulders has devolved the sad but sweet duty of being a mother to his orphan children, I have received the following details of his life:

"Our father, Rev. John Sandels, was a native of Ireland; was educated at Trinity College, Dublin; came to this country subsequently, and for several years was professor of ancient languages at Kenyon College, Ohio. While holding this position he studied theology and took orders in the Episcopal Church. After his ordination he came South, and in Tennessee, in 1846, married Catherine M. Hines, daughter of Mr. Kenelm Hines.

"In Maury county, Tennessee, August 13, 1851, MONTI HINES SANDELS was born. When he was 8 years old, in 1859, our father came to Arkansas.

"Mont was admitted to the bar in the autumn of 1872, as soon as he was 21.

“His education was gotten almost entirely at home and under our father. His law studies were under Walker & Rogers of this place, that firm being composed of Judge William Walker and Judge John H. Rogers. He was elected mayor of Fort Smith in 1877; was re-elected a second term, and resigned on account of ill health.

“In November, 1885, he was appointed United States Attorney for the Western District of Arkansas. This position he resigned in April, 1889, to go upon the Supreme bench.

“He was married October 10, 1879, to Bettie Bliss Johnson, daughter of the late Charles B. Johnson, of this place, and a granddaughter of Col. Wharton Rector. She died November 19, 1889, and my brother followed her not quite a year later, November 12, 1890.

“Some class-mate of my brother’s gave him, when a mere boy, a gold ring with the legend, ‘Keep thy faith,’ engraved within it. He always wore this; and I have often thought the words were the key-note of his character. His life went as a sacrifice in his fidelity to his pledges of office; and in the least as well as the largest things he kept his faith, and, loyal as he was to all outside, his greatest nobility was shown and known only to us of his family.”

Judge SANDELS was admitted to the bar of this court on the 24th of October, 1879, being at that time in active practice. As a lawyer he was very successful, not through gifts of eloquence, for his addresses to courts and juries were wholly unadorned and conversational in tone, but through his clear conception of the real point in controversy, his thorough grasp of the fundamental principles of the law, and his straightforward and simple presentation of his cause. He was not a man for show. When he had laid the case before the jury they did not exclaim that he was a brilliant man, but rather that his was a very clear case. His practice rapidly extended until it became very remunerative. And this leads me to speak of his only serious fault, a fault so amiable that not only did it lean to virtue’s side, but it was merely the exaggeration of a virtue,—his complete in-

difference to his financial concerns. The last cent in his pocket was always at the service of his friends, and when he could no longer supply their wants with his own resources, he would become surety for their indebtedness. Too often these obligations were allowed to fall upon him. Punctiliously honorable, he always met them at whatever cost of personal inconvenience, and then without the slightest hesitation would do the same thing again. Although earning large sums, he remained through his excessive generosity a poor man.

As I have said, he was a strange man. His extreme stoicism and coolness under all circumstances, together with his dark and slightly reddish complexion, his jet black hair, and the circumstance of his living on the borders of the Indian Territory, caused many persons to speak of him jestingly as an Indian, though he was, of course, of the purest Caucasian race. Tall, rather slender, with a massive and singularly rounded brow, with black and curling hair growing thin about the temples, quiet, self-possessed, deliberate in speech, he seemed at first cold and unfeeling; but in point of fact no man ever had a warmer heart. He was social in his disposition, and devoted to his friends as few men are, taking great pleasure in their companionship, and willing to make any sacrifice on their account; and as the records of this court will show, he was always ready to volunteer his services without expectation of reward, when he heard the cry of the widow or the orphan appealing for aid against injustice.

Judge SANDELS was entirely wrapped up in his profession. For general literature, and for the arts and sciences, so far as I could perceive, he cared little. But he was an illustration of the ancient maxim, "I fear the man with one book." As a lawyer, he was truly formidable, and he who had him for an antagonist was compelled to gird his loins well for the fray.

Judge SANDELS laid no claim to being a saint, but he was more—he was a man, a man of the world, wise in counsel,

resolute in action, honorable and candid in all his dealings with his fellow-men, devoted to his friends, but making no pretense of loving his enemies. For the mean, the debased, and above all the treacherous, he felt and expressed the scorn which their conduct merited. He was not malicious, but he was firm in his aversions, as in his friendships, and he knew nothing of that sickly sentimentality which apologizes for the vile. For the man who betrayed his friends he had an unlimited scorn, but to the friend who was faithful he was himself faithful even to death. Had you in war some bold and desperate enterprise to accomplish, you could select no better companion than he. You would know that in the hour of danger he would never flinch, but that, coolly and without an idea of doing anything more than the simplest act in the world, he would stand by your side, smiling quietly in the presence of death. Weary of the hollow pretensions to superior goodness, which are so often but a cloak for weakness and indecision of character, it is refreshing to turn to a nature like his, manly, strong and earnest, honorable without hypocrisy, just without affectation, doing his duty merely because he was incapable of acting otherwise, and not from a craven fear of the consequences of evil.

While very successful at the bar, he was still more suited to the judicial office. The calmness, the clearness, the even balance of his mind, his intense desire to do justice, fitted him peculiarly to be the arbitrator of the rights of men.

It is now but little more than a year since he came to settle among us with his three charming little children and his young wife, then in the bloom of her womanly beauty. No man had fairer prospects. Before him, life seemed to stretch out through long vistas of futurity, without a cloud to mar the brightness of the vision. There was no height in the judicial career to which he might not aspire. Beloved by his friends, trusted by the public, honored by his brethren of the bar as few men have been, the head of a charming family who regarded him with devoted attach-

ment, he seemed among the happiest of men. But the hour of sorrow was at hand; and even then, though we saw it not, the black wing of the Angel of Death was casting its shadow above his home.

The young wife sickened. Through the ghostly vigils of the night he sat in agony beside her bed, watching the ebbing away of that life with which his own was bound up, and yet, with that strange stoicism which was his alone, without sleep, without rest, performing by day his allotted tasks as a member of this court. At last the hour came. The silver cord was loosened, the golden bowl broken, and she whom he had loved with all the force of his strong nature lay before him in that everlasting sleep which the tumult of earth can never disturb, but before which we are hushed and speak softly, lest we should trouble the serenity of its repose. He did not weep, he did not cry out, as weaker men would have done, and when at the news I hastened to clasp his hand, and to extend those consolations which we all know to be so unavailing, but which we feel constrained to offer because we have no other, he said with a ghastly calmness which I shall never forget: "At such a time every man must tread the wine-press alone."

From that hour he was a doomed man. No outward symptom betrayed the depth of his suffering, but he had received a wound which, like those that are so surely fatal, was bleeding inwardly. He attended to his tasks as before, but his step was less elastic, his eye less bright, and a dry, hacking cough, which sent a shudder through all except himself, seized upon his chest. Careless of his personal safety he had always been, and his health had never been robust. Deprived of the attentions of his wife who had watched over him with fond solicitude, worn out by labor and by affliction, we have seen his swift decline until now he has passed from our sight. He has crossed that river upon whose brink we all stand, striving in vain to catch a glimpse of that further shore which is shrouded from our view by the mists of death. Fearlessly

he has entered those awful portals before which we are all waiting, anxiously demanding what may be concealed beyond, and which will one day open likewise for us. He has gone, and we remain here to lament our loss, grieving for the friend who has departed, and for the upright and able Judge who promised to serve his State for so many years, and with such rare capacities. Of his presence we have been deprived by death, but death cannot rob us of his memory. The example of his virtues, of his kindness, his unselfishness, his justice, his integrity, will rest with us forever, and most of all, the remembrance of an original, a powerful and a most attractive personality.

I now present to you the resolutions adopted by the bar of this city, which express much more fittingly than it is in my power to do, the sentiments that we entertain for our departed friend:

RESOLUTIONS OF THE LITTLE ROCK BAR.

Once more hath the Angel of Death appeared within the portals of this temple of justice. Our honored Associate Justice, MONTI H. SANDELS, is no more. Our sorrow is unspeakable. We stand mute in contemplation of the loss which we sustain by his untimely death. Given to us so recently by the people, we found him an inestimable treasure. Many of us had enjoyed his personal acquaintance for some years before he was called to the bench, and we were fully aware that he had attained a place *facile primus* in the hearts and estimation of the bar and the people of the western portion of the State; but, not until he came to us as a member of this court, did we feel so fully the charm of his personal magnetism, or appreciate so highly his genius as a member of the profession. He held a place on the bench entirely his own. His methods of reasoning and of statement were unique. As a writer he was singularly gifted. He had command of a terse and vigorous expression which make his written opinions a model of judicial style. He had in him the elements of popular leadership, and the fact that

he had for many years taken an active part in politics, led some at first to doubt his fitness for the judicial office; but in his case, as in that of Chief Justice Marshall, criticism was entirely disarmed when he was found to measure up to the highest standard of a model judge.

The State of Arkansas has been fortunate in securing for her highest judicial tribunal the services of so many men eminently fitted by nature and attainments to perform the responsible duties devolving upon them. Among these, when history shall have made up the roll of her distinguished judges, the name of M. H. SANDELS will be found to occupy a conspicuous place.

This tribute would be incomplete without special reference to that which was a leading and most enviable trait in the character of our departed brother, and that was his generous disposition of heart and manner to all, and his strong attachment and fidelity to his friends. It is no disparagement to say that a judge of more personal popularity has never occupied the bench of this court. Even his enemies loved him, and this because his generous nature allowed him to see some good in every man and to allow a liberal credit for every virtue that he could discover in any one with whom he was brought in contact.

The isolating duties of our Supreme Judges, and the dignity of bearing and conduct which are exacted of them, are, to some extent, a strain upon that pleasant familiarity which renders social intercourse with congenial friends so delightful, but Judge SANDELS possessed in a remarkable degree the faculty of uniting the dignity of a judge with the freedom of a companion. Having come to the bench at the early age of 37, we had hoped to reap for many years the benefit of his labors, but an all-wise Providence has decreed otherwise, and as a tribute to his memory it is,

Resolved, That in the death of Judge SANDELS the State has lost an illustrious citizen, the bench one of its brightest ornaments, his associates of the bar a true and generous

companion, and his orphan children a father whose worth they can never be told.

Resolved, further, That a copy of these resolutions be presented to the Supreme Court of the State, for permanent record, by some member of the bar, to be named by the chairman of the meeting, and that a copy be presented to the United States Circuit Court, and that a copy be transmitted to the members of the family of the deceased, and also to the press for publication.

W. S. McCAIN,
GEORGE H. SANDERS,
MORRIS M. COHN,
Committee.

The Chief Justice responded as follows :

In response to the tributes offered by the bar to the memory of Judge SANDELS, I voice the sentiment of each member of the court in saying that no eulogy that has been assigned to him is undeserved. He was capable, conscientious and inflexibly independent. When those qualifications are found, nothing can be added save by way of amplification. He possessed the strong characteristics of a rugged and noble manhood. The love of justice was therefore a part of his nature; and, as his mind was deeply versed in the lore of human nature and the motives that actuate conduct, his saving common sense afforded a faithful guide to the right in the solution of controversies. He shunned the judicial refinements which sometimes lead the mind away from justice, and, with a steadfast conviction of where the right lay in every cause, drew freely from the storehouses of all the departments of jurisprudence to find applicable principles to square with his convictions. If injustice triumphed where his counsel was heeded, it will be found that it was the inflexible law and not the judge that must bear the reproach. While yielding to the binding force of the rules of law, which reason and experience have approved, he was not fettered by precedents, and was ever ready to sweep from the books the rules which seemed to

fetter right. Nothing but the fear of disturbing property rights and of working greater injustice than the reform would accomplish deterred him from insisting upon some marked changes in the law. The results that followed the doctrine of the early case of *Borden v. State* (11 Ark., 519) were as an incubus upon his conscience, and his emphatic condemnation of one phase of it found expression in *Apel v. Kelsey* (52 Ark., 341).

For intelligent dispatch of business in this day of overcrowded dockets, few benches possess his equal. In the rapidity of reaching ends, men differ as the mettled racer and the plodding but not less useful cart-horse. He passed swiftly over the details of voluminous records and promptly explained how the judgment should be reached. As Lord Selborne said of Jessel: "He seemed naturally to come to the point at once, and always, or almost always, to hit the right nail on the head." His terse, and sometimes quaint and humorous, method of statement was striking and impressive; his reasoning was clear and strong and convincing, and his power of putting much in little was great. The opinion in the case of *Russell v. Tate* (52 Ark., 541), wherein he announced the judgment of the court, is a characteristic example of bold and powerful condensation. It is a coincidence worthy of commemoration that he and his immediate predecessor in office, while standing as antipodes in some characteristics, possessed the qualities just mentioned in close relationship. He came to the bench earlier in life than men are commonly called to such duties, served less than two years without enjoying a day of robust health, and yet his extraordinary mental gifts and characteristics, and the certain fulfilment of the promise they gave of a great judicial career, make his loss stand like a shadow in the land.

The resolutions of the bar will be spread upon the records of the court, and the court will now adjourn out of respect to the memory of Judge SANDELS.