

McGUIGAN v. GAINES.

Opinion delivered November 14, 1903.

1. REFORMATION—MISTAKE.—Although a court of equity may reform a written instrument where, on account of a mutual mistake, it does not reflect the intention of the parties, and may do so where the mistake is proved by parol evidence only, the relief will be granted only where the proof is clear, unequivocal and decisive. (Page 616.)
2. SAME—PRACTICE.—To entitle a party to reform a deed on the ground of mistake merely, it must be clearly shown that the mistake was common to both parties, and that the deed as executed expressed the contract as understood by neither. (Page 619.)
3. MARRIED WOMAN—LIABILITY ON COVENANTS.—A married woman, having full power to sell, convey and contract in reference to her separate property, is bound by the covenants contained in her deeds thereto. (Page 619.)

Appeal from Garland Chancery Court.

A. CURL, Special Chancellor.

Reversed.

STATEMENT BY THE COURT.

On the 9th day of February, 1891, W. H. Gaines and others executed and delivered to Wm. McGuigan a deed conveying to him certain land in Garland county, for which land McGuigan paid the sum of \$4,600. The land conveyed is described in the deed as follows, to-wit: "The southwest quarter of the northwest quarter, the southwest fractional quarter, the south half of the southeast quarter, and the northwest quarter of the southeast quarter, all of section 18 in township three (3) south, range eighteen west, containing 317.41 acres, more or less, except, however, the right of way of the Hot Springs railroad and the following described parcel of land in the said northeast quarter of the southeast quarter of said section eighteen, used as a graveyard, to-wit." Then follows a particular description of the graveyard tract, which it is unnecessary to set out here. The land, as described in the deed, was divided by Gulpha Creek. From eight to fourteen acres of the land lay west of the creek, while the remainder lay east of it. But this land west of the creek did not belong to the parties who conveyed it to McGuigan, for it had been sold to one Nickles some twenty or thirty years before the deed to McGuigan was executed.

In 1894 McGuigan brought this action in the circuit court to recover damages for a breach of the covenants contained in his deed on account of the fact that plaintiffs did not own the land described in the deed which lay west of Gulpha Creek. To this complaint the defendants filed an answer and cross-complaint, in which they alleged that they informed plaintiff at the time of the purchase and before the delivery of the deed that they did not own the land west of Gulpha Creek; that the same had been sold and conveyed to Nickles by their ancestor many years before, and that they did not intend to sell or convey that land, and that the plaintiff well knew that this was so, and that it was included in the deed by mistake of the draughtsman who drew the deed. There does not appear to have been any reply filed to this cross-complaint, but the allegations thereof were treated as denied, and the case was transferred to the chancery court, and heard and decided on those issues.

The special chancellor who decided the case found that the land west of Gulpha Creek was included in the deed by mistake, and that the deed in this respect did not express the intention of

the parties. He thereupon rendered a decree reforming the deed, from which decree plaintiff appealed.

Wood & Henderson, for appellant.

A court of equity is not authorized to find that a contract does not express the intention of the parties by reason of a mistake of the draughtsman, unless the evidence is clear. 14 Ark. 482; 50 Ark. 179; 66 Ark. 155; 15 Am. & Eng. Enc. Law, 649; 98 U. S. 79, 85; 53 N. E. 797, 87; 28 S. E. 798; 48 S. W. 700; 44 S. W. 728. The mistake must be mutual. 15 Am. & Eng. Enc. Law, 628; 18 Am. & Eng. Enc. Pl., 781; 50 Ark. 179; 26 Ark. 28. A contract written as intended by the parties will not be reformed, although it does not have the intended legal effect. 46 Ark. 167; 49 Ark. 425; 56 Ark. 320; 41 Ark. 495.

Greaves & Martin, for appellees.

The decision of the court comes within the rule laid down in 50 Ark. 179. The covenants of warranty were not part of the conveyance, but separate contracts. 44 Ark. 153. Married women are not held on such covenants. 33 Ark. 640.

RIDDICK, J., (after stating the facts). This action was brought by the plaintiff to recover damages for breach of the covenants contained in his deed executed to him by the defendants. The defendants admit the execution of the deed, but allege that by the mistake of the attorney who drew the deed he failed to except from the conveyance certain land west of Gulpha Creek mentioned in the statement of facts, which defendants did not own, and for the loss of which plaintiff now asks damages. They allege that plaintiff well knew that defendants did not intend to convey this land west of the creek, and they therefore ask that the deed be reformed so as to conform to the intention of the parties thereto.

The question involved in the case is not so much one of law as it is one of fact. The party alleging the mistake has undertaken to prove it by parol evidence only. The law bearing on that point is well settled. There is no doubt that a court of equity may reform a written instrument where on account of mutual mistake the instrument does not reflect the intention of the parties thereto, and it may do so although the mistake be proved by parol evidence only. But in such cases, where the court is asked to reform a written contract against the will of one of the parties thereto, a court must, as

a matter of common prudence, proceed with caution, and will decree a reformation only where the evidence shows clearly and conclusively that justice requires it. "In no case," says Mr. Bishop, "will a court decree an alteration in the terms of a duly executed written contract, unless the proofs are full, clear, and decisive. Mere preponderance of evidence is not enough. The mistake must appear beyond reasonable controversy." Bishop on Contracts, § 708.

These words of the author are well supported by the adjudged cases. But, though the mistake must be clearly proved, it does not follow that the courts must refuse relief in all cases where there is conflict in the testimony or evidence, for it often happens that, notwithstanding such conflict, the facts of a case may be clearly and decisively proved. A recent decision by the Court of Appeals of New York has gone even further, and holds that relief may be granted even though the facts be not established beyond a reasonable doubt. *Southard v. Curley*, 134 N. Y. 148, 31 N. E. 330. But this case seems to be opposed at least to the reasoning of many other cases, and there is room for doubt as to whether it is a sound exposition of the law outside of the state of New York. Take, for instance, the statement of Judge Story in *United States v. Monroe*, 5 Mason, 577. "In cases," he said, "of asserted mistakes in written instruments, it is not denied that a court of equity may reform the instrument, but such a court is very slow to exercise such an authority, and it requires the clearest and strongest evidence to establish the mistake. It is not sufficient that there be some reason to presume a mistake; the evidence must be clear, unequivocal, and decisive."

This statement of the law by Judge Story has been frequently quoted and approved by the courts. It has been twice approved by this court. Now, while Judge Story does not expressly state that the mistake must be established beyond a reasonable doubt, he uses language which carries the same idea. He says that a court of equity in such cases requires "the clearest and strongest evidence" to establish the mistake, that the evidence must be "clear, unequivocal, and decisive." But how can this be so if the evidence is such as to leave on the mind of the chancellor a reasonable doubt as to whether a mistake is proved or not?

But, waiving that point, the decisions are quite unanimous in requiring that the mistake should be clearly established. The reason that underlies these decisions is a very plain one, for, if written

contracts could be overturned by a mere preponderance of parol evidence, then they would be of little more value than a parol contract. There is a further reason in cases affecting deeds and other contracts concerning conveyances of land. The law, to obviate the confusion and uncertainty arising from trusting such matters entirely to the memory of witnesses, requires that such contracts shall be put in writing in order to be binding. But the beneficial effect of these statutes would be to a large extent nullified if when such contracts are reduced to writing they could be easily set aside on parol evidence. The reasons which forbid that a written contract should be overturned by a mere preponderance of parol evidence are so clear and convincing that there is on that point no conflict in the decisions. *Rector v. Collins*, 46 Ark. 167; *Carnall v. Wilson*, 14 Ark. 167; *Northwestern Ins. Co. v. Wilson*, 103 U. S. 549; 2 *Pomeroy*, Equity Jurisprudence, § 859; 2 *Warvelle on Vendors* (2d ed.) §§ 779-781.

In order to prove their allegation that there was a mistake in the deed delivered by them to the plaintiff, the defendants have introduced the testimony of four witnesses. Two of these witnesses—Mr. Williamson and his wife—are interested and parties to the suit, and two of them are not interested in the action. Opposed to the testimony of these witnesses is the testimony of the plaintiff, his wife and his two daughters. The wife was competent as a witness to some of the facts, she having acted to some extent as an agent of her husband in making the purchase. All of these four persons testify to facts which tend to show that, so far as plaintiff was concerned, there was no mistake, and that the deed reflects the contract as plaintiff understood it. The testimony of the witnesses for plaintiff is supported by the testimony of his attorney, who drew the deed; and who, being called to the stand by the defendants, testified that the deed was drawn in accordance with the agreement between the parties as he understood it; that he knew nothing about the contention of defendants that the land west of the creek should have been excluded until this controversy arose.

The deed appears to have been executed with some care, and it expressly excepts from the conveyance a graveyard containing about an acre of land, and also the right of way of a railroad which had been built across the land. Now, the question occurs, why, if these parties deemed it necessary to make an express exception in the deed on account of the graveyard and the right of way, should they deem it unnecessary to do so in the case of the land west of the

creek, a tract many times larger than the graveyard tract? One of the defendants has undertaken to answer this by saying that he did not know that the southwest quarter of section eighteen, in which the land west of the creek was located, was a fractional quarter, as shown by the government survey, and that he supposed that the word "fractional" that appeared in the deed descriptive of that quarter section referred to the exclusion of this tract which he intended to except from the conveyance. As these parties were probably not learned in the law, this statement may be true, but the explanation is not altogether satisfactory, for he says that he informed plaintiff of the fact that the tract beyond the creek must be excepted, and that he did this in the office of the attorney who drew the deed. Now, this attorney testified that he knew nothing of the intended exception, nor does the defendant, or either of them, assert that he was informed of the fact that this land was to be excepted. It is plain that defendants, or some one for them, informed the draughtsman that the graveyard tract and the right of way were to be excepted, but it seems that they made no mention to him about the exception of the much larger tract beyond the creek. The fact that his attention was not called to it tends to contradict the testimony of the defendants that this matter was discussed in his office about the time the deed was being prepared.

We have not undertaken to set out all the testimony, for it is unnecessary to do so. Some of it goes strongly to support the contention of defendants. Indeed, we are inclined to believe that the weight of evidence lies on that side, but as before stated that is not sufficient.

It is not claimed that any fraud was perpetrated in this case, and to entitle the parties to reform a deed on the ground of mistake merely it must be clearly shown that the mistake was common to both parties, and that the deed as executed expresses the contract as understood by neither. 18 Enc. Plead. & Prac. 781. We are not convinced that this is true in this case. The state of the evidence is such as to leave us in grave doubt about it, and after a consideration of it we are of the opinion that the reformation asked by defendants should be denied.

Some of the defendants are married women, and the further contention is made for them that a married woman is not bound by the covenants in her deed. This was the rule at common law, and may still apply where the land conveyed belongs to the husband and the wife joins in the deed merely for the purpose of barring dower and

homestead rights. But, under our statute, the wife has now full power to sell, convey and contract in reference to her separate property, and we see no reason why an exception should be made in respect to covenants in her deeds. To hold that she could not make covenants in respect to the title of real estate sold by her would to some extent embarrass her in selling it. We find in the statute nothing that justifies such an exception, and we are therefore of the opinion that this contention is not well taken. *Sidway v. Nichol*, 62 Ark. 146, 34 S. W. 529; 8 Am. & Eng. Enc. Law, 163.

This action was transferred to the chancery court on motion of the defendants, without objection from plaintiffs, and there is now no reason why it should not be finally disposed of in that court. The value of the land for the loss of which plaintiff asks damages is small, and in our opinion does not exceed one hundred dollars. The decree will be reversed, and the cause remanded with an order that a decree be rendered in favor of plaintiffs for that amount.

APPENDIX.

I.

IN MEMORIAM.

FRANCIS JOHNSON.

On September 23, 1902, Mr. Francis Johnson, a member of the bar of this court departed this life. At a meeting of the Court held on Saturday, November 29, 1902, the Chief Justice, the Associate Justices, and members of the bar being present, the Hon. George E. Dodge, a member of the bar of this Court, delivered the following address:

May it Please the Court:

At a meeting of the bar of this city, held in this court room on September 24, 1902, called for the purpose of taking appropriate action in view of the sudden death of Mr. Francis Johnson, a committee was appointed to prepare and submit suitable resolutions of respect to his memory.

That committee reported, and the meeting adopted the following preamble and resolutions:

Francis Johnson was born in the city of Little Rock, September 5, 1847. He was the son of Robert W. Johnson, a United States senator from the State of Arkansas. At the breaking out of the war between the states, he was a student in his teens at the Virginia Military Institute. He was detailed, with other young students, to guard this famous institution, and remained there until the building was burned by the Federal forces under General Hunter. He then entered the University of North Carolina, where he remained for about a year.

When Colonel Hinzley raised the third North Carolina Junior Reserves Infantry, he joined that regiment as private, and was afterwards made adjutant.

He took the degree of A. B. at Yale University in 1871, and was prize man in mathematics and logic, and orator of the Junior Class. He graduated in law at Columbia College, New York, in 1872.

His education was largely the result of his own efforts—teaching part of the time to procure the funds with which to prosecute his studies. After his graduation, he located in California, where he practiced his profession as a partner of Lieutenant Governor Johnson, of San Francisco. He remained there until about nineteen years ago, at which time he was called back to his native State to become one of the attorneys for the St. Louis, Iron Mountain & Southern Railway Company. The business of this corporation in the Northern and Northeastern portions of the state was intrusted to his care, and he attended to it with fidelity and ability, and to the entire satisfaction of his employers.

In 1873 he married Miss May Curran, herself a daughter of one of Arkansas' most distinguished jurists. To this union there were born two daughters and one son, who survive him.

On the 23rd day of September, 1902, after a busy day's work, he returned to his home, and spent the evening around his fireside, surrounded by loved ones, in pleasant converse.

Late in the night he retired, bidding his wife what proved to be a final farewell; his labors on earth were over; he had received his final summons, and was cold in the embrace of death. He was a modest and unobtrusive man; he was always surrounded by a circle of warm friends. He left no enemies; and, while he was a bold and fearless advocate, his courteous treatment of his adversaries left no wounds. He was a ripe scholar, well read in literature, a strong and able lawyer, a gentle and kind husband and father. As a slight token of our regard for him, and that his memory may be perpetuated:

Resolved, First, that we are profoundly grieved at the death of Francis Johnson, for whom we have always cherished the most kindly feelings of friendship and high regard.

That in his death the bar of the state has lost an honest, able, hard-working and efficient member, and a most polished, courteous and genial gentleman, and his clients a counselor, attorney and advocate whose place will be hard to fill. Fidelity to his client, and fairness to his adversary were elements of his character that will long be remembered and recalled by his brethren at the bar. His mind was pre-eminently logical, his mental grasp firm and quick, and his propositions were clear, concise and convincing. Both as a lawyer and as a man, whether in the courts or in the private walks of life, he was faithful to duty, and kindly, courteous and considerate to all men, and under all circumstances a perfect gentleman.

Second, That we tender to his family our heartfelt sympathy, and request that the secretary transmit to them an engrossed copy of these proceedings.

Third, That George E. Dodge be and he is hereby appointed to present these resolutions to the Supreme Court, Joseph W. House to present them to the United States Court, Dan W. Jones to present them to the Pulaski Circuit Court, and John Fletcher to present them to the Pulaski Chancery Court.

J. C. MARSHALL,
JOHN W. BLACKWOOD,
W. L. TERRY,
W. H. PEMBERTON,
W. E. ATKINSON,

Committee.

Those of us who have been long at the bar can recall to mind many funeral processions, and look back upon many bar meetings, held to do honor to the memory of brother lawyers. There is undoubtedly a fraternal feeling engendered among most people who work together to a common end, which requires no oath-bound organization, either to originate or perpetuate it. This is conspicuously true of the legal profession, and for reasons that are unknown to any other profession.

While there is more or less strife in all of the active occupations of life, it is not concentrated, as that of the lawyer is, against single opponents in a series of contests which last through the whole campaign of life. There is something more gladiatorial in it than survives in any other sphere of life,—more, indeed, than is to be found along the world's firing line, where wars are waged, and battles are fought.

In such contests, men to a great extent lose their individuality in being massed against other masses of men. The responsibility for results is divided among many, as is also the praise or the blame. But each lawyer, in the trial of a suit, is a chosen champion; chosen and selected for his supposed ability to vindicate the justice of his client's contention, who finds himself confronted by the champion of the other side.

All of this has a tendency to produce exactly the relationship which exists among lawyers. They are not only associated together, each working in the same general cause, but are striving in opposition to, and in conflict with, one another, and yet to the common ideal end—the attainment of justice, both in the abstract and in the concrete.

In its narrowest sense, the successful result in a given lawsuit is a benefit to the lawyer and to his client. If justice in the abstract has been reached, the result has also benefited the state and society at large. And so it comes to pass that the lawyer who lost his suit yesterday wins today, largely through the success of his opponent of yesterday in establishing some general principle.

It is this altogether unique rivalry, exemplifying, as it does, a diversity in unity, which causes the laity to wonder at, and often skeptically to contemplate, the fraternal spirit which prevails among lawyers. But, to the lawyer, this feeling is well understood, and, inspired by it as by any other sincere sentiment, he is prompted to do

honor to the memory of one of his comrades—not as a mere matter of form, or with outward display, but as a man who misses and mourns a lost friend.

There are occasions like the present when some of us, more intimately connected by ties of friendship and close personal contact with the one who is no longer with us, would prefer to sit in silence, and listen to what others could better and more disinterestedly say appropriate to the subject. But, this feeling being subordinated to both the honor and the duty implied in this appointment, I can do no less, and will seek to do no more, than to submit a few observations calculated to embody what I believe to be a consensus of the opinion of the bar in general concerning the rare character and sterling worth of our deceased brother, Mr. Francis Johnson.

He was a graduate of Yale, and of the Columbia Law School, but he may be said also to have been a graduate of the "school of adversity." He was a young soldier of the Confederacy, who had bravely borne his part in that heroic struggle which ended in lost hopes, ruined fortunes, and blighted firesides. He was one of those who, in the house of defeat, was called to confront ruin and disaster, where formerly fortune had smiled upon him in a home of refinement and affluence; one who lost no time in futile repining, but addressed himself to the completion of that education which was to be won by his own personal exertions, rather than as the birthright of a favored son of fortune. And so, in the old fashioned method, which more than any other emphasizes the trite maxim concerning "the royal road to learning," Mr. Johnson qualified himself to enter upon the practice of the law.

The first years of his professional life were passed in San Francisco, where he proved himself to be a lawyer of ability. Taking advantage of opportunities offered in his native state of Arkansas, he returned to Little Rock in the year 1882, and, from then until the close of the very day whose midnight hour struck his final release from honorable toil, he was busily employed as a corporation lawyer.

His sphere of duty was principally in the circuit court of the First, Second and Third Judicial Circuits. In the counties comprising these circuits, he attended two terms of court each year, and, with ability and faithfulness, tried cases of importance at each term. The judges and lawyers of these courts therefore had the best opportunity to take the measure of Mr. Johnson, both as a lawyer and as a man. It is from such sources as this that there comes the unanimous opinion as to his excellent ability and unimpeachable integrity. Nor did this good opinion wait for expression until, by reason of his decease, the custom of speaking no ill of the dead called only for the best that could be said of the departed.

It may be here stated, by one who had opportunities to know the estimate in which Mr. Johnson was held by those who practiced in the same courts with him, that for years past he was regarded as a lawyer of the highest order of ability, as well as a gentle, brave and courteous man. He was the kind of man and lawyer whose word as

readily passed current as a certified check upon the bank of truth itself. Under the most trying circumstances, he was the embodiment of patience and courtesy. He was the lawyer sought for to act as special judge, by common consent of the attorneys representing both sides of a controversy.

Rarely do the virtues of gentleness and firmness blend so harmoniously in human character as they did in that of Mr. Johnson. He had all of the aggressiveness and the boldness necessary to make him a formidable adversary. He was a man of convictions. He had ambition, but not of the kind which inspired him to achieve success at all hazards and regardless of the rights and interests of others. It was an ambition to achieve results which were in themselves right and just, and not the reckless pursuit of selfish ends which overthrows, tramples upon, and destroys the rights of others.

The trait of character which so conspicuously displayed itself in his demeanor is yet the most difficult to describe in words—that is, the unfailing courtesy which he observed in his dealings with his fellows. Like the perfume of a flower, or the song of a bird, it is felt and appreciated, but defies descriptive phrase.

“How sweet and gracious, even in common speech,
Is that fine sense which men call courtesy;
Wholesome as air, and genial as the light,
Welcome in every clime as breath of flowers,
It transmutes aliens into trusted friends,
And gives its owner passport round the globe.”

In the preparation of his cases, Mr. Johnson brought to the aid of a clear intellect and logical mind an unremitting industry. In his capacity for taking pains, he came within the scope of the well known definition of “genius.” He never relied upon the inspiration of the moment. He made no rough guesses at the law. He took time to study and to reflect, and an opinion based upon such an investigation as he made was usually a safe and sound one, for it was buttressed by sound reasoning and good authority.

He was attentively listened to by both court and jury, for they had learned that in what he said he expressed his honest convictions, and asked for no more than was warranted by the facts and the law. All who came in contact with him were impressed with the fact that, behind the lawyer, there was a man, earnest, honest and sincere.

It was a pleasure to Mr. Johnson to confer with, and to counsel, younger members of the bar, and, by helpful hints and suggestions, to smooth over some of the rough places which every young practitioner finds in his way.

He possessed the happy faculty of being strongly contentious in the support of a proposition, but, at the same time, avoiding a dogmatic and intolerant treatment of the subject. These and many other attractive traits of character disarmed enmity, softened animosity, and made a friend of his adversary. The maxim that in order to succeed a man must have enemies is the product of a hard and mis-

anthropic philosophy. Here was a man who was a success in his sphere of action, and yet, so far as those best acquainted with him know, he had not an enemy in the world.

A man who, as an active trial lawyer, was constantly employed, for so many years, in the circuit courts of some fifteen counties of the state in the defense of a railway corporation sued for alleged damage to the person and the property of the people must have been a remarkable man to have sustained himself as he did, and to have actually endeared himself to the people. One who follows the particularly arduous lines of corporation practice, where all the sympathy of the community from which jurors are selected is against the client which he represents, and who challenges the respect of court, jury and bystander by his fairness and candor must be made of no ordinary material.

And, again, a corporation lawyer who performs his duty in the defense of his client fearlessly and aggressively, and yet whose course of conduct, for years, in the management of his cases, has disclosed nothing but the most openhanded and honorable methods, affords the best answer which can be made to the shallow opinion, sometimes flippantly expressed, to the contrary effect.

He never sought applause by vain display. The approbation which he received came as the natural result of an unaffected, straightforward course of conduct. His confidence in his fellow-men was the natural outgrowth of a heart which harbored no malice or ill will, and which could see but its own reflection in the hearts of others. Because of this guileless confidence, he could be imposed upon, but could no more practice imposition himself than could a sweet fountain send forth bitter waters.

To him the study and the practice of the law were not as mere means to an end, but were approached more in the spirit of the devotee before an altar lighted by sacred fires. He loved to reason from first principles, and to reach his conclusions from deductions based upon bed rock premises.

Mr. Johnson left behind him no record of public service rendered in return for the suffrages of his fellow citizens. His life was the private, as contrasted with the public, life, as commonly understood. Yet, in his private life he left a record which, in its truest sense, is a public one, for no lawyer can lead a strictly private life, if he performs the duties of a lawyer. In a greater or less degree, he stands conspicuously before the public. He is one of the official instrumentalities in the administration of the laws of his state,—a fact of which a lawyer cannot be too often reminded. His is an office of life tenure, and, in proportion as he practices his profession on a high or low plane, he not only adorns or disgraces his profession, but in the same degree conserves or destroys the respect of the community for law and order. Of no other profession can it more truly be said that "the post of honor is the private station."

If an acquirement of the fundamentals of the law barely sufficient to secure the coveted license to practice begets in its possessor no

higher ambition than to make use of it as a stepping stone to official preferment, the license is put to an ignoble use. A stepping stone is a mere convenience, and, to be made use of, must be trodden upon. Surely this is not the legitimate purpose of a commission which, on its face, imports the taking of an oath that the affiant will serve the law, and not, for the sake of mere personal popularity, bring the law into disrepute. But, on the contrary, it ought to, and it does, imply that one so commissioned has higher aims than selfishness and self-seeking, and will call attention to himself only by patient self-denial, incorruptible integrity, and assiduous industry within the legitimate limits of his profession.

Almost any man of average smartness may become the idol of the hour, and be temporarily hoisted upon the shoulders of an admiring constituency, and so be said to be leading a public life. Public official life, indeed, has need of men learned in the law. This need includes all three of the departments of our form of government. But the call should come as to a trained specialist, whose ability and skill have marked him as the man for the hour and for the occasion. And, until such occasion arises, and such a call comes, the suggestion may be here ventured that both the legal profession and the state are the better off for the useful so-called private life of the lawyer who yearns not after the flesh-pots of office; better off for the patient, plodding lawyer whose ambition it is to be a master workman in, and to uphold and dignify, a profession to which the world of business and of statecraft alike look for that conserving element which adorns, while it strengthens, every institution of free government.

A modest and unassuming representative of the profession, and of the high ideals just indicated, was found in the lawyer and friend whose memory we this day honor.

But now his work is done, and we cannot say less than that it was well done. His record is complete, and in it may be found much for praise and emulation. The duties of an arduous profession no longer exact from him the daily toil and the nightly vigil. Death has signed his honorable discharge from the ranks of his brethren of the bar who yet remain. To him it came not as the traditional "grim monster," approaching with threatening mien and with challenge to an unequal combat against prolonged pain and suffering. But rather did it assume the guise of a friendly, releasing hand, unloosing the bonds which fettered a free spirit, and accomplishing a quick transition from the lower to the higher life. So died our gentle, brave and courteous friend, and at his burial we hid the mound of fresh earth, so suggestive of death, beneath flowers of fragrance and purity, suggestive of that peace and happiness which we bespoke for him in a land where flowers never fade.

"So shall thy grave with rising flowers be blest,
And the green turf lie lightly on thy breast:
There shall the morn her earliest tears bestow,
There the first roses of the year shall blow."

Mr. Justice Riddick responded as follows:

In behalf of the court I will say that we fully concur in what has been so well said concerning the life and character of our deceased brother, Francis Johnson, both in the resolutions of the bar and in the address to which we have listened with much interest. I formed the acquaintance of Mr. Johnson soon after his return from California in 1882, when he came up to the second circuit to defend lawsuits brought against the railroad company, for which he acted as attorney. A large part of his time thereafter, up to his death, was devoted to trying such lawsuits in that portion of the state, and he became one of the regular practicing attorneys of the two or three northeastern circuits of the state. By reason of the fact that his practice lay almost entirely in the country circuits, he was better known, and as with him to be better known was to be better liked, it is probably true that among the profession and people generally of those circuits he was more highly appreciated and esteemed as a lawyer and a man than he was even here in the city of his home. He was not only admired there as a lawyer, but he often sat as a special judge for the trial of cases in those courts, and showed by his ability and his calm and dispassionate judgment that he was eminently fitted for a place on the bench.

Friendships and acquaintances are easily formed on the country circuits. Paradoxical as it may seem, lawyers there are thrown together more closely than in the cities. They travel together, stop at the same hotels, eat at the same tables, and often sleep together. Such a life has its discomforts, no doubt, but, like life under most conditions, it has its compensations also; and one of these is the opportunity it affords of finding out what a multitude of really good and companionable men the world contains, and what a number of them are members of our profession. He who follows such a life, and is worthy, is certain to form many and fast friendships. The noble and unselfish character of our brother, joined to his courteous manners and genial disposition, was well calculated to win friends, and he had troops of them in every county where he practiced.

It was Cicero, I believe, who said that a noble mind chooses rather to have than to seem to have a superiority in merit. Mr. Johnson could have stood well such a test as that, for there was in his composition not one particle of sham or pretense. Singularly free from the weakness of vanity, envy and malice found no lodgment in his generous heart. It is generally true that in this life the world pays us back in our own coin. If we pour out hatred and revenge upon others, it is reasonably certain that we shall be repaid in kind, heaped up in rounded measure. But nature, which gave our friend his admirable and lovable disposition, protected him against all such ills as these. Instead of the "malice domestic," the hatred that some reap, he won "golden opinions from all sorts of men."

Herein, I think, lies a valuable lesson that his life teaches, for I do not know of anyone whose conduct towards the bench, towards mem-

bers of the bar, towards parties and witnesses with whom he came in contact, was characterized by more uniform consideration and courtesy—a courtesy all the more beautiful because it was innate, and came forth spontaneously. This fine courtesy which he accorded to others was repaid on the part of the bench, the members of the bar and the people of the circuits where he practiced by an esteem and friendship concerning which I am glad to testify. And when, like some clear sun which, after a day of beauty, dips quickly behind the hills, his life on earth ended, and suddenly over the wires was flashed the sad tidings that Francis Johnson was dead, I am sure that of the many who knew him well, there was not one who did not feel in his death the pain of a personal loss—a loss that was irreparable.

Such a man was an honor to his profession and to the state, and in honoring him we do credit to ourselves.

The resolutions presented by the bar will therefore be spread of record as a testimonial to his memory.

GEORGE E. DODGE.

On February 6, 1904, Mr. George E. Dodge, a member of the bar of this Court, was gathered to his fathers. At a meeting of the Court held on April 2, 1904, present the honorable judges and members of the bar, the Hon. Benjamin S. Johnson, a member of the bar, addressed the Court as follows:

May it Please Your Honors:

At a meeting of the bar of this city, held in this court room on February 8, 1904, called for the purpose of taking appropriate action in view of the sudden death of George Eugene Dodge, an honorable member of this court, a committee was appointed to prepare and submit suitable resolutions of respect to his memory. That committee reported, and the meeting adopted the following preamble and resolutions, which I have had the honor delegated to me to present to the court. I now present the same, and move the court that they be spread upon the records of this court as an enduring tribute to his memory:

“RESOLUTIONS.

“The committee appointed at the meeting held on yesterday on the occasion of the death of George E. Dodge, a leading member of the Little Rock bar, to prepare and submit such resolutions as may seem suitable for the commemoration of his life and death, would respectfully report as follows:

“The deceased was born in this city, lived here during his whole life, and died here on the 6th day of the present month, surrounded by his family and a few of his most intimate friends, in the 59th year of his age.

“He was admitted to the bar in the year 1868, and here entered on the practice of his profession immediately afterwards under most

favorable auspices; in which pursuit he continued with undeviating devotion and fidelity until death closed a career marked at every stage by increasing success. To speak at large of the qualities that most distinguished him with any great degree of completeness is not our purpose now; nor is it necessary to dwell on them in addressing these words to you, to whom he was so intimately known for many years; but, for a brief memorial, we will respectfully recommend the adoption of the following resolutions as expressive of the sentiments of the bar concerning one who was long a companion in our daily lives, and whose irreparable loss we are called on to lament.

"Be it Resolved:

1. "That for many years past Mr. Dodge occupied an enviable position at the bar of his native state. To a mind naturally strong and vigorous, eminently penetrating and logical, he added that untiring energy which enabled him to attain to a profound knowledge of legal science, and to fit him in an unusual degree for the duties of a professional career; to be a sage counsellor and successful advocate. His uniform courtesy towards the other members of the bar and towards the courts will long be remembered as an example that deserves the emulation of all who may come after him. In the more intimate relations of life he has left behind him memories that will long be cherished. He was a most affectionate husband and father, and a devoted friend; and his unvarying sense of justice, and rectitude commanded the respect of all men, and honored the Christian faith that he had professed during his life.

2. "That a duplicate of these resolutions be prepared, and that it be sent to the family of the deceased, as a slight but respectful token of our sympathy in their present affliction.

3. "That Benjamin S. Johnson, Esq., be requested to present a copy of these resolutions to the Supreme Court; that a copy be presented to the United States Circuit Court in this city by George B. Rose, Esq., and that a copy be presented to the second division of the Pulaski Circuit Court by J. E. Williams, Esq.

"Respectfully submitted,

"U. M. ROSE,

"JOSEPH W. MARTIN,

"DAN W. JONES,

"W. E. ATKINSON,

"J. E. WILLIAMS."

May it Please Your Honors:

In the midst of the rushing and stirring scenes of life we are now and then called upon to pause, withdraw our minds from the cankering cares and duties of the hour, and pay mournful tribute to the memory of those who have fallen asleep by the wayside. It is a task of sorrow and tears, but it is a task from which the soul rises refreshed and purified.

The world with its hot, choking vapors recedes and becomes a small and distant planet when we give over our thoughts to the con-

templation of the virtues of the dead. The sounds of strife, the voice of bitterness, the cry of hate, the clamor of arms, are all lost to the ear which is listening at the portals of the tomb. The eye is withdrawn from the spectacle of crimes, of misery and of vice, and rests gratefully for a while on the beautiful and ravishing glimpses of eternity, which greet it in its longing gaze after the departure of some friendly spirit. In such an hour, the oppressed heart, weary and heavy laden, casts off for a season its galling burdens, listens to the music of another sphere, and enjoys in anticipation the rest which awaits it when the narrow stream is crossed at the close of life. From such reflections, we return and resume the wearisome journey before us, wiser and better men with a new strength to promote virtue and repel the allurements of vice.

The grave is in no sense the end of life. Even the wasted body, which there submits to decay, is yet to hear the voice which will command the earth and the sea to give up their dead. And, while the liberated spirit is tasting its immortality in regions beyond the sun, still here, in the midst of his old associations, he who sleeps beneath the sod, and at the same time dwells in eternity, continues to live and partake of the affairs of time. Life is but expanded by the stroke of death. Another world, yea many worlds, are added to the boundaries of existence; but the one which we now inhabit is not abandoned.

We cannot, if we would, trammel up the consequence of having lived. The channels of influence for good or for evil, once started, flow forever, even here in these mortal plains. No man ever lived for himself, or drew after him into the grave, when he died, the results of his life. Brass and marble are enduring monuments; and glowing epitaphs, transmit from age to age, the names and meritorious deeds of those who sleep beneath them. But the perpetual influences of human conduct, never ceasing until time itself shall cease, survive all that skill and affection can bring to the tomb to rescue the dead from oblivion.

We are living today in the midst of accumulated influences of an endless past. The bitter taste of the forbidden fruit which Adam ate in the Garden of Eden is yet on our lips, and to heal its burning poison we invoke, each hour of this living present, the aid of One who nearly two thousand years ago was put to death in a Roman province for seditious teachings against the reigning Cæsar.

In civil affairs, affairs of state, principles of government, explorations of science, triumphs of art, the acquisitions of literature; in all the wide scope and vision of human effort there is nothing new. Nothing, save the combination of the results of former ages, and their application to the demands of the world as it now exists. In this it is true there is progress, but it is a progress for which the present is indebted to the past.

That vast and silent region which stretches back to the hour when the stars sang their strains of triumph in the sky is not to us the region of darkness. There is a great high luminary, hung up in its mighty dome, as bright, blazing and eternal as the sun in the heavens,

by which we guide our feeble and wandering steps. It is the light of experience, the vestal fire on whose altar every human being who has acted his part in this universal theatre has laid his offering to increase the flame. It is history in its highest significance, beaming with the influence of those who are no longer visible to the eye.

No one is dead to him who reads history aright. The page becomes illuminated, and each actor there recorded starts into life, and becomes a living teacher, an admonishing and impartial friend.

It is in this view that the dead are useful to the living. Their destiny is fixed. Their book is closed, and the seals are set. To them we can bring no change. But how different the power which the tenants of the grave wield over those who have not yet joined them! Our minds are enriched, our judgments are formed, our hearts are touched, softened and elevated, and the whole course of our lives is controlled and directed, by the examples, the influences of those whom we shall see no more.

These thoughts are irresistibly suggested to my mind by the position in which I stand before this court today. I rise to announce the death of one whose name and influence will be forever associated with the judicial history of this state. I rise to announce the death of one who was a member of this court for nearly forty years, and from whose grave there now springs up the enduring and beautiful light of virtuous example.

George Eugene Dodge is dead! It is a fact long since known to us all, and yet how mournful the announcement sounds here in the theatre of much of his work and long career of influence and honor.

George E. Dodge is dead! He is dead, it is true, as it is appointed unto all once to die; but how little there is of man that altogether dies? That feeble languishing form is resting to be awakened again after a long sleep. That is all. He still lives in every other respect. Not only has he put on his robes of infinite existence beyond the veil which hides him from our view, but here, in this sanctuary of justice, here in the forum of his labors he still lives, and in your memories, and the memories of all of us, he still lives, as in the days of his vigorous manhood. He lives in the pleasing recollections which all cherish of an urbane, kind and courteous friend and gentleman. But he lives in a wider sphere than this. He has given the example of his life to all—to the old for reflection and approval, to the young for study and imitation,—a life of ardent love and devotion to his profession; an earnest and constant worker, true to his Christian teachings, true to his clients, devoted to his friends and conscientious in all his dealings, whether with the high or low, rich or poor. It survives and will never perish. It is so much of added treasure to the true wealth of the world. Let us study, as becomes the part of wisdom, his example, and profit by the lessons which it imparts.

George E. Dodge was born in this city on July 6, in the year 1845. On the 6th of February, 1904, just after the glorious orb of day had passed beneath the horizon, he closed his eyes in eternal rest, like a child that had fallen asleep. His death was without pain, I fain would

believe, although his sufferings had been great. The end came, I know, not unheralded, and not unexpected, and yet who is there, when hope and life and duties and joys are all around and about us, beckoning us on in life's glorious journey—who can say that death is not always a surprise?

Nearly seven years ago he was stricken with a fatal malady, known so well to medical science, and yet for which that science has found no cure or remedy. For seven long years he resisted its attacks, and, like a true and Christian hero as he was, complained not, but filled patiently his duties in life, leaving it all, as he had often said to me, "to the will of God."

In the summer of 1867, Mr. Dodge graduated at the Albany, N. Y., School of Law. His class was a strong one, and many of its members afterwards attained great distinction in their chosen profession. Among them I may mention the late President Wm. McKinley, and Judge Bartlett Tripp, Chief Justice of the Supreme Court of Montana. There were many others whose names I cannot now recall, although, with justifiable pride, he frequently mentioned and talked with me about them.

From the Albany Law School, Mr. Dodge returned home to this city, and entered upon the practice of law, being admitted to the bar of this court in the year 1868.

On October 17, 1867, he was married to Miss Madeline Perdue, of Louisville, Ky., who now survives him. There were four children by this marriage, two of whom are still living. Shortly thereafter he formed a partnership in the practice of law, in this city, with Judge Frank T. Vaughan, under the name of Vaughan & Dodge. This continued until Judge Vaughan left the state for a while, when it was dissolved.

In 1868 he was elected counsel for the city of Little Rock, which office he held for two years. This is the only public office of any kind or character which he ever held. He never sought office, and I have often heard him say he desired none. He loved his profession as a lover, and was satisfied to pursue it with all of its cares and perplexities.

In 1871, December the first, the partnership with myself was formed, and that partnership continued uninterruptedly and unbrokenly until the day of his death.

Much has been said and much has been written in regard to various kinds of legal ability, which we find at the bar and on the bench. Opinions differ on this subject, just as minds are differently constituted. It is said of Chief Justice Marshall that he often delivered the most important opinions, and at the close requested a brother judge to find the authorities to sustain him. His judgments were drawn from general principles, which, like demonstrations of physical science, cannot lead us into errors. To remember the book, the page and the case in which some court had made a decision is a mere effort of memory, but to determine what the law is in the light of reason and justice requires the exercise of the loftiest attributes of the human

mind. In one case we simply appropriate, very properly it is true, the labors of other men; in the other case we launch out upon our own strength, and come in laden with rich spoils of original thought. To combine these two qualities of professional life is to make a perfect lawyer; but, if one is to exist without the other, then the mind which is guided and governed by general principles has all the advantages in my opinion, and is the most to be desired.

Mr. Dodge was in a marked and eminent degree an original thinker. I have known him, nearly always, to reason out the law upon any given case first, and then seek for the authorities to sustain him. He had followed the science, the reason, the spirit of the law, and that is always harmonious, consistent and just. If I may be allowed an expression often used by him, he was a devout believer in the plain and familiar maxims of common sense, and always brought them to bear in the discharge of all his legal duties. Will any one say that such traits of mental character made an unsafe jurist?

I had not been associated with him long until I became convinced that he would have made an eminent judge; that he would have honored any bench, and would have made his impress upon the laws of his state, had he ever been so chosen. But he sought none of these things. His sole ambition was to do his duty in the active practice of law, his chosen profession.

Mr. Dodge was possessed of a most genial and urbane nature. He was a most fluent and beautiful writer. So much so that in the most common and simple briefs written and filed by him in this court it was always noticeable.

As a man, although apparently austere and severe in manner and appearance, he was one of the most genial I ever knew. He was apt in telling an anecdote, and enjoyed one as much as any person I ever saw. There were many, I know, who thought that he was more of a stoic in manner and character than otherwise, but this was a mistake. As I have said before, for over seven years he had been practically an invalid and suffered greatly. Then grief and sadness had entered the portals of his lovely home, and sorrows had made him quiet and silent. He was never morose, but he was silent. Associated as I was with him so intimately, day after day and year after year, for over a third of a century, I have never heard him complain of his sufferings of body or heart. And I have seen him each day enter upon his day's work in silent patience, always with an abiding faith that He who ruleth all things would guide and guard and care for him.

In 1875 he was appointed one of the commissioners for the state of Arkansas to the Centennial Exposition at Philadelphia with Dr. Lawrence of Hot Springs. Shortly thereafter Dr. Lawrence was stricken down with a severe illness, and Mr. Dodge became virtually sole commissioner for this state. He left his office, gave up his practice, and for over six months, without one cent of renumeration, devoted himself exclusively to the duties of the position. There are many now within the sound of my voice who will never forget the warm, cordial and hearty welcome he gave them when they arrived at the Arkansas

building; and the assiduity with which he looked after the interests of all, as host representing his state, will never be forgotten.

In 1877 the General Assembly passed resolutions of commendation and thanks for his service, and I know that he ever cherished this approval of his work and sacrifice as a praise not to be forgotten.

In 1882 he was elected Grand Master of the Supreme Lodge of Free and Accepted Masons in Arkansas. That position he held for one year with honor to the fraternity and credit to himself.

But citizen, lawyer and public servant all becomes absorbed in a brighter and more exalted character as he approaches that narrow stream which flows around the world and divides things temporal from things eternal. No proper estimate can be placed on the life of a man until the manner of his death is known. Mr. Dodge had for years been slowly yielding to the advancing foe, whose approaches no one can resist. He was a true, genuine Christian. Early in life he had settled that question for all time. His faith was like the Rock of Ages, and his professions, openly, constantly, truthfully were known to all men.

In the close intimacy with which he honored me, I often heard him dwell for hours on the great mysteries which gathered around the grave. The future world and his relation to it was a practical question to his practical mind. He met it as he had met every other requirement of his situation. He sought in every way to discover his duty, and his soul rested upon the Savior of Mankind, without doubt, fear or discussion. He died as he had lived, a true child of God.

He was by nature great and generous and honest. As a lawyer he waged warfare on the highest plain or honor. He sought no advantage through favoritism, and won no victory by doubtful methods. He despised a court, high or low, that was not pure and unsullied. His courage, in the conduct of a case was the sublimity of heroism, and his fidelity to his clients was never open to suspicion. With the weaker side he was generous and forbearing, and to the poor he gave opinion and counsel without money and without price.

There was no malice in his heart, no tyranny in his nature. If he had been born a king, he would have ruled his subjects with a scepter of love: "In his right hand he ever carried gentle peace to silence envious tongues."

All his associates knew his faults as well as his virtues. There was nothing hidden in his nature. The life he lived and the contests he fought were known to many; were open to view, and there the sunshine of his legal victories as well as his daily life still gleams.

He was a most attractive man in his physical development. Nature rarely fashions into manhood a form so perfect and a presence so attractive. When we find a man whose gifts and fine endowments have placed him among the best, and whose supreme mind and life has won for him distinction, which his admiring contemporaries can well profit, and still find him sharing but few of the imperfections of frail humanity, then I think we cannot afford to be reserved and miserly in the bestowal of praise due to such a man, and should rather

seek comfort and solace for his untimely loss in the fond recollections of all the great and virtuous and the noble that was in the living, and the remembrance of which he left behind—a sacred inheritance to his friends, a worthy example to the young, a pure and most acceptable connecting link between the living and the departed—the dead past and the bright present.

May it Please Your Honors:

I am aware that in speaking of the dead, who have long been closely associated with us in life, we are naturally inclined to refer only to the brighter characteristics of their lives and to extol their talents and virtues, showing that our better natures are touched by the grief and sad bereavement of others, and that envy and jealousies of human nature are lost in tears and sorrow!

The ordinary duties of life have a tendency to draw our attention to the mercenary side of human character, and seldom allows us to look upon the brighter, nobler and greater traits of man's nature, so that except on occasions of this kind—when the tender cords of the heart are touched—does the mind turn back on the pathway of the life of others, to gather up flowers strewn along it, that they may be presented as mementoes to the court and friends; but, with our hearts touched and softened, we are led oftentimes to study the better part of human character, and forget the trivial things that are apt to be considered in our daily intimacies with each other.

Man is not perfect. Our deceased brother, of whom we speak today, was but a man. He, like others, may have made mistakes, but they were of such insignificance that soon they will be lost to memory, while we, on the other hand, will remember the nobler and better points of his character, which were many and well marked and of a nature to impress themselves vividly upon the minds of all who were intimately acquainted with him.

He was a devout and fond husband, and most generous and indulgent father; his home bore the impress of these virtues, and now by its silent gloom, gives out the deep affliction of his once bright and happy family, now clothed in sadness.

I would here intrude but a word of myself and my connection with my friend. For nearly thirty-four years I had been associated with him in the practice of law. Bound to him by ties of partnership only, he yet became more than a brother to me. In the ups and downs of life, in its early struggles, in its assured and attained success, we were as brothers. Never, during our whole partnership, had an unkind word passed between us. Ever gentle with my faults, ever considerate of my trials, his death has been a loss to me which can never, never be replaced. His silent desk, his vacant chair, and the loss of his inspiring presence, are to me a daily source of honest grief and distress, and, do what I will, turn where I may, I shall miss him to the end.

For these reasons I think that my personal loss is greater than the rest of you have suffered. But that is a "fee grief due to my particular breast." It is enough to say for myself that I did love him in his lifetime, and do honor to his memory, now that he is dead.

My duty is accomplished. I have announced to this court the death of one among its brightest members. I have dealt freely and imperfectly on the leading elements of his character and some of the prominent incidents of his life. Much more I might say. The social circle, the domestic fireside, the altar of private friendship, all render to his memory the dearest and tenderest tributes of love that were ever laid as evergreen garlands upon the grave of the beloved dead. But I will not draw aside the veil which makes that portion of his life so sacred. It belongs to the cherished few to whom his heart was opened with all its wealth of love.

Just and learned lawyer, enlightened citizen, devoted Christian, courteous gentleman, my brother, farewell. Sacred be thy memory and peaceful and sweet be thy slumbers.

"Like a shadow thrown
Softly and gently from a passing cloud
Death fell upon him."

In response the Chief Justice spoke as follows:

The growing frequency with which occasions like this, within recent years, have called together the members of the bar of this court, reminds us all of the unceasing demands of pallid death. He comes with silent and stealthy tread, but none the less with certainty and punctuality. It is also noticeable in our case that his beckonings, within this period, have been to those occupying the first rank in age and experience, character and standing, ability and brilliancy.

The life of the subject of these memorial services most distinctly marks the boundary line between the old regime of the legal profession and the present generation of lawyers. Born, reared and educated to manhood's years in all that marked the period of the old or antebellum school, George E. Dodge maintained all his life much of the peculiar characteristics of the former period in his manner and personal bearing; and this, with him, continued more or less in his after professional life, as would be natural in such case. At the same time he gradually entered heart and soul into the more practical phase of the professional life, which is the peculiar feature of the present day. So it may be said of him that in his manhood's make up he was of the old school of citizenship, while professionally he became and was largely of the new school.

In the practice of his profession he was observant, intelligently wide-awake, untiring and conscientious in the service of his clientage, bending all his thoughts and energies towards practical results, rather than to the sentimental rewards that in the old time inured to one's personal advantage in the gratification of professional ambition. He was known of all the members of the profession, who enjoyed a close acquaintanceship with him, as one who rather avoided the applause of the forum than courted its fascinations, and yet it is the judgment of most of them that as an advocate before juries in the court room he had few equals and scarcely any superiors within the bounds of our

jurisdiction. As a writer, he stood among the very best who have exercised their gifts in the present of this court.

It was his habit, when his health permitted, to be a punctual attendant upon the sessions of this court, and it was always a pleasure to see his genial face, and observe his very cordial and pleasant demeanor towards those present. All, of course, knew of his bodily afflictions, and those of the inner circle were aware of the weighty sorrows that were his to bear during the last years of his life, and all these took a mournful pleasure in seeing with what fortitude and cheerful resignation he bore up under the great burden, for his appearance betokened little of them. Some of us were acquainted with the inner life of the man; with his religious life, his Christian walk and conversation. It was always an inspiration to note this afflicted and sorrow-stricken man so faithful and regular in his place, bent on the discharge of any Christian duty, however small it might appear to the outside world.

George Dodge was the fondest man of little children we ever knew, always giving them the pleasant greeting, the friendly hand and the warm heart, and always ready to give counsel in their little troubles. They all loved him, and his acquaintance among them was naturally most extensive.

Take him all and all, no man was more generally held in the highest esteem, and no one will be more sadly missed, now that he has gone from among us, than George E. Dodge.

The resolutions and proceedings of this occasion will be entered on the records of the court for the day, as is customary, and the clerk will furnish copies of the same to the family on request.

The court will now adjourn, in token of our respect for the deceased brother, until next Monday, at 9 a. m.

LEONIDAS COLWELL BALCH.

On May 21, 1904, at a meeting of the Court, present the Honorable Associate Justices and members of the bar, the Honorable Chas. S. Collins, a member of the bar, with appropriate remarks, presented the following resolutions adopted by the bar of Little Rock, viz.:

"Leonidas Colwell Balch was born in Panola county, Miss., on the 20th day of November, 1842, and closed his career at the home of his later years in Little Rock, Ark., on the evening of April 18, 1904, beloved by those who were nearest to and knew him best, respected by the entire community, and his death regretted by all. On May 18, 1861, he entered the Confederate army, joining the Twelfth Mississippi regiment of infantry, and was so severely wounded at the battle of Seven Pines, on May 31, 1862, that for many months his life hung in the balance, and was only saved by the devotion of those historic

women of old Virginia whose names and fame have come down to us with loving praises as an example to other generations of American women. The character of the wound was such that it never entirely healed, but for forty-two years, and up to the day of his final departure, it not only disciplined him in the school of suffering, but was also the subject of constant medical attention.

"Considering such a lifelong burden, from which most of us have providentially escaped, and cannot fully appreciate, we wonder at the iron will and determination of our friend; enabling him, not only to overcome his physical disabilities, but to lead so long and so useful a life and to close the same with such credit and with so little therein either for himself or his friends to regret.

"Disqualified from any calling requiring bodily strength, he addressed himself to the profession of the law, and was admitted to the practice at the Sardis bar in 1870. He rapidly took high rank, and was recognized as a leader among the entire bar of North Mississippi, which embraced such names as Chalmers and Miller, and others whose reputation for erudition and learning has not been confined to the borders of their own state.

"Influenced by friends who had preceded him here, in 1881, with his family, he removed to Little Rock, where he resided until the day of his death among neighbors who loved him because of his sterling and unassuming worth, and as a friend who in all the years had nothing but gentle and sympathetic words for those around him in all the varying conditions of life. To his friends in prosperity his words were those of cheer. To his friends in adversity and trouble his words and actions were swift to express the sympathy of an affectionate heart.

"His practice at the Little Rock bar was but a small part of his profession here. The tides which so often direct our courses so ordered it that much of his pleading was in the counties in the eastern portion of the state where he was widely known, and where his name for twenty years has been a familiar one upon the records of the courts in that portion of the state. Those who came in personal contact with him at once recognized, not only an able counsel, but, what is better and rarer, a truly good man, governed, in both professional and business life, not only by a clear and singularly well balanced mind, but by a quickened conscience which developed to a remarkable degree uprightness and purity in his personal life, integrity of purpose in what he said or did, and absolute justice in dealing with friend or foe. While just to the friend, he was also gentle and kind; while his foe knew instinctively that he was opposed by an antagonist scrupulously fair and incapable, for any temporary advantage, of resorting to covin or deceit, for his life was an "open book read of all men" and free from those elements of secretiveness and indirection which so often mar the character and produce distrust in men otherwise brilliantly endowed and gifted with many virtues.

The immediate cause of his death, strange to say, was not the old wound which he himself, during his entire life, thought would, in the

end, wear him out, but that fell destroyer, consumption, contracted, as the result of la grippe, about one year before his death. Against it he battled with heroic will, attending to the important interests represented by him and for which circumstances had so ordered it that there could not well be a substitute, until within about four months of his death, when, yielding nature, exhausted, he took to his room, and deliberately began to put his house in order for the end which must come to all. Day by day, as the shadows of the valley gathered around him, and as the sands ran low in the glass, he quietly and cheerfully talked with his friends and neighbors of the coming change. Those who were with him unite in testifying to his calm dignity and the fact that never had they witnessed a more manly approach to the chill waters of the dark river. It was a fit sequel to a well-spent and honorable life. It was a proper ending that the boy who fell in the van at Seven Pines, after conquering the secrets of suffering and of life, should thus courageously meet the final issue.

"Three weeks before his death he sent for a friend, and calmly gave directions as to the details of his burial, and as to his worldly affairs, with all the air of hope as though about to take a journey. Then, as the end approached, he measured the hours, and on the day of his death he called his family about him, and announced himself that the end was at hand, and 'folding the drapery of his couch round him,' he laid him down as if to peaceful sleep. It was not like a house of mourning. With such a blameless life behind him, with such a strong but gentle spirit, those around him could not but feel that he had 'filled the measures of his days with usefulness,' and that he had left not only to his family, but to the world, a legacy of honor, the fruit of a well spent and heroic life, and that in God's providence we should not mourn that he had been released from his long and patient suffering. 'Peace to his ashes.' We join with those whom he loved best, and by whom he stood, and for whom he suffered and toiled, in honoring his memory, and in placing this chaplet upon his tomb.

Resolved, That we, as the representatives of the bar, hereby express our heartfelt sympathy with his widow and his family in their bereavement, and commend them for consolation and promise to 'Him who tempers His winds to the shorn lamb,' and who is able, though we, in our blindness, may know not how or when, to bring joy out of grief and to work out of our afflictions here a new heaven and a new earth where sorrow and suffering and parting cannot come.

And be it further *Resolved*, That the secretary send a copy of this memorial to the family of our departed brother; that the Hon. C. S. Collins present the same to the Supreme Court; Judge Thomas B. Martin to the Circuit Court of the United States for the Western Divis-

ion of the Eastern District of Arkansas; Ashley Cockrill, Esq., to the Circuit Court of Pulaski County, and T. M. Mehaffey, Esq., to the Chancery Court.

"Respectfully submitted,

"J. W. HOUSE,

"F. T. VAUGHAN,

"J. F. LOUGHBOROUGH,

"Committee."

"A true copy.

"G. W. WILLIAMS, Secretary."

In the absence of the Chief Justice Judge Battle responded on behalf of the Court, and ordered that the proceedings be spread on the record, and that the Court adjourn out of respect to the memory of the deceased.