

MEMORANDA.

THE resolutions adopted at a meeting of the Bar held Dec. 20, 1880, to take action on the retirement of Mr. JUSTICE STRONG from the Bench (102 U. S. ix), were transmitted to him with the following letter:—

SUPREME COURT OF THE UNITED STATES,
Dec. 23, 1880.

DEAR JUDGE STRONG,— We have the pleasure of handing you, with this, a copy of the resolutions of the Bar, adopted on the occasion of your retirement from judicial life, and of the proceedings in court when the Attorney-General asked that they might be entered on our records. From this you will see how much your absence from the Bench is regretted by those who have so long been accustomed to consider your judgments. Great, however, as is their loss, we cannot but consider ours greater. We already feel that we are no longer to have the benefit in our consultations of your careful investigation of facts, your nice discrimination in the application of principles, and your useful criticisms, always worthy of attention, but never giving offence. Your uniform kindness and courtesy towards all will never be forgotten.

We are glad to know that, although you are not to be with us longer on the Bench, you will keep your residence in Washington, and that the pleasures of personal intercourse with you and the members of your estimable family, which we have so much enjoyed, need not be interrupted.

That you may live long to enjoy the honors which are so deservedly yours is the sincere wish of your friends and former associates.

M. R. WAITE,	JOSEPH P. BRADLEY,
N. H. SWAYNE,	WARD HUNT,
SAMUEL F. MILLER,	JOHN M. HARLAN.
STEPHEN J. FIELD,	

A MEETING of the members of the Bar of the Supreme Court of the United States was held in the court-room Jan. 31, 1881, to take action touching the resignation of Mr. JUSTICE SWAYNE. HON. SAMUEL SHEL-LABARGER was elected chairman, and Mr. JAMES H. MCKENNEY, clerk of the court, secretary. A committee on resolutions, consisting of Mr. PHILIP PHILLIPS, Mr. GEORGE H. WILLIAMS, Mr. RICHARD T. MER-

RICK, MR. ELLIOTT F. SHEPARD, and MR. J. HUBLEY ASHTON, was appointed by the chairman; and they, through MR. PHILLIPS, reported the following resolutions, which were adopted:—

Resolved, That the members of the Bar have learned, with deep regret, that, in the opinion of MR. JUSTICE SWAYNE, the time has arrived when he should retire from the labors and duties of the Bench, which he has so long adorned.

Resolved, That at the conclusion of his long and honorable career, the Bar deem it alike their duty and their privilege to express their sentiments of sincere respect for MR. JUSTICE SWAYNE, which have been inspired by the large capacity, the full and accurate learning, the patient and persistent investigation, the anxious desire to do justice, the genial and benevolent courtesy he has uniformly accorded to the members of the Bar, which have distinguished him throughout the long period of his service on the Bench of the Supreme Court.

Resolved, That the Attorney-General be requested to present these resolutions to the Court, and ask that they be entered on its minutes, and communicated to MR. JUSTICE SWAYNE.

MR. ATTORNEY-GENERAL DEVENS, in presenting the resolutions, addressed the Court as follows:—

May it please your Honors,—The members of the Bar were aware last Monday, when MR. JUSTICE SWAYNE delivered the opinion, the preparation of which had been intrusted to him, that they were listening to his words for the last time in this place. His retirement, in advanced life indeed, yet with unimpaired powers, is an event that they would not willingly pass without proper expression of the respect in which they hold his eminent public services, and of the honor and love which they bear to him personally.

Nineteen years have passed since he became a Justice of this Court. With one exception,—the senior Associate Justice, detained from us during this term by a protracted and distressing illness,—all who originally sat with him are gone. While no “cold gradations of decay” have given admonition of the necessity of repose, he has deemed it wiser to seek it.

His judicial life includes two great historic periods, one the supplement and consequent of the other. The novelty and importance of the questions that were at once pressed upon the attention of the Court by the civil war will be readily admitted when we remember that they concerned all the rights of belligerents, of confiscation, prize, blockade, and non-intercourse. The vast expenditures required new systems and modes of raising revenue, and the legislation by which it was sought to meet the exigency became here, of necessity, the subject of inquiry and interpretation.

His last opinion considers fully the important subject of the income tax imposed by the United States, and defines clearly and authoritatively the meaning of “direct taxes,” as the term is used in the Constitution.

At the close of the war came the period of reconstruction. As pointed out by MR. JUSTICE SWAYNE himself, it was sixty-one years since any amendment of the Constitution had been made. All the earlier amendments had been prompted by the anxiety of the States lest their autonomy should be invaded by the Federal Government; but a time had arrived when it was clearly necessary that rights acquired and results determined by the civil war should be placed under the guardianship of the Federal Government; and this was done by three constitutional amendments.

The great power possessed by this Court, that of declaring a law, which had the sanction of all the forms of legislation, void, because in violation of the Constitution, had been exercised before this era in but the two instances of *Marbury v. Madison* and *Scott v. Sanford*. But there followed upon the amendments, and the consequent legislation, a large series of constitutional inquiries which are by no means concluded.

The ability, the learning, the acquirements, the ready capacity to acquire, the calm judgment and the sound common sense of MR. JUSTICE SWAYNE caused his influence to be everywhere felt in all the various stages of these great judicial debates, in which he bore his full share.

His opinions, which will be found in more than one third of the volumes of the Reports of this Court, commencing with the first of Black and extending through the twelfth of Otto — some thirty-seven volumes — are the enduring monument of his honestly earned fame as a jurist.

Such a fame may appear to the casual observer less brilliant than that of the orators, the soldiers, and the statesmen who were his contemporaries when it was won; yet it is not less dear, nor less valuable, in the eyes of every thoughtful lover of the institutions of this Republic.

The singularly amiable disposition and cordial manner of MR. JUSTICE SWAYNE were irresistibly attractive to all who practised before him. He had a patience which was proof against dulness. He would listen after he himself was satisfied, in order that counsel might feel they had been fully heard.

I have not spoken of his anxiety to do always what was just and right. Happily I stand before a tribunal which has endured nearly an hundred years, upon no member of which was there ever the imputation that he did not mean to deal justly, and to do the right as it was given him to see the right. It was one of MR. JUSTICE SWAYNE's strongest characteristics.

In the fine chapter of the Old Testament which describes the farewell of the aged Samuel to his people, ruler, priest, and judge though he was, he desires to know, before he parts with his power to Saul, if he has done wrong to any man, that he may then rectify it. "I am old and gray-headed," says he; "behold, here I am: witness against me before the Lord and before his anointed; whose ox have I taken? or whose ass have I taken? or whom have I defrauded? Whom have I oppressed? or of whose hands have I received any bribe to blind mine eyes therewith?" And the people answered that, as the Lord was their witness, he was no such man.

Sure I am that should the distinguished magistrate who retires from the Bench ask, "Who is there that has stood before me to whom I have not striven to do equal and exact justice?" the answer would be like that of the Hebrew people to the royal judge of Israel: "There is no such man."

In his honorable retirement, consoled by those literary studies which have long been his delight, and by the dearer comfort of friends and family, the good wishes of all will go with him. As he may look back to the life that is past without regret, so he may look forward with serenity and confidence.

MR. CHIEF JUSTICE WAITE replied as follows:—

The resolutions of the Bar and your remarks, MR. ATTORNEY-GENERAL, are no more than is due to the occasion, and we take pleasure in directing that they be entered on our minutes. MR. JUSTICE SWAYNE took his seat here at the beginning of the late civil war, when the Chief Justice was considerably more than

eighty years of age, and four out of the five of the associates were either over or but little under seventy. He came fresh from a large and successful practice at the Bar, and brought with him an unusual familiarity with adjudged cases, and settled habits of labor and research. As might be expected, he soon became one of the most useful members of the Court, and took an active and leading part in all its work. During the nineteen years of his judicial life, both public and constitutional law have been presented to the Court in a great variety of phases, and each successive term brought its new cases and its consequent new questions. What part he bore in this important service and how well he bore it is best shown in the pages of the thirty-seven volumes of our reports, which have been filled since he came on the Bench. Being favored with uninterrupted good health and great capacity for endurance, he has rarely been absent from his seat here or in the consultation room when required, and never except from necessity. His record as a judge is consequently the record of the Court during his service, and in his voluntary retirement he can have the satisfaction of feeling that his judgments here and elsewhere have been as he believed to be right. If at times he differed from his associates, he could always give a reason for what he did. His courtesy of manner on and off the Bench will never be forgotten; and he carries with him, as he leaves the Court, the esteem of every one of his associates. It has been his good fortune to be not only a student of the law, but of general literature as well. He has always been a welcome guest wherever he has gone; and we hope he may live long to enjoy the reputation he has won, the society of his family and friends, and the pleasure of his books.

The resolutions were transmitted to MR. JUSTICE SWAYNE with the following letter: —

WASHINGTON, Feb. 24, 1881.

DEAR BROTHER SWAYNE, — Your retirement from the Bench at this time, when we are being deprived of the counsels of several other justices with whom we have had such long and pleasant association, is peculiarly trying to your brethren who remain.

We not only heartily join in the expressions of respect and regret which are so well conceived in the address of the Attorney-General and Resolutions of the Bar, a copy of which accompanies this letter; but we desire to communicate to you our own personal sorrow at the severance of those pleasant and harmonious ties which have so long united us.

We feel how greatly we shall miss the aid of your profound and various learning, ever ready at call, ever instructive and apposite to the discussion in hand; and shall equally miss the cheerful flow of your unfailing courtesy and spirits.

Our earnest wish is, that you may long enjoy the happiness which justly comes to vigorous age adorned with the wealth and graces of literature, surrounded by the charms of appreciative companionship and devoted affection.

Ever and sincerely, your friends,

(Signed)

M. R. WAITE,

SAM. F. MILLER,

STEPHEN J. FIELD,

JOSEPH P. BRADLEY,

WARD HUNT,

JOHN M. HARLAN

W. B. WOODS.

HON. NOAH H. SWAYNE.