

## APPENDIX.

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### *In Memoriam.*

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MORRISON REMICK WAITE, LL.D.

DIED MARCH 23, 1888.

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MORRISON REMICK WAITE was born on the 29th day of November, 1816, at Lyme, in Connecticut, where his ancestors had resided for generations. He was the eldest son of Henry Matson Waite, for many years an Associate Justice, and then the Chief Justice of the Supreme Court of that State. He graduated at Yale College in 1837, and for a while read law in his father's office in Lyme. He then removed to Ohio, and completed his preparation for the bar in the office of Samuel M. Young, Esquire, of Maumee City. On being admitted to practice he formed a partnership with Mr. Young. Eventually they removed to Toledo, where Mr. Waite continued in practice, at first in partnership with Mr. Young, and later in connection with his own brother, Mr. Richard Waite, until he was made the Chief Justice of this court.

Mr. Waite early took a leading position at the bar in that part of the country, and maintained it to the close of his professional life. He was a good lawyer, a convincing advocate, a safe and prudent counsellor, an honorable, upright, manly, and truthful man, not self-asserting, but always firm in his convictions and true to his own sense of right. Such a man naturally wields an influence for good in the community in which he resides, and in the political and religious divisions to which he belongs; an influence which grows with his growth, and increases with his years.

In politics Mr. Waite was a Whig, until that party was disbanded; and when it ceased to be, he became a Republican. Pub-

lic office and honors more than once might have been within his reach; but he preferred to devote himself to his profession.

From his early life he was a member of the Protestant Episcopal Church of the United States, interested in its system, and devoted to its welfare. In his own parish, in the councils of the diocese, in the General Council of the church, he was a well-known and trusted adviser.

Outside of his own State, however, and of the Church which he lovingly served, he cannot be said to have had an extended and national reputation as a lawyer, before he was selected by President Grant, in the autumn of 1871, to represent the United States as one of its counsel before "The Tribunal of Arbitration" upon the "Alabama Claims" at Geneva.

The proceedings before this Tribunal occupied most of the year 1872. The share, (apart from general aid rendered in the consultations with counsel,) which Mr. Waite specially took in these proceedings was: the preparation of Chapters 6, 7, 8, 9 and 10 of "The Argument," and the paper upon "The Special Question as to Supplies of Coal in British ports to Confederate ships."

In April, 1874, after his return from Geneva, Mr. Waite was, by a unanimous vote of the people, elected to be a delegate from Lucas County to the convention called to form a new constitution for the State of Ohio. On the assembling of that body he was chosen to be its President; and while presiding over it on the 20th day of January, 1874, the news reached him that he had been nominated to the Senate by President Grant as Chief Justice of the United States, in the place of Chief Justice Chase, deceased. On the following day this nomination was unanimously confirmed; and on the 4th day of the next March he took the oath of office in open court, and took his seat upon the bench. From that time forward his life belonged to his country and is part of the records of this Court.

On the evening of the 17th of March last he took a sudden and severe cold. On Monday, the 19th, he came to the opening of the court after the annual recess, and sat upon the bench while Mr. Justice Blatchford read for him the opinion which he had prepared as the opinion of the court in the Telephone Cases. When the reading of this was finished, being too feeble to remain, he returned to his house and took to his bed. On the morning of the 23d he died, peacefully and without suffering, and probably without consciousness of immediate danger. On the coming in of the court at noon of that day MR. JUSTICE MILLER said:

"It is my painful duty to announce to the Bar of this court that its honored Chief Justice departed this life this morning at half past six o'clock. This is not the occasion to make any extended observations on the subject, which will be done in due time. The court will adjourn until 12 o'clock on Monday, April 2d."

The surviving members of the court had already, through Mr. Justice Miller, conveyed this intelligence to the President and to both Houses of Congress.

The President issued the following proclamation :

TO THE PEOPLE OF THE UNITED STATES:

The painful duty devolves upon the President to announce the death, at an early hour this morning, at his residence in this city, of Morrison R. Waite, Chief Justice of the United States—which exalted office he had filled since March 4, 1874, with honor to himself and high usefulness to his country. In testimony of respect to the memory of the honored dead, it is ordered that the Executive Offices in Washington be closed on the day of the funeral, and be draped in mourning for thirty days, and that the National Flag be displayed at half mast on the public buildings and on all National vessels on the day of the funeral.

By the President,

T. F. BAYARD, *Secretary of State.*

WASHINGTON, D. C., *March 23, 1888.*

In the Senate the following proceedings took place :

MR. EDMUNDS: I ask unanimous consent that the further reading of the Journal be dispensed with.

THE PRESIDENT *pro tempore*: The Senator from Vermont asks unanimous consent that the further reading of the Journal be dispensed with. It is so ordered, if there be no objection.

The Chair lays before the Senate a communication from the Supreme Court of the United States, which will be read.

The Chief Clerk read as follows :

WASHINGTON, *March 23, 1888.*

SIR: I am directed by the Supreme Court of the United States to notify the Senate through you that the Chief Justice of the United States died at his residence this morning at 6.30.

I have the honor to be, very respectfully,

SAM. F. MILLER, *Justice, Supreme Court.*

HON. JOHN J. INGALLS, *President of the Senate.*

MR. EDMUNDS: Mr. President, on the 21st day of January, 1874, Chief Justice Waite received his commission and took his seat as the presiding officer of that great tribunal, and for now more than fourteen years, partly in times of great excitement, difficulty, and

trouble, and through a career in that court and out of it embracing questions of the widest importance to human rights, involving life, liberty, and property, the Chief Justice has been a conspicuous figure in the jurisprudence of this nation, and, perhaps, not less conspicuous in respect of the jurisprudence of the whole world.

His career is ended for this life. It has neither been tarnished during this whole period by any stain nor clouded by any reproach, either official or personal. Upright, brave, even-minded, impartial, patient, learned as a judge; gentle, generous, affectionate, kindly as a citizen; he has in every walk of private life filled his career with honor, great honor to himself and infinite benefit to his country.

I move, Mr. President, that the Chair appoint a committee of five Senators to take such order as may be expedient in respect of the funeral of the Chief Justice and other matters connected therewith; and if this shall be agreed to, I shall move that in view of this great calamity the Senate adjourn till Monday next.

The PRESIDENT *pro tempore*: The Senator from Vermont moves that a committee of five Senators be appointed by the Chair to take action concerning the funeral of the Chief Justice.

The motion was agreed to.

MR. EDMUNDS having declined service upon the committee on account of the condition of his health, the President *pro tempore* announced the following committee: Senators SHERMAN, HOAR, WILSON of Iowa, PUGH and GEORGE.

In the House the SPEAKER said: The Chair will lay before the House a communication which has been received from the Supreme Court of the United States.

The Clerk read as follows:

SUPREME COURT OF THE UNITED STATES,

*Washington, March 23, 1888.*

SIR: I am directed by the Supreme Court of the United States to notify the House of Representatives through you that the Chief Justice of the United States died at his residence this morning at 6.30.

I have the honor to be, very respectfully,

SAM. F. MILLER, *Justice, Supreme Court.*

HON. JOHN G. CARLISLE, *Speaker of the House of Representatives.*

MR. EZRA B. TAYLOR of Ohio: Mr. Speaker, as appears by the communication just read, the great office which was yesterday occupied by Morrison R. Waite is to-day vacant — an office second in dignity to none within my knowledge in the whole civilized world. It has been occupied by him for many years with such ability and

industry, such a disposition to discharge conscientiously his whole duty, that to-day the nation is in mourning for his decease. This is not the time for eulogy, nor in fact for any extended remarks. But for the purpose of exhibiting the respect entertained by this House for his memory, I ask that the Clerk read, and that the House adopt, the resolutions which I send to the desk.

The Clerk read as follows :

*Resolved*, That the House of Representatives has heard of the death of Chief Justice Waite, of the Supreme Court of the United States, which occurred this morning at 7 o'clock, with feelings of deep and sincere sorrow.

*Resolved*, That while the nation mourns the loss of one of its most useful and illustrious sons, it is fitting that the House, representing the people, express its deepest sympathy with the family of the deceased in their affliction.

*Resolved*, That the House will attend as a body the funeral of the late Chief Justice, and the Speaker is requested to appoint a committee consisting of nine members to act with a committee of the Senate in any necessary action relating to the funeral.

*Resolved*, That as an additional mark of respect to the memory of the deceased the House do now adjourn.

The resolutions were unanimously adopted.

**The SPEAKER**: Before announcing the result of the vote, the Chair wishes to state that the committee provided for in the resolutions will be designated hereafter. [Messrs. Kelley, Seney, Grosvenor, W. C. P. Breckinridge, Stewart of Vermont, Carlton, Anderson of Iowa, and Russell of Connecticut, were appointed as such committee.]

**MR. EZRA B. TAYLOR**: Mr. Speaker, permit me to say in this connection, if the parliamentary custom should require myself to be put upon that committee, being the mover of the resolutions, that other engagements prevent my acting, and I ask to be excused.

The result of the vote, adopting the resolutions, was announced ; and 25 minutes past 12, p.m., the house adjourned.

On Wednesday, the 28th of March, at noon, the Order of the Protestant Episcopal Church for the Burial of the Dead was said by the Bishop of Maryland over the body of the Chief Justice in the hall of the House of Representatives, in the presence of his family, of his associates on the bench, of the President, the Cabinet, both Houses of Congress, the Heads of the Army and of the Navy, the Diplomatic Corps, and a vast audience in the galleries. At two o'clock, on the same day, it was taken to Toledo, in Ohio, in charge of the Congressional Committees and of the Court, and, after appropriate services, was interred there on the 29th of March, 1888.

Chief Justice Waite was married at Lyme, in Connecticut, on the 21st of September, 1840, to Miss Amelia C. Warner. His married life was one of unbroken affection and happiness. His widow, two sons, and a daughter survive him. In private life he was a man of singular gentleness, purity, and tranquillity of character. Affectionate in nature, courteous alike to young and old, considerate for all, sympathetic and generous, he lived among friends, and died without an enemy. What he was as a public man is told in what follows.

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PROCEEDINGS OF THE BENCH AND BAR OF THE  
SUPREME COURT OF THE UNITED STATES.

SATURDAY, *March 24, 1888.*

In pursuance of a preliminary conference, held at the Capitol this day, notice is hereby given that a meeting of the Bar of the Supreme Court of the United States will be held at the Supreme Court Room at 11 o'clock on Monday the 26th instant, to take order for their attendance at the funeral of the Chief Justice of the United States, and for a subsequent meeting of the Bar in commemoration of his eminent character and public service in the discharge of that great office.

W. M. EVARTS, *Chairman.*

JAS. H. MCKENNEY, *Secretary.*

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MONDAY, *March 26, 1888.*

The Bar of the Supreme Court of the United States and the officers of the Court met in the Court Room in the Capitol at 11 o'clock in pursuance of the foregoing notice, and the meeting was called to order by MR. WILLIAM A. MAURY.

On motion of MR. MAURY, MR. WILLIAM M. EVARTS was called to the chair.

On motion of MR. A. G. RIDDLE, MR. JAMES H. MCKENNEY was elected secretary.

On taking the chair, MR. EVARTS said : Gentlemen and Brethren of the Bar,—We are called together upon the afflictive occasion of the death of the Chief Justice of the United States to take proper order, in our respect for his position and himself, for the attendance of the Bar at the funeral, and for the appointment of a committee to prepare suitable resolutions commemorative of his character, of

his virtues, and of his great services, to be presented at some future meeting of the Bar. What is your pleasure, gentlemen, in reference to this arrangement?

MR. MAURY then presented the following resolution; which was adopted:

*Resolved*, That the Bar of the Supreme Court will assemble in the Court Room of the said court at 11.30 o'clock Wednesday the 28th March instant, and proceed from there in a body to the Hall of the House of Representatives to attend the funeral services of the late Chief Justice.

The Attorney General of the United States moved that the Chairman appoint a committee of seven members to prepare suitable resolutions to be presented at a future meeting to be called by the Chairman; which was adopted, and the Chairman then appointed the following committee:

The ATTORNEY GENERAL;

MR. EDMUND and MR. VEST, of the Senate;

MR. CULBERSON and MR. EZRA B. TAYLOR, of the House;

MR. SHELLABARGER and MR. ASHTON, of the Bar of the District of Columbia.

Adjourned to meet at the call of the Chairman.

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WASHINGTON, D. C., *March 29, 1888.*

The members of the Bar of the Supreme Court of the United States are requested to meet in the Hall of the Court on Saturday, March 31, at 12 o'clock, noon, to hear and take action on the report of the committee heretofore appointed to prepare and present resolutions in regard to the death of the late Chief Justice.

W. M. M. EVARTS, *Chairman.*

Attest:

JAMES H. MCKENNEY, *Secretary.*

SATURDAY, *March 31, 1888.*

MR. EVARTS: Gentlemen of the Bar, we have met in pursuance of the Chairman's call for a meeting, and I now move that MR. EDMUND take the chair.

This motion was agreed to.

MR. EDMUND, on taking the chair, addressed the meeting as follows: Gentlemen of the Bar of the Supreme Court, — We have met, as we have on similar occasions often done before, to certify our last formal testimony of respect to the life and memory of the late Chief Justice of the United States. These occasions are always those of calamity to the Bar and people; but certainly, in this in-

stance, the event we mourn was not a calamity to the departed Chief Justice. He has achieved a triumph out of our calamity; a triumph not like those that Roman emperors and conquerors received, when the trumpets sounded war notes and the lictors cleared the way; but the triumph of the just, good, and God-fearing man and judge, who has gone to his reward. But this is not the place for me, gentlemen, to make any extended remarks; I have expressed my knowledge and opinion of the late Chief Justice recently in another place. If there be no objection, gentlemen, the Clerk of the Supreme Court, MR. MCKENNEY, will please act as Secretary of this meeting.

At a former meeting, a committee was appointed to prepare and present at this time such resolutions as they should agree upon touching the sad event which we have met to consider; is that committee ready to report?

MR. ATTORNEY GENERAL GARLAND: I am instructed by the committee to report resolutions expressive of their views upon this sad occasion, and now read the same:

The Chief Justice of the United States has ended his career on earth.

He proved himself equal to all the duties which the title of his office imports.

It is fitting that the Bar of the Court over which he presided so satisfactorily should express their sense of the calamity that has visited the Court, the Bar in general, and the whole country: Therefore be it *Resolved*,

I. That the Bar of the Supreme Court of the United States recognize in the late Chief Justice a combination of qualities that peculiarly fitted him for the difficult and delicate duties of president of a great court; that his ability as a judge, his strong sense of justice, and his firm but mild administration, contributed to the public feeling of security and to the confidence that has made the Supreme Court the balance-wheel of the Constitution; that they are grateful to the legacy of his noble and unsullied character, adorned by traits that endeared him to all who came in contact with him; that he was a type of the highest product of our free institutions, always maintaining his official and personal dignity, yet always mindful that no one was too humble for his attention and regard; and that they will remember him as one who was an honor to his country and to the whole brotherhood of men.

II. That we tender to the family of the deceased our heartfelt sympathy.

III. That the Secretary is hereby requested to furnish the Attorney General of the United States with a copy of these proceedings, with the request to present the same to the Supreme Court of the United States for such action thereon as the Court may deem proper.

IV. That the Chairman is hereby requested to transmit an engrossed copy of these proceedings to the family of the deceased.

Under the third resolution, it is made my duty to present these resolutions at the proper time to the Court over which the late Chief Justice presided, when I shall avail myself of the opportunity of expressing briefly some additional views in reference to his career as Chief Justice on this bench, but now it only remains for me to move the adoption of the resolutions.

MR. WILLIAM A. MAURY: Mr. Chairman, I am requested to second the motion for the adoption of these resolutions.

Seldom has the stroke of death caused such dismay as filled the public mind when the intelligence burst upon it that the Chief Justice of the United States had breathed his last.

It was not generally known that he was ill, and few, if any, of those who knew of his illness apprehended a fatal result.

To the public, then, it was as if he had been stricken down in the fulness of health, and it is not surprising that the event stunned the people among whom he had lived and moved for so many years, and to whom he was endeared by his many public and private virtues.

The Bar, in common with the whole country, recognize the fact that a great pillar of state has fallen, and that the Constitution has lost a firm support.

The Chief Justice was, in very truth, called to the high magistracy he filled. It came to him; he did not go to it.

His country's call found him engrossed in the affairs of a busy life, ripe in experience of the world and versed in the knowledge of men, — qualities which were in no small degree the foundation of that rare and admirable administrative ability which made him the complement of the Court over which he presided.

But the great factor of his efficiency as a presiding officer was the unlimited confidence his associates reposed in his judgment and integrity of purpose. Much of the business that was despatched by him alone in open court would no doubt have been reserved for the conference room but for that confidence of his brethren and the modesty with which he wore it.

The country will never know what it owed to that rare executive capacity which the departed Chief Justice displayed daily before our eyes. Nor is it accordant with experience that we who were so often before him, or even the tribunal of which he was the head, adequately appreciated in his lifetime that excellency;

For it so falls out

That what we have we prize not to the worth,  
Whiles we enjoy it, but being lacked and lost,

Why, then we rack the value, then we find  
The virtue that possession would not show us  
Whiles it was ours.

It is due, then, to the memory of the Chief Justice that whenever and wherever his career may be reviewed, and especially on this occasion, prominence should be given to that qualification of his which was so little known to the public, and yet which had so much to do with the efficiency of the Court of which he was a member.

When we consider how many great lawyers in different parts of the country are almost unknown outside the limits of their respective States, because their jealous mistress—the Law—will not trust them out of her sight, it need give no surprise that the attention of the country was not directed to Mr. Waite until his Government selected him as one of her representatives before the Tribunal of Arbitration that sat at Geneva under the Treaty of Washington. That honor, the appropriate harbinger of the greater one that was to come, was entirely unsolicited, and the first intelligence of it excited mingled surprise and incredulity in the busy lawyer upon whom it had been bestowed.

It must have been superior qualities that commended for service as counsel before an international tribunal, and as the associate of the other eminent counsel of the United States, who appeared at Geneva, a gentleman whose life had been devoted to the discussion of questions of municipal law in the courts of his State.

How well he acquitted himself in this new field is attested by his argument in reply to Sir Roundell Palmer on the special question whether Great Britain committed a violation of neutrality in supplying the Confederate cruisers with coal. The argument is a demonstration that Great Britain had permitted the war vessels of the Confederate States to make her ports their base of operations against the United States, instead of their own from which they had been shut out by the blockade.

In this argument he displays the clearness and directness which afterwards characterized his judgments, and it is not surprising that this discussion of the rights and duties of neutrals should have settled the question of his capacity when his nomination as Chief Justice came before the Senate.

The late Chief Justice was eminently a man of affairs. He was always aiming at practical results, and was entirely satisfied when he reached them. As a consequence, it will be found that his opinions are unusually free from discussions not demanded by the case before him.

He was modest, yet firm and decided. He neither sought nor shrank from responsibility. He proved himself equal to every occasion. No one ever felt his notice to be a condescension. No subject was too small for his attention that lay in the path of duty.

Looking at his first opinion, we perceive the same ease and simplicity of diction that appear in his latest judgments, and nothing to betray the fact that he was but just installed in his great place. From the beginning he was easy and natural in bearing, as one born for high station and conscious of the ability to fill it.

It was one of the fine adjustments of his well-proportioned nature to have a steady, balanced mind fitted to a vivacious, cordial temperament, making a combination that recalls the observation of William of Orange on England's greatest captain, that he had the coolest head and the warmest heart of all he had ever known.

His qualities of head and heart must have been of inestimable value when he was presiding over the deliberations of the conference room, and we are at liberty to infer his success in this most delicate and difficult branch of his duties by the fact that none of those thrown most intimately with the Court ever had reason to suspect the least friction or unpleasantness between him and any of his associates.

In the history of the Court there are instances, perhaps, where the Chief Justice has not been so fortunate in his relations with his associates.

It adds to this triumph of administrative skill that it occurred during a period when the Court was sometimes stirred by dissent as it had never been stirred before.

It is a beautiful thing to remember of the departed Chief Justice, and as true as beautiful, that in distributing the business of the Court he consulted every one's convenience but his own.

It is the glory of his example, which is truly a legacy to his countrymen, that his great honors were not sought, but came unsolicited. As was said of one of England's most eminent chief justices :

“He has shown us that real merit will make its own way without any assistance, without any little arts or assiduities, and that the only certain method to have a good reputation is to deserve it. Great and good men, who dare do right without regard to the strength of opposition or the clamors of a multitude, are not only a blessing to the age in which they live, but to succeeding generations, by their being incentives to a similar behavior to posterity.”

MR. SAMUEL SHELLABARGER then said: Mr. Chairman,—The usage to which our meeting to-day conforms, in gathering at the grave of a dead brother, is an ancient one. If these talks have had any real significance or value, outside of their being amiable expressions of condolence, then I think that value is to be looked for mainly, if not wholly, in their serving to mark the progressive stages in the growth of those institutions with which our professional work is preëminently connected; and especially in their serving to record those qualities in the lives of professional and public men which are the source of so large a proportion of our laws and of our systems of government, and even of our civilization.

In this view it is extremely fit that we, as we, one after another, pass away, should make careful note of what it is in the life that has just ended that best advanced the good of others.

The value of this practice, of taking an account of the qualities and results of a professional career just ended, is especially realized when it is applied to the lives of the men who have administered in the courts of a country its laws. Indeed, the character of the judiciary of a country is so obviously the reflection of the character of its civilization, that we utter mere truisms when we say that the greatness of every state is measured by the learning and the purity of its judiciary; and that the happiness, the liberty, and the virtue of every people are best studied in its courts. In these sanctuaries of the law it is that even in decaying states liberty and order take their last refuge, and here die.

I doubt whether there is to be found anywhere, in the history of any people, so suggestive and indeed so startling an illustration and proof of what I have just stated as is furnished in the history of the judiciary of England. If, in making this search, we should confine our attention to the lives of her chief justices and chancellors, we will find that the growth of liberty, of public virtue, and of order is faithfully and infallibly indicated in the character of the men who occupied the positions of chief justices and lord chancellors.

What I have just stated regarding the character of the great judges of England being the mirror in which we see the character of her institutions and people being kept in mind, we are startled at what is recorded by the very highest authority of that country touching the chief justices of England during the first six hundred years of her life.

The first chief justice of England, who had the distinction of holding the first court in Westminster Hall, had also the eminence

of being the first prisoner in the Tower of London ; a prisoner for crimes the most flagitious, and which class him amongst the most eminent criminals of history.

Passing thence down and over a period of five centuries, we find it recorded of the character of another of her chief justices, appointed during the reign of Elizabeth, that he was at one time by profession a highway robber, and indulged, with musket in hand, in his lucrative profession at Shooter's Hill and Gadshill, at the very door of Lincoln's Inn.

Or, passing still further down, we find that one of the chief justices of England, recently deceased, and one of the most eminent who ever graced that great bench, makes this startling record regarding her chief justices. He says :

Till Lord Coke arose, England can scarcely be said to have seen a single magistrate of constancy, who was willing to surrender his place rather than his *integrity*.

And even Coke's great reputation did not escape the contamination of the most grave accusation, if not guilt ; and he wrote upon his Commentaries when a prisoner in the Tower of London, accused of a capital crime.

But soon after Coke came one who fills, by reason of his mere judicial character and work, the largest space in the history of the English law that is occupied by any of England's illustrious judges. He is one who gave to England a new and real civilization. This was Chief Justice Holt. Of him it is truly said that he gave splendor to all the after-coming luminaries of the English bench, and that he is the model on which, in England, great judicial character has been formed for the last and best two hundred years of English history.

I have alluded to these features in the judicial history of the country from whence we derive our laws, and measurably our judicial models, and especially to this illustrious life of Chief Justice Holt, because I find that from that life one of the greatest masters of the English law has drawn a portraiture of a great judge, which I wish to avail myself of as one eminently fit to be applied to Chief Justice Waite.

Indeed, it is rather a curious fact that one of the best, if not the best, definition of a great judge which is found in our language is found in Lord Campbell's definition of what constitutes a *bad judge*. This portraiture of the bad judge is given as presenting qualities every one of which was absent in the judicial character of Holt, and its opposite present.

The outline of this picture of a bad judge, as drawn by Lord Campbell, may be thus, in substance, sketched. He says the lawyer who was celebrated as an advocate is, owing to the zeal and partisanship which became part of his nature, apt to carry these with him upon the bench, and thereby "becomes unfit fairly to appreciate conflicting evidence, arguments, and authorities."

The man of bad temper who was, when at the bar, restrained by respect for the ermine, or by dread of opposing counsel "when constituted a living oracle of the law, is puffed up by self-importance, and revenges himself for past subserviences, and is insolent to his old competitors, bullies the witnesses, and tries to dictate to the jury."

The sordid and selfish practitioner who, whilst struggling to advance himself, "was industrious and energetic, having gained the object of his ambition, proves listless, and quite contented if he can shuffle through his work without committing gross blunders or getting into scrapes."

Another class, more laborious than discriminating, "hunts after small or irrelevant points, and obstructs the business of the courts by a morbid desire to investigate fully, and to decide conscientiously."

Still another class, who at the bar were constantly complaining of interruptions by the court, when raised to the bench "forgets that it is his duty to *listen and be instructed*, and himself becomes a by-word of impatience and loquacity."

Still another class is one which, though it may retain its high-mindedness and noble aspirations, has a morbid disposition to attempt "new modes of redressing grievances, and uncalled-for displays of heroism, and thus brings collision between different authorities in the state, which had long moved harmoniously."

This admirable classification of the qualities of bad judges lacks one conspicuous element, to wit, corruption. From these errors Holt was absolutely free.

The opposite character is the judge who, whilst self-respecting, dignified, and firm, is never "puffed up"; never intolerant of the infirmities of others; never cruel, harsh, impatient or dictatorial; never listless or indifferent to the duties and obligations of his great station; never searching, with microscopes and muck-rakes, for the *trifles* of the law, and making them rule the cases; never impatient in *listening*; never seeking the reputation of an *inventor* of new and startling and untried experiments, and always following the dictates of truth, the lights of solid learning, and the precepts of justice.

I think it will ultimately be written down in the deliberate and solemn judgment of history that such was the character of Chief Justice Waite.

Like as it was said of Holt, so I say of Waite. He was not, like Clarendon or like Chase, a statesman; he was not, like Bacon, a philosopher; he was not, like Mansfield, an orator; but he was like unto Clarendon and Bacon and Mansfield, Marshall, and Chase in those eminent characteristics which contribute to make the judicial greatness of each of these great judges.

I now venture upon a very few statements somewhat more in detail regarding this official life just closed.

The artist or the biographer or the historian whose subject is really *normal* and *symmetrical* and *usual*, but who attempts to invest his subject with the fascinations which associate only with genius, or to invest them with the grandeur and awfulness which are inspired only by immensity, or with that startling individuality which belongs only to the prodigious, is neither an artist, a biographer, a historian, or honest man; and his creations perish under the light in which the rubbish in science, art, and letters is quickly consumed.

So here, he who may attempt to present to history the late Chief Justice as a prodigy in any of the qualities of his mind, or in any of the results of his life, offends against truth and degrades the great character which he affects to exalt. The exact truth is that Chief Justice Waite's life and the fruits thereof belong to the class which makes up the great mass of the truly useful and good lives of every country and age.

These are, indeed, they who have ever made and will ever make the sciences, arts, literatures, laws, institutions, and civilizations of all peoples; are they who are neither gods nor demigods, prodigies nor monsters; are they who have flesh and fibre and force and feeling like unto their fellow-mortals.

But they are also the lives whose all-mastering powers proceed from high and intelligent resolves, combined with that persistent and steady devotion to duty which always has and always will govern the world.

I remember that in the Senate Chamber, and in the hours which immediately preceded the vote on the confirmation of Chief Justice Waite, Senator Sumner called me to him and asked about the character of Mr. Waite. In reply I then described the nominee as I do here and now.

But Mr. Sumner said: "I hesitate; I fear. We stand at an

epoch in the country's life, in the midst of revolution in its constitutional progress, at a nascent stage in the development of some of its institutions; and I long for a Chief Justice like John Marshall, who shall pilot the country through the rocks and rapids in which we are." I repeat his words as nearly as I can. I asked Mr. Sumner to point the President to a few John Marshalls standing "in waiting," and I would guarantee the immediate nomination of at least one of them to the Chief Justiceship.

Mr. Sumner said he would require some time to "look around."

I confess I then shared, but in a less degree, Mr. Sumner's anxiety regarding the effect of Mr. Waite's accession to the Chief Justiceship upon the fate of the recent Amendments. I had not fear regarding his general fitness, but only because of what I regarded as his extreme conservatism. That quality was, indeed, the most marked one of the Chief Justice's mind; and as neither the *time* nor the *spirit* in which the new Amendments were gendered, nor the text of these Amendments, was characterized by eminent conservatism, therefore to many of us who engaged in framing these Amendments the nomination of Waite "gave pause."

When, therefore, Waite's great opinions construing these Amendments came, one in Minor's case, in 1874, holding that the "Fourteenth Amendment does not add to the privileges and immunities of American citizens, but simply adds guaranties for the protection of privileges *theretofore* existing," and especially when the great opinion appeared, in 1876, in Cruikshank's case, also holding that the "Fourteenth Amendment adds nothing to the rights of one citizen against another," and that when the framers of the Fourteenth Amendment inserted therein the provisions creating national citizenship, prohibiting the abridgment of the privileges thereof, and prohibiting the States from depriving any person of life, liberty, or property, or of the equal protection of the laws, and giving to Congress power to enforce these provisions, such framers did not mean to add anything to the rights of one citizen against another; meant not to add anything to the rights of American citizens save the right to be dealt with as equals; that these framers did not design to enable Congress to legislate *affirmatively* and *directly* for the protection of civil rights, but only to use corrective and restraining legislation as against the States; then many of the framers of these Amendments received *information* regarding their intentions which was *new*, and was not calculated to allay the apprehensions with which they saw Chief Justice Waite go upon the bench.

Still I am bound to say now, when the lapse of years has

matured men's views and cooled their feelings regarding the results of the late war, and succeeding decisions have explained and supplemented these earlier decisions, and have guarded against what was believed to be their erroneous tendencies, that I am inclined to think the judgment of history will be that he has been, in the main, steadily right regarding these Amendments; especially in view of the restraining effect of the later decisions.

I am inclined to think that the position in which is now left the power of the National Government in providing for the defence of the civil and political rights of the people as members of the Nation, especially as that position is defined in such cases as *Ex parte Virginia*, *Ex parte Siebold*, *Strauder against West Virginia*, and other later and kindred decisions, is safe and is conservative of our institutions; and that the great court of which Chief Justice Waite has been so long the head will be entitled to, and will receive, the gratitude and veneration of the people of this Republic, in the generations to come, for having guided that Republic safely through many perils, and for having fixed its institutions upon high, just, and stable foundations.

I cannot, and in view of what has been and will be said by others I ought not, to further continue these suggestions. I therefore leave the illustrious subject of to-day's sad discussion by saying that Chief Justice Waite has passed beyond the reach of danger to his great and enduring fame; that his character and fame are now safe in the keeping of the great people whom he honored, and who loved and honored him; that the judgment which history will record and perpetuate regarding him will be, that as a man he was upright, kindly, simple, and Christian; that as a lawyer he was learned, diligent, able and conscientious; that as a judge he was incorruptible, learned, patient, courteous, impartial, conservative, and just; that the character which he made is, in all that exalts the man, the citizen, and the judge, preëminent in its greatness, and ranks him with the immortal judges of the world.

MR. FRANK W. HACKETT: Mr. Chairman,—I will venture to add a word to what has been so well and so justly said. I cannot but feel aware that, in paying tribute to the memory of our departed brother, emphasis should be laid upon that personal element in his character that contributed in so large a measure to the success with which he administered his exalted office. I may, perhaps, be blinded by affection, but my relations with him were of that character that I cannot but yield to an impulse to say a word, however indifferently said, upon this occasion.

I first met Mr. Waite at Paris in 1872, when he was one of the counsel for the United States before the Tribunal of Geneva. His associates were the late Caleb Cushing and the distinguished gentleman who now is with us, and who, I hope, will address you, Mr. Chairman, before these proceedings are closed. I was secretary to Mr. Cushing, and there were several other gentlemen occupying similar positions. Notwithstanding the difference in age and in official standing, we all felt, both counsel, agent, and secretaries, that we formed one family, and there was a uniform kindness and courtesy extended by each and every one of the elders to us of the juniors; but I think I am justified in saying that towards Mr. Waite there went out a peculiar esteem and affection on the part of us young men. Circumstances permitted that he should be with us more than were the others of the counsel, and it was not long before we found that we were drawn towards him by an affection that is indescribable. We all loved him; and that sentiment, I know, has gone on increasing up to the present time. It was my fortune to come to Washington and to be here occasionally in the Court while he presided over it with so much dignity, and I failed at any time to detect the least change in his manner towards any one who came here. He was the same frank, open, kind-hearted man that he was when he was with us, yet always dignified.

It seems to me that it is the duty of somebody on this occasion to put upon record that peculiar gift, which had been given him to a degree far excelling any man whom I can now recall, of attaching to himself the affection of men. I am not an old enough practitioner to say how far this power is of service in carrying on the administration of the bench, but I am led to believe that it is of far greater value than would appear at first blush. I certainly have had occasion more than once in this room to see a young man, from a distant State, unacquainted with the Court, awed by the surroundings, arise and come forward to address the Court. I have seen him awkward in manner, pervaded by a feeling that, he was where the occasion did not permit him to do himself justice; and then I have heard the Chief Justice in a word assure him with such kindness of tone and such aptness of expression that the young man was transformed into his real self and presented his case in a manner to do himself credit. Little incidents like these reveal the power and character of the late Chief Justice; and they were not only a source of affection towards him, but of real service in the administration of justice.

Mr. Chairman, the years are passing swiftly by, and soon we

shall be gone. What is said here will be spread upon the record of the Court, and transmitted down to future generations as some expression of the feelings of the Bar with regard to him. I am sure for those who shall come here in future days, to do battle for what they deem to be right and true, I could wish no better fortune than that they will find themselves sustained and cheered by the radiant sunshine of a presence as noble, as pure, and as lovable as that of Morrison Remick Waite.

MR. J. RANDOLPH TUCKER: Mr. Chairman,—I had not expected to say anything on this occasion, and what I shall say now is without that preparation I could have desired to make in speaking in the presence of so solemn an event.

It has been my good fortune to know Chief Justice Waite for many years past; to see him in the social circle, in his own family, and in his high possession upon this Bench. In all the walks of life he was distinguished by those qualities which have been so fully portrayed, of courtesy, manliness, courage, and uprightness. No man could have associated with the Chief Justice without feeling that he was in the presence of an honest man, and, when standing before this tribunal, that it was presided over by an able, learned, pure, and incorruptible judge. But I have peculiar relations to him upon this occasion. I feel, coming from a circuit over which he presided for so long a time, that it is due to his memory for me to say for the Bar of Virginia that upon the Circuit, as here upon this Bench, he admirably discharged his duties to the entire satisfaction of that whole people. We always felt that upon those delicate questions which were brought before him in connection with our renewed relations to the Union, Chief Justice Waite was fair, impartial, just, and upright in his judgments, and I lay this tribute from that people upon his grave to-day in these brief remarks, because I esteemed him as a friend and admired him as a public officer. There was one part of his character to which some allusion has been made, but which needs emphatic recognition—that over all his manly qualities there was thrown the mantle of a simple and genuine piety, which marked him as a Christian jurist conscientiously performing his judicial functions with a fixed purpose to do justice between men in the fear of God.

The late Chief Justice took his seat on this bench on the 4th of March, 1874, and filled his great office for fourteen years. The volumes of reports from the latter pages of the 19th of Wallace and for thirty-eight volumes following contain the official memorials of his industry, fidelity, learning, and ability. These cover, in the

whole history of the court, nearly one-third of the reports — an evidence of the diligence of judges in the despatch of the rapidly accumulating business of the court.

The original and massive mind of Marshall; the learning, acumen, and comprehensive grasp of Taney; the commanding intellect and varied experience in the political as well as professional field of Chase, had in three-quarters of a century given illustrious reputation to the office of Chief Justice, to which, as their successor, Chief Justice Waite was commissioned January 21, 1874. And while impartial criticism may not assign to him the extraordinary rank in the esteem of the profession attained by his great predecessors, yet it may with entire truth be affirmed, that in the soundness of his judgment, in the diligence of his research, in the clearness of his statements of legal principles, and in the tact and skill displayed in the conduct of the business of the court, he was a worthy successor of those whose more brilliant and original talents had given such lustre to the Chief Justiceship of the United States. And when it is remembered that the court, during the period of his service, was engaged in judicially adjusting the constitutional amendments to the States under their renewed relations to the restored Union; in the consideration of the delicate questions arising under the multiform corporate rights and privileges existing in the present era; and in giving definite shape and distinctness, under proper limitations, to the power of Congress over foreign and interstate commerce, it must be confessed that the period of service covered by Judge Waite's term was more fraught with difficulties, more full of new responsibilities, and demanded more labor, learning, and ability than in any previous period of our history. In such a period, to have discharged his duty well — with unquestioned fidelity and honor, with ability, impartiality, and integrity — is a tribute in which all who bear his name may have just pride, and to which the profession and the country gratefully seal their sincere testimony.

In the well-spent life which has closed, we may all find hope and example. Its honorable epitome may be expressed in few words: "A true gentleman, an upright citizen, a sincere patriot, and a Christian Judge."

Mr. WILLIAM M. EVARTS: Mr. Chairman, — My relations to this eminent man began, not in the public eye, nor under the influence of public fame. Fifty-five years ago we first came to know one another, and we have been under each other's observation, with unbroken friendship and unbroken respect, ever since.

Whatever part I might properly take in the public obsequies of the Chief Justice and the magistrate, perhaps, in any personal observance and homage it would be more fitting for me with silent lips and downcast eyes to take a place among the mourners. But this should not be, and I may be permitted, as briefly as may be, to make some comment on that life passed under my eyes, from the beginning to its close, that no others can offer.

As we were freshmen together in college as far back as 1833, and through the four years of our association there as scholars of the same discipline, were friends in every relation, social, moral, intellectual, I should be able to add something to the events and the public traits in his life that the whole profession and the whole country have appreciated. Never rhetorical and never ostentatious, he was from the beginning until his graduation a most intelligent, a most faithful, and a most successful student, having always the respect of all in these qualities, and not less in the sobriety of his conduct and dignity of his character. To his teachers, to his companions, to all who knew him in the career of the student, when we graduated, whatever may have been the gay and perhaps too frivolous expectations of each of us, as to the qualities that would last in the wear and tear of life and meet its vicissitudes, Waite gave as good promise as any other of enduring to the end.

Perhaps nothing could be more diverse than Waite's own choice and movement in selecting the arena for professional life from my own. While I sought at once the busy, populous, and wealthy city which has grown up now to be, in a proper computation of its numbers, perhaps the second city in the world, Waite went out from his home into a remote corner of what was then a somewhat distant State, and in an undeveloped community. He pursued his steady course there; if not growing as fast in reputation as he would have done had he lived in a more noted community, yet growing in character ever faster—in that steadfast character that is followed by public confidence. And when, after the long interval between our graduation in 1837 and our new association in 1872, we were brought together in the public service, we were no strangers to the character and conduct and faculties either of us might hope to bring to that service. From that time until his death our intimacy has been as close and as constant as during the period of our boyhood to which I have adverted. The traits that have been so thoroughly and so accurately portrayed by our brethren who have addressed you, have been truthful and definite, interesting and useful, and it is impossible, in any estimate that I can

make — it is impossible but that the essential traits that make up character and bring out conduct were most happily combined in the Chief Justice. Coming, later in life, to the larger associations of this Capitol and to the larger communities throughout our country to which he was thus introduced, he brought the warmer affection of closer neighborhood and simpler life to the gratification of our society, and quite as much enjoyment to us, in these traits and aspects of him, as he gained from the enjoyments into which, as we all know, he cheerfully entered. No doubt in a rapid glance one may seem to omit much that should be made prominent, but it seems to me, if I could name as the great result of his public career, as personal to himself, it would be that from the beginning to the end it was a life of sustained dignity, unobtrusive and unostentatious. When we come to the Chief Justiceship — a place so great, not in our imagination but in the sober measurement of that great dignity among men — who can say of one thus elevated more truly than of him, *magistratus ostendit virum*. The magistracy shows forth the man, not in the sense of the publicity and display which great office furnishes, but in the bringing out, to public notice and admiration, the adequate and noble qualities which, but for the magistracy, would have been hidden from observation.

While Chief Justice Waite possessed those personal traits of softness and tenderness of character and of heart to which my friend Mr. Hackett has so well adverted, and which all knew him to have from his youth, and throughout his professional career, and in his public positions and on this bench, all knew of him as well that when his conclusions of right and of duty were once formed he was steadfast and unmovable. I believe every eminent Associate on this great Court would say of him that, whatever mildness and courtesy and tenderness he might habitually show, when decisions had been reached, the judgment and the attitude of the Chief Justice were steadfast and unmovable. And now I can appeal to the great profession of the law in this country, that it is no common prosperity or fortune or power to have reached the incomparable eminence that our friend reached, and there shall have been conceded, in public estimation, a fitness on his part comporting with the great place to which he had been called. What other place is there in the frame of society and of government, of which we have any history or any observation, that is equal to that of a tribunal that can pronounce irreversible decrees? No king, no magistrate, no parliament, no congress, on certain great topics of judicial control and decision,

can overrule or reverse the decrees of this tribunal. Nothing short of a new consultation of the great nation that has grown up under this Constitution, by a change in its own sovereign decrees, can reverse these public judgments of this Court. When errors have been committed in France or England in their great tribunals, their chambers of government, their parliaments, can change the law; but in this great class of the powers and duties of this tribunal the power of the law-makers, devolved by our Constitution upon the two Houses of Congress, in all its plenitude, cannot change the constitutional decrees here promulgated.

The broken condition of social, of legal, of political, of public affairs at the stage in the rearrangement of our affairs that Mr. Waite became Chief Justice made the situation most difficult. Wise men might well look around for where those solid and circumspect traits of conduct and of character, weight and power, could be united for this situation; that could repair the wastes of war; that could reconstruct the symmetry and strength of judicial predominance over the passions and memories of war. In these new situations, the magistrate upon whom this great place was conferred has proved himself adequate in intellect, in integrity, and in firmness to maintain and administer the law of the land, and build up the strongholds of all-prevalent justice. At a time when so much detraction of all public men prevails—much of it flippant and frivolous, some of it, alas, malicious—what envious voice, what poisonous arrow has been aimed at the good name and fame of the Chief Justice? No; in that elevated moral height which he had gained “no fowler’s eye could mark his flight to do him harm.”

Mr. Chairman, I have told you the beginning of my friendship; I have just parted with him at his grave. Into that undiscovered country now traversed by his “printless feet” we cannot follow, except under that great illumination of faith which gives to us for that future, as for all our guidance in life, the substance of things hoped for and the evidence of things unseen.

The resolutions were unanimously agreed to; and thereupon, on motion of Mr. Shellabarger, the meeting adjourned.

## SUPREME COURT OF THE UNITED STATES.

MONDAY, April 9, 1888.

Present: MR. JUSTICE MILLER, MR. JUSTICE FIELD, MR. JUSTICE BRADLEY, MR. JUSTICE HARLAN, MR. JUSTICE MATTHEWS, MR. JUSTICE GRAY, MR. JUSTICE BLATCHFORD, MR. JUSTICE LAMAR.

The ATTORNEY GENERAL addressed the Court as follows: May it please the Court, At a recent meeting of the Bar and the officers of this Court, I was requested to present resolutions adopted by them respecting the late Chief Justice Waite, for the proper action of the Court thereon; and now, in complying with that request, I beg leave to read the resolutions :

The Chief Justice of the United States has ended his career on earth.

He proved himself equal to all the duties which the title of his office imports.

It is fitting that the Bar of the Court over which he presided so satisfactorily should express their sense of the calamity that has visited the Court, the Bar in general, and the whole country: Therefore, be it resolved;

I. That the Bar of the Supreme Court of the United States recognize in the late Chief Justice a combination of qualities that peculiarly fitted him for the difficult and delicate duties of president of a great court; that his ability as a judge, his strong sense of justice, and his firm but mild administration contributed to the public feeling of security and to the confidence that has made the Supreme Court the balance-wheel of the Constitution; that they are grateful for the legacy of his noble and unsullied character, adorned by traits that endeared him to all who came in contact with him; that he was a type of the highest product of our free institutions, always maintaining his official and personal dignity, yet always mindful that no one was too humble for his attention and regard; and that they will remember him as one who was an honor to his country and to the whole brotherhood of men.

II. That we tender to the family of the deceased our heartfelt sympathy.

III. That the Secretary is hereby requested to furnish the Attorney General of the United States with a copy of these proceedings, with the request to present the same to the Supreme Court of the United States for such action thereon as the Court may deem proper.

IV. That the Chairman is hereby requested to transmit an engrossed copy of these proceedings to the family of the deceased.

In connection with these proceedings, I wish to add a few observations by way of a personal testimonial to one I so highly esteemed.

Indeed, this is an occasion for sad and solemn reflection on the

part of this Court. It is but a few months since we testified to the worth and merit of Mr. Justice Woods, stricken down in the midst of great labor and pressing official duties, and now, before his grave is green with the first grass of spring, we are mourning the loss of the model Chief Justice, fallen before the same shaft, at a time when all his attainments were needed in the work of this tribunal. Truly, "it is a time for memory and for tears" in this Chamber.

When the resolutions state, not by comparison, but directly and absolutely, that he was equal to the duties of his office of Chief Justice, in all that is implied in its title, what more can or need be said? That he filled such a place, in fact, is fame and glory enough in the minds of all people who are acquainted with our institutions and understand their workings.

Coming to this post in 1874, when the country was still rocking in the throes of the terrible civil war of four years and more, when many vexed and disturbing questions of the first moment were crowding here for determination, at once he assumed his place with the ease and familiarity of a trained jurist fitted to preside.

In his first opinion (*Tappan v. Merchants' National Bank*, 19 Wall.), we see the same plain, direct, clear, cogent, and judicial style that runs through his later utterances, and even characterizes his very last productions.

From this volume of Wallace to the coming 126 U. S. Reports, inclusive, forty-one volumes, stand the monuments of his industry, ability, and impartiality in this forum, and they will not fall to pieces at the touch of Time.

I knew him well, from almost the time he took his seat here, and from a close observation and study of him and this Court during that period, if ever the scales of Justice wavered in his hand I did not discover it.

With him as her personification, Justice can well be painted blind.

Literally was he absorbed in the obligations of his office; they were his study by day and by night.

The accumulation of business upon the docket was oppressive to him; it was almost his skeleton at the door. Scarcely did I ever meet with him that he did not have much to say on this subject, and always with an earnest expression of hope that something would be done for the relief of the Court.

With these burdens and cares upon him, calculated to the utmost to fret and annoy, yet he was mild, kind, patient. He has done his work well, whenever and wherever found, and for it he receives

universal applause, not grudgingly, but freely and cheerfully rendered.

In the analysis of this work and of his character there will be discovered an inheritance that his friends, his afflicted family, and his country will cherish with gratitude and pride, and one that will not perish, but will become more precious as our Government lives and "grows in its growth and strengthens in its strength" —

Rich in saving common-sense,  
And, as the greatest only are,  
In his simplicity sublime.

I now move that the resolutions be placed among the records of the Court.

**MR. JUSTICE MILLER** replied as follows :

The Court receives with the deepest sensibility the resolutions of the Bar in regard to the death of the late Chief Justice, and the remarks of the Attorney General in presenting them. We fully appreciate the great loss which the country, the Bar, and the officers of the Court have sustained by this sad event.

The blow falls, however, with more force upon the members of this Court, who, associated with him in the performance of its functions, have been accustomed to the benefit of his learning and of his ability in the discharge of the duties common to us all; for not only has he guided our pathway and lightened our labors by his experience, his skill, and his practical tact, but, with an urbanity and kindness of heart rarely if ever excelled, he has won our affections and attached us to himself; so that while we sympathize in the public loss, each also feels the sorrow of the final separation from a special friend. Chief Justice Waite came to the Court in the prime of life, with a vigorous constitution, trained in the ways of the law and the courts by a long and successful practice, and was at once recognized as a man with faculties which fitted him for presiding over this high tribunal. As to his character, his work, and the impression which he has made upon the public, we concur in the remarks made by the Attorney General.

The results of his labors are seen in the forty-one volumes of the reports of the decisions of this Court, from 19th Wallace to 126th United States, inclusive. In the opinions delivered by him contained in those volumes will be found the strongest evidence of his industry and his capacity as a judge. His style was eminently judicial, terse, vigorous, and clear. No one who reads them ever

doubts what is meant or what the Court decided. They will stand as his highest claim to the gratitude of his country and a monument to his diligence and ability. It has been said by eminent judges, with something of regret, that however important their services, however valuable their decisions and opinions, they are, as compared with other public servants and public men, withdrawn from observation. But the influence of a great judge, like the late Chief Justice, embodied in the reports of a court of high character, will be felt as establishing rules of conduct and for the decision of important questions, and will be commented upon and appreciated by a large class constituting a learned profession long after contemporary addresses or public efforts of whatever character shall have passed into forgetfulness. To one desirous of posthumous fame, this connection of a distinguished judge with the principles which the courts have laid down as rules governing the rights of persons and property, and the powers of government over the citizen, must always present a sufficient compensation for the absence of public applause accompanying the discharge of his judicial duties. Besides these high functions of the office of Chief Justice, it would be unjust to him to omit our testimony to the eminent skill, courtesy, and tact with which he discharged those minor duties which devolved upon him as the presiding officer of the Court. He was endowed by nature with qualities rarely combined in the same individual, of steadiness and firmness in action, and courtesy and consideration towards all with whom that action brought him in contact.

The oldest members of this Court know of no one who was better fitted to discharge the administrative duties of the office of its Chief Justice, or who ever did so with more acceptability to his associates and to the public at large.

Since we must all die, it may perhaps be said of Chief Justice Waite that the inevitable event came to him in a manner as near to what one could have desired it to come as was possible.

Up to within a week of his death he was in the most vigorous health, and actively engaged in the discharge of his official duties. On the morning of Monday, the 19th day of March last, the Court met after a recess of four weeks. He was present, and had an opinion ready for delivery in one of the most important causes decided while he was upon the Bench, the great Bell telephone suits, which had been before the Court for a year.

During the recess he had written the opinion of the Court, but upon the morning of its meeting, feeling slightly unwell, he requested one of the junior Justices to read it for him. This occu-

pied nearly two hours, thus showing the immense amount of labor he had bestowed upon its preparation during this interval, which the public supposed was one of recreation for the Justices of the Court.

As soon as the opinion was read, the Chief Justice returned home and went to that bed from which he never again arose. After an illness of four days, in which his suffering was not very great, on the morning of Friday, the 23d day of March, at half past six, being assisted to turn over in his bed, he said, with apparent satisfaction, "I feel better." He then asked for a drink; the nurse stepped away a moment in the same room to get a glass of water, and when she returned to the bed he was dead. Thus, without a long or painful illness, without a struggle, in the midst of his usefulness, and just at the conclusion of what was one of the ablest and most important judicial decisions of his life, he passed away. Who does not wish, when his own end shall come, that it may be like this?

The resolutions of the Bar just presented to us, with the remarks of the Attorney General, will be placed upon the records of the Court.

I have also received resolutions adopted by the Senate of the State of Ohio, the State from which the Chief Justice was appointed to this Court, expressive of their admiration and sense of the great loss.

They will also be spread upon the records, and it is ordered that all proceedings in relation to the death of the late Chief Justice, which may be received by the Clerk, be placed on the files of the Court.<sup>1</sup>

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<sup>1</sup> Under this order there have been filed in the Office of the Clerk of the Court: Resolutions adopted by the Senate of the State of Ohio; Proceedings in the Circuit Court of the United States at Charleston, S. C.; Resolutions of the Rutland County Court in Vermont; Proceedings in the District Court of the United States for the Western District of Arkansas; Proceedings of the Yale Alumni Association at Washington; and Resolutions of the Bar of Chicago.