

APPENDIX.

I.

In Memoriam.

SAMUEL FREEMAN MILLER, LL.D.

THE court, on meeting pursuant to law, on the 13th of October, 1890, found Mr. Justice Miller lying critically ill at his house in Washington. The Chief Justice on the opening of the court said: "The court reassembles under the shadow of impending affliction. The visit customarily paid to the President of the United States on the first day of the term will be postponed. Cases assigned for the second Monday of the term (October 20) will be set down for the third Monday of the term, the 27th of October. Applications for admissions to the bar will be entertained, and after they are disposed of the court will adjourn until to-morrow."

That evening, at fifty-two minutes past ten o'clock, Mr. Justice Miller died. On the convening of the court on the 14th, the Chief Justice said: "It is with feelings of profound sadness that I announce the death of the senior Associate Justice of this court, Mr. Justice Miller, which occurred at his residence in this city, at fifty-two minutes past ten o'clock, last evening. No business will be transacted, and the court, as a mark of respect to the memory of its eminent associate, will adjourn until Monday next": which was accordingly done.

On the 16th of October the funeral services in Washington took place in the court room of the Supreme Court, and the body was taken to Keokuk, Iowa, for interment. Mr. Chief Justice Fuller and Mr. Justice Brewer accompanied it.

On the 18th of October, at 11 o'clock A.M., a meeting of the bar

and officers of the Supreme Court of the United States was held in the court room to take action upon his death. Mr. Samuel F. Phillips was chosen chairman, and Mr. James H. McKenney, secretary. Messrs. William M. Evarts, Wayne MacVeagh, C. K. Davis, A. H. Garland, John T. Morgan, W. C. Goudy, George F. Edmunds, Thomas J. Semmes, George G. Vest, W. D. Davidge, J. M. Wilson, J. M. Woolworth, John B. Henderson and Enoch Totten, were appointed a committee to prepare suitable resolutions, and the meeting adjourned to the 6th day of December, at the same hour and place.

On Monday, October 20, the court met pursuant to adjournment: Present: Mr. Justice Field, Mr. Justice Bradley, Mr. Justice Gray, Mr. Justice Blatchford and Mr. Justice Lamar.

Mr. Justice Field said: "The Justices of this court who accompanied the body of Mr. Justice Miller to its place of burial, in Iowa, have not returned to Washington. There is therefore not a quorum of Justices present to-day, and the court will consequently stand adjourned until to-morrow at 12 o'clock."

On the 6th of December, 1890, the members of the bar and the officers of the court met pursuant to adjournment.

Mr. William M. Evarts, on behalf of the committee, reported for consideration the following resolutions:

"*Resolved*, That the members of the bar, practising in the Supreme Court of the United States, are affected with profound sensibility at the loss suffered by the court, and by the profession of the law, and the community at large, which has fallen upon them in the sudden death of this eminent lawyer, jurist and magistrate, when at the height and full exercise of his great powers in the service to the nation, in the exalted place which he had so long occupied.

"*Resolved*, That the length of years, falling not much short of a whole generation, which the judicial service of Mr. Justice Miller has given to the administration of justice in the high functions and the wide scope which belong to the great tribunal in which he sat, and the period of the service, concurring with the march of events in the life of the nation through the civil war, and the difficult tasks of the restoration of order and unity in the working of our government and the reestablishment of the calm and prevalent maintenance of law throughout the land, place him in the front rank and in close association with the greatest judges that have shed lustre upon the court, in its historic fame and permanent benefits upon the welfare of the people.

"*Resolved*, That the members of this bar, besides fully sharing in the universal and grateful public estimate of the character and life of this great judge, and grief at his loss, may properly, from their close and constant observation of his personal traits and his relations with the court and the bar in his discharge of his daily duties, bear witness to his admirable conduct in these duties and relations, so just, so firm, so amiable, and feel a personal sorrow at his death.

"*Resolved*, That a copy of these resolutions be presented by the president and secretary of the meeting to the family of Mr. Justice Miller, with the sincere sympathy of the profession in their bereavement, and that the Attorney General be requested to present to the Supreme Court in session the proceedings of this meeting."

After appropriate remarks by Mr. Wayne MacVeagh, Mr. A. H. Garland, Mr. C. K. Davis, Mr. John B. Henderson, Mr. Henry E. Davis, Mr. J. H. Embry, Mr. R. D. Mussey and Mr. Wm. M. Evarts, these resolutions were unanimously adopted, and the meeting was adjourned *sine die*.

On Monday, December 15, 1890, the Chief Justice and the associate Justices being all present, Mr. Attorney General presented and read these resolutions to the Court, and said:

MAY IT PLEASE THE COURT:

It was a saying of Solon, the lawgiver, that no one ought to be called happy until after death, since storms and calamities in the evening may change the character of the brightest day. Tried by this supreme test, Samuel Freeman Miller was a happy man.

Born of pioneer stock, amid humble surroundings in the simple life of Kentucky, during the second decade of this century, a life from which advancement could be had only along the rugged paths of frugality, integrity and hard work, he was fortunate in the time and place of his nativity.

It is not uncommon to refer to a successful man as having started without extraneous help, as if this rendered the career more remarkable. Quite the reverse is true. To the unambitious youth, content upon the plains of comfortable mediocrity, wealth and influence may be desirable. But one who aspires to the high places of earth, to climb mountains, and from their summits take in wider landscapes, to be a leader among his fellows, must generally strive under the spur of necessity, along paths impassable to luxury.

In this, also, Mr. Miller's life was happy. Necessity compelled, and an indomitable resolution impelled him to make his own way.

Full of ambition, though having only slight educational advantages, he chose medicine as a profession, and practised as a physician successfully in Kentucky for a number of years.

Dissatisfied, however, with his surroundings, especially hating the contaminating touch of African slavery, he determined to seek a new life, changing at once his residence and his profession.

In 1862, President Lincoln found Mr. Miller in Iowa, as a few years before the country had found Mr. Lincoln in Illinois, devoting his life to a somewhat obscure and unremunerative, though, for the place and time, successful practice of the law.

And the finding of such a judge by the President was only less fortunate than the finding of such a President by the country.

Indeed, Mr. Justice Miller rightly thought it one of the happiest incidents of his life, that he not only received his commission as Justice of this court at the hands of Abraham Lincoln, but that he received with it his friendship and confidence; and well he might, for who does not feel a pride that he was even a contemporary of that great and good man, and who does not view with regret the severance of any tie connecting that inestimable life with his own?

While we may take by the hand those who have lived and wrought by the side of Lincoln, we seem to be near him, and as by personal contact to take on something of the high inspiration and holy impulses of his character.

Alas, that but a single strand now connects him with the personality of this court. One member only remains, full of years and honors, discharging the high duties to which he was consecrated by the martyred President.

Serus in cœlum redeas.

Mr. Justice Miller was happy in his work and in its results.

To be appointed to a seat in this great tribunal was a signal mark of distinction; but to occupy that seat, in the estimation of the profession and of the whole people, for nearly thirty years, with the highest credit to himself and the greatest usefulness to his country, was honor indeed.

When Justice Miller ascended this bench, a political earthquake was shaking the foundations of Government, obliterating old landmarks, and filling the accustomed channels of public law with hitherto unsuspected difficulties and dangers. To safely guide this, the weakest and most sensitive branch of the Government, amid these shocks and through all the troublous times that fol-

lowed, so that, on the one hand, no just power of the General Government should be lost, and on the other, no just right of a State or of a citizen should be sacrificed, was a task worthy of the best efforts of the greatest jurists; and worthily has the work been done. It is not disparagement to others to say, that in this work, which will ever stand as a monument of honor to the court, and a bulwark of security to free institutions, Justice Miller was second to none.

The most striking feature of his mind was the logical faculty. Others, perhaps, had more culture, more legal learning; none had more legal wisdom. Intellectually, as morally, he was robust, rugged, simple and always honest. With him, logical conclusions were moral convictions, and to abide by them was an intellectual and moral necessity. Like Martin Luther at the Diet of Worms, he could "do no otherwise."

Undiscriminating eulogy has said that Judge Miller was wont to sweep away the law in order that justice might prevail. Such a statement would not have been accepted by him as praise. He loved justice, but he knew, as all men fit for judges know, that justice, humanly speaking, can have its perfect work only through the law; that obedience to law by the magistrate, as well as by the private citizen, is essential to justice, as it is a condition of liberty.

In his social and home life also, our friend was happy. A vigorous, healthy constitution in a stalwart body, a genial temperament, a great fondness for and unfaltering trust in his friends, made the grasp of his hand always hearty, and his presence a delight in every social gathering.

His religious views were broad and very practical. The essence of his creed was "to do justice, to love mercy, and to walk humbly" before God and man.

In the *Odyssey*, the much suffering Ulysses thus depicts the highest earthly bliss:

"There is no better, no more blessed state,
Than when the wife and husband in accord
Order the household lovingly. Then those
Repine who hate them, those who wish them well
Rejoice, and they themselves the most of all."

After a long life of such domestic felicity and of such public usefulness, loved by a multitude of friends, revered of all men, our friend, still instant in duty, with length of days in his right hand, and in his left hand wisdom and honor, awaited the call of

the Master. The call came, sudden, peremptory, and it found him ready.

I move that the resolutions of the bar be spread upon the records of the court.

THE CHIEF JUSTICE responded as follows :

The court deeply sympathizes with the resolutions and the remarks of the Attorney General. The loss so universally felt in the death of Mr. Justice Miller comes home in an especial degree to his brethren, participants in his toil and sharers of his intimate friendship.

When he became a member of the court its deliberations were presided over by Chief Justice Taney, and Catron and Nelson and Grier and Clifford were among his Associates, together with the venerable Wayne, the last survivor of the bench as constituted under John Marshall. Of the forty-five Associate Justices up to the time of his death only Catron equalled, and Washington, William Johnson, Story, McLean and Wayne exceeded him in length of service. We need not say how cordially we reciprocate the wish that our colleague, his ancient comrade, may be spared to pass far beyond that limit, while we extend the aspiration to that other veteran who has sat in judgment with him for more than twenty years.

The trans-Mississippi country had just entered upon its course of unexampled development, when the sagacity of Mr. Lincoln gave to it, in this appointment, a judicial representative. Wisconsin was one of the states of the circuit to which Mr. Justice Miller was first allotted, but was afterward detached, while Iowa, Kansas, Minnesota and Missouri remained with him from the beginning to the end, Arkansas, Colorado and Nebraska being subsequently added; and there is no part of that vast and powerful region that is not full of his labors. He lived to see a population in his circuit of three million expand into ten (two of the States admitted to the Union years after the commencement of his incumbency rising from the 63,000 of 1860 to the million and a half of 1890), while an equally marvellous increase in the products of the farm and of the mine, in commerce, in science, in invention and in wealth, corresponded with the progress of the great nation of which he was a judicial officer.

He came here in the prime of life, in the full vigor of his faculties, and with a mind trained by the experience of active practice in two professions, nearly ten years in that of medicine

and fifteen at the bar; a practice in either requiring for success learning, knowledge of men and things, acuteness, and, above all, the habit of decision.

When he took his seat the country was in the throes of internecine conflict; when his eyes closed it was upon a happy, prosperous and united people, living under the form of government devised by the fathers, the wisdom of whose fabric the event had vindicated. Great problems crowded for solution: the suspension of the habeas corpus; the jurisdiction of military tribunals; the closing of the ports of the insurrectionary States; the legislation to uphold the two main nerves, iron and gold, by which war moves in all her equipage; the restoration of the predominance of the civil over the military authority; the reconstruction measures; the amendments to the Constitution, involving the consolidation of the Union, with the preservation of the just and equal rights of the States—all these passed in various phases under the jurisdiction of the court, and he dealt with them with the hand of a master.

While he took his full share in the consideration of every subject of judicial investigation, notably in reference to some, as, for instance, those pertaining to the public lands, yet he chiefly distinguished himself in the treatment of grave constitutional questions, which brought into play the patience, the intuition, the deliberation, the foresight, the intellectual grasp and the breadth of view which characterize all who have deserved the name of statesmen. And, as with private controversies, so with those concerning the public and the Government, he sought to go by the ancient ways, and never to incur the curse denounced on him who removeth the landmarks. His style was like his tread, massive but vigorous. His opinions, from his first in the second of Black's Reports, to his last in the one hundred and thirty-sixth United States, some seven hundred in number (including dissents) running through seventy volumes, were marked by strength of diction, keen sense of justice, and undoubting firmness of conclusion.

He had that true legal instinct which qualified him to arrive at the very right of a cause and to apply settled principles to its proper disposition; while to courage was joined an integrity and simplicity that always commanded respect and generally carried conviction. Benignant in temperament, and with a heart full of sensibility, his intercourse with his fellows was so cordial and kindly as to endear him to all who came within the sphere of his influence.

And the power of routine so benefited him that through the long years of experience, which seem so brief now, he attained, as was remarked of Mansfield, "that dignity of disposition which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security."

The classical allusion of the Attorney General might well receive a wider application; for, to the last, having seen and known much of men, of councils and of governments, himself "not least, but honored of them all," he bent to the oar, seeking to explore new lines of coast along the well-nigh illimitable ocean of the law.

His last years were suffused with the glow of the evening-time of a life spent in the achievement of worthy ends and expectations; and he has left a memory dear to his associates, precious to his country, and more enduring than the books in which his judgments are recorded.

The court has heretofore adjourned as a mark of respect to the memory of the deceased, and a delegation from its number has attended the committal of his body to its connatural dust in the distant city from whence he came, among the people to whom he was so deeply attached, who with their fellow-countrymen had followed his career with pride and affection, and by whom his final resting-place will ever be held sacred.

The resolutions of the bar and the remarks of the Attorney General will be entered upon the record; and it is ordered that the memorials of the bars of New York, of St. Louis, of Portland, Oregon, and of the eastern and western districts of Arkansas be placed on file, together with such other commemorative tributes as may be hereafter received.

II.

AMENDMENTS TO RULES.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

Ordered, that the following additional rule of this court is adopted and promulgated:

35.

WRITS OF ERROR UNDER SECTION 6 OF THE ACT OF FEBRUARY 6, 1889, CHAPTER 113, (25 STAT. 656.)

1. The plaintiff in error shall file with the clerk of the court below, with his petition for the writ of error, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to, *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6 and 9 of Rule 10.

Promulgated November 3, 1890.

8.

It is ordered by the court that subdivision 5 of Rule 8 of this court be amended so as to read as follows :

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

Promulgated January 26, 1891.

9.

It is ordered by the court that subdivision 1 of Rule 9 of this court be amended so as to read as follows :

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

Promulgated January 26, 1891.

It is ordered by the court that subdivision 2 of Rule 9 of this court be amended so as to read as follows :

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of the court; and, if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

Promulgated January 26, 1891.

It is ordered by the court that subdivision 4, of Rule 9, be amended so as to read as follows :

4. In all cases where the period of thirty days is mentioned in Rule 8, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska and Idaho.

Promulgated January 26, 1891.

ADMIRALTY PRACTICE, 54.

It is ordered by the court that Rule 54 of the Rules of Practice in Admiralty be amended so as to read as follows :

54.

When any ship or vessel shall be libelled, or the owner or owners thereof shall be sued, for any embezzlement, loss or destruction by the master, officers, mariners, passengers or any other person or persons, of any property, goods or merchandise shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "an act to limit the liability of ship owners and for other purposes," now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act;

and upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same: and public notice of such monition shall be given as in other cases, and such further notice served, through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

It is further ordered that the present heading to this rule be erased.

Promulgated January 26, 1891.

III.

ASSIGNMENTS TO CIRCUITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

ORDER.

It is ordered, That the following allotment be made of the Chief Justice and Associate Justices of this court among the circuits, agreeably to the act of Congress in such case made and provided, and that such allotment be entered of record, viz. :

For the first circuit, HORACE GRAY, Associate Justice.

For the second circuit, SAMUEL BLATCHFORD, Associate Justice.

For the third circuit, JOSEPH P. BRADLEY, Associate Justice.

For the fourth circuit, MELVILLE W. FULLER, Chief Justice.

For the fifth circuit, LUCIUS Q. C. LAMAR, Associate Justice.

For the sixth circuit, DAVID J. BREWER, Associate Justice.

For the seventh circuit, JOHN M. HARLAN, Associate Justice.

For the eighth circuit, DAVID J. BREWER, Associate Justice.

For the ninth circuit, STEPHEN J. FIELD, Associate Justice.

November 3, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

ORDER.

There having been an Associate Justice of this court appointed since the commencement of this term, it is ordered that the following allotment be made of the Chief Justice and Associate Justices of said court among the circuits, agreeably to the act of Congress in such case made and provided, and that such allotment be entered of record, viz. :

For the first circuit, HORACE GRAY, Associate Justice.

For the second circuit, SAMUEL BLATCHFORD, Associate Justice.

For the third circuit, JOSEPH P. BRADLEY, Associate Justice.

For the fourth circuit, MELVILLE W. FULLER, Chief Justice.

For the fifth circuit, LUCIUS Q. C. LAMAR, Associate Justice.

For the sixth circuit, HENRY B. BROWN, Associate Justice.

For the seventh circuit, JOHN M. HARLAN, Associate Justice.

For the eighth circuit, DAVID J. BREWER, Associate Justice.

For the ninth circuit, STEPHEN J. FIELD, Associate Justice.

January 19, 1891.