

APPENDIX.

I.

In Memoriam.

HOWELL EDMONDS JACKSON, LL.D.

SUPREME COURT OF THE UNITED STATES.

Monday, November 25, 1895.

Present: THE CHIEF JUSTICE,
MR. JUSTICE FIELD,
MR. JUSTICE HARLAN,
MR. JUSTICE GRAY,
MR. JUSTICE BROWN,
MR. JUSTICE SHIRAS, and
MR. JUSTICE WHITE.

MR. ATTORNEY GENERAL addressed the court as follows:

It is with more than a sense of official propriety that I comply with the request of the bar by presenting to the court their resolutions relating to the late Justice Jackson. We of his home circuit knew him best. There were his birthplace and his home. There his first regular judicial work was done, by which he made the reputation that led to the call from across the party wall to a seat beside Your Honors.

The active bar always feel some misgivings when a man in public life, even though he has won distinction there, is called to the bench, especially when he has reached middle age. But they soon found that Howell Edmonds Jackson was not so much a senator who had been appointed judge as a judge who had served for a time as senator. His mind, naturally broad and strong, symmetrically

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developed, controlled by steady purpose, and directed by industry which seemed almost weariless, would have enabled him to fill with credit any place which requires such qualities. He had so filled the high positions to which the resolutions refer, but he was peculiarly fitted for the duties of a judge. He had in high degree patience to hear and consider, and firmness to decide. He had an even temper, judgment unprejudiced toward men or things, and a logical turn of mind which naturally shed irrelevance and sophistry and inclined to accuracy of fact and correctness of conclusion. He loved justice in the concrete as well as in the abstract and felt the pleasure a strong judge always takes in applying the principles of law to the redress of wrongs; but he knew and loved the system of judicial science too well to wrench or impair it, and unsettle the rights of the great body of the people, in seeking to avoid those occasional hardships against which human law, being necessarily general, cannot provide. So his decisions were of the kind which build and perfect our jurisprudence, and not a series of mere arbitrary judgments. There are few among them which the legal mind hesitates to adopt among the precedents which keep the law in healthful life and growth.

He was never chargeable with the blunders of a careless man or the vacillations of a weak one, but won respect even when he failed to convince, because he reached his conclusions by the broad highways and not by indirection or evasion.

Some have excelled him in extent of learning and others in mere force of intellect, but few have equalled him in the comprehensive perception and abiding sagacity which result from a harmony of powers. His vigorous practical understanding was not to be bewildered by details, confused by doubtful or conflicting precedents, nor misled by refinements of reasoning. His decisions always bore the stamp of his own mind and character.

Absorbed as he was in the exacting duties of the circuit, his health was shaken before he realized it, but he never lost patience or resolution. The vigor he showed as a member of this court in the number and promptness of his opinions, as well as by their lucid thoroughness, was in spite of the dragging of disease. And one of the most striking instances of the calm heroism of peace was the resumption of his place when the public interest required it in the income tax case. However opinion, legal and lay, was and may remain divided on the questions involved in that case,

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there is, and will be, no divided judgment about the high qualities shown by the opinion of Mr. Justice Jackson, which all feared would be, and which was, his last. Though the effort required undoubtedly hastened the end, no true friend or patriot can feel regret, because it has put on imperishable record an example of devotion to public duty whose worth cannot be too highly esteemed.

The feeling of personal bereavement which prevails to a very unusual extent among those who knew Justice Jackson seems to me the highest tribute to his memory. There is no warmth in mere mental power or acquirement, nor in the most careful correctness. These may kindle admiration or envy, but not the affection which is the best tribute of man to man. I do not mean the mere result of pleasant ways, but the sturdy liking implied in the line —

“He makes no friends who never made a foe.”

He had a kind and considerate nature, but it did not blind him to his duty, nor swerve him from it; and he was free from that morbid excess of virtue which makes some good men unjust to their friends.

Reputation and honors did not affect his quiet simplicity, nor add to the unobtrusive dignity which needed no assertion.

The entire life of Justice Jackson illustrates the efficiency of steadfast devotion to duties which come without self-seeking and are met with diligence, earnestness, and sincerity of mind and purpose. His seven years as Circuit Judge gave him time to accomplish a most honorable career. Few positions put capacity and character to so severe a test as the office of judge of a court of first resort and general jurisdiction. This applies with great fitness to the sixth circuit, whose four States, reaching from Lake Superior to the Appalachian Range, like a cross-section of the great Republic, present almost every variety of population, business, and laws. Such a judge must admit and exclude evidence, sift, discern, and analyze facts, and apply legal principles generally, all without the advantage of associates, sometimes with slight aid from counsel, and often with little opportunity for study and reflection. Many of his judgments are final, and few are open to complete review; but every act and utterance undergo the impartial and unerring scrutiny of the bar and the people.

The powers of this highest of all tribunals are too great to be

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committed to one man alone. Their exercise is placed beyond the reach and above the need of review by the association of minds which stimulate, aid, and correct each other. Who may so fitly join in the deliberations of such a court as those who have stood the highest tests which the profession affords?

Justice Jackson's career as a member of this court was cut short by his untimely death; but he served long enough to confirm the fitness of his selection and sharpen still further our sense of loss. Whoever shall be called to take that vacant place will find it none the easier to fill because it was last held by Justice Jackson.

The Resolutions are as follows:

The committee appointed at a meeting of the bar of the Supreme Court of the United States, held in the Supreme Court room at the city of Washington, October 14, 1895, in memory of Mr. Justice Jackson, to draft resolutions to be reported at an adjourned meeting, present for consideration the following:

On August 8, 1895, Mr. Justice Howell Edmonds Jackson departed this life at his home, near Nashville, Tennessee.

He was born at Paris, Tennessee, in 1832, obtained his academic education in his native State, graduated at the University of Virginia, and took the degree of bachelor of laws at the Cumberland University, in Tennessee.

He practised law at Jackson and Memphis before the civil war, and at once displayed those qualities which gave promise of the high rank which he subsequently attained in the profession.

He was an earnest believer in the doctrines of the Whig party, was devoted to the Union, and opposed secession. After his native State passed the ordinance of secession and was threatened with invasion, he, like so many others who would have sacrificed their lives, if by this they could have removed the cause of strife and assured a happy union, adhered, with all of the ardor of his nature, to the side his people had chosen in the conflict. The war suspended the activities of civil life, and holding an office under the Confederate Government, which, while one of great trust, left him much leisure, he devoted himself throughout the war to the most laborious and systematic study of the law, thus acquiring an accuracy and breadth of legal knowledge which made him so fully equipped for all of the responsible duties which came to him.

After the close of the civil war he practised law in Jackson and

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Memphis, and achieved a reputation second to none of his competitors. His practice was varied, embracing office work of the most delicate and responsible character, and litigation in all of the state and Federal courts, and while his services were justly prized as a counsellor and as a chancery and supreme court lawyer, he was no less successful in the severest jury contests, where he achieved great triumphs, not by the graces of oratory, which he never cultivated, nor the meretriciousness of cunning advocacy, which he scorned, but by candor and earnestness, which won the confidence of the jury, and clear, forcible, and logical arguments, which convinced them.

On account of his reputation as a man and lawyer, he was called to a seat upon the court of referees of Tennessee, which was a provisional supreme court created to assist the regular court to dispose of the vast accumulation of cases occasioned by the civil war. He served on this court with great credit until its term expired.

Though never having taken any active part in politics, he consented, on account of his great interest in the question of the settlement of the state debt of Tennessee, to become a candidate on the state credit ticket for the state senate.

Following the custom established by immemorial usage in Tennessee, he met his opponent in joint debate and made the canvass with so much ability and persuasiveness as to win his election in a heated contest, in which he advocated high taxes, the most unwelcome cause that could be championed.

This, though not suspected by him, was the initial point of his national career. A deadlock in the selection of a United States Senator, for which position he was not a candidate, was suddenly solved by his political opponents, who, moved by an estimate of his character like that which, on a later occasion, caused the President to nominate him to the Supreme Bench, came to his support as soon as his friends put his name before the legislature; and, coöperating with a majority of his own party, elected him on the first ballot. The offices of United States Senator, Circuit Judge, and Justice of the Supreme Court all came to him in unbroken succession and without expectation or effort on his part.

His career in these honorable and responsible positions is too well known to need recapitulation.

His performance of the labors of his office, even when the hand of death rested heavily upon him, will always remain a pathetic

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and inspiring picture in the memory of those who saw his heroic efforts.

He was profoundly religious, and an elder in the Presbyterian Church.

His manner was reserved, and yet no one found him difficult of approach. He was frank and courageous in expressing his opinions of men and measures, yet free from bitterness and personal invective. He was serious in affairs, but in the company of friends was always jovial, enlivening conversation with sprightly humor and pointed anecdote. He felt and maintained the dignity of his office and yet with those amenities which in a judge invest the intercourse between bench and bar with an atmosphere which is as wholesome as it is gracious.

He displayed exact learning, laborious investigation, unflinching courage, absolute impartiality, and broad patriotism; therefore, be it

Resolved, That the members of the bar of the Supreme Court of the United States, profoundly impressed with the great loss sustained by the profession and the nation in the untimely death of Mr. Justice Jackson, desire to record their esteem for the qualities which distinguished his short career on the Supreme Bench, and which gave such perfect assurance that he was a worthy successor of those distinguished judges who have administered, with such fidelity and ability, the greatest trust ever confided by a nation.

Resolved, That we deeply sympathize with the bereaved family of Mr. Justice Jackson and that a copy of these resolutions be presented to them by the secretary of this meeting.

Resolved, That the Attorney General be requested to present these resolutions to the Supreme Court in session and request that they be recorded.

THE CHIEF JUSTICE responded:

MR. JUSTICE JACKSON took his seat as a member of this court on the 4th of March, 1893, serving for the remainder of the current term, which closed on the 15th of May; sat through the next term, the month of March excepted; and heard argument in a few cases at October term, 1894.

Perhaps no greater eulogium can be passed on him than to say that, brief as was the period during which he was permitted to be with us, he impressed himself upon his colleagues and the country

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as possessed of the highest attributes of the judicial officer, and left enduring evidence of judicial eminence on the records of the court.

There was no eccentricity in his success. He came here with a mind disciplined by years of experience in business and political activities, in an extensive professional practice and in the discharge of judicial duties and stored with knowledge of affairs as well as of books, knowledge qualifying him to deal with questions promptly and with practical wisdom, rather than knowledge of things "remote from use, obscure and subtle."

Patience in hearing; assiduity in examination; quickness in grasp; clearness in thought; facility, simplicity, and directness in expression; all these he had, and they enabled him to find the clew in records however lost in wandering mazes and make it plain for guidance to correct results.

He profoundly realized that the administration of justice is the great end of human society, and that upon the conscientious labors of those to whom that administration is committed the protection of life and liberty and property depends, and so the endeavor to do justice ran like a golden thread through all his work. Added and superior to all other grounds of praise, it could well be said of him, as an eminent English judge said of himself, that there was one merit to which he could boldly lay claim—the determination to do what was right, whenever that could be discovered.

Of the cordial relations between Mr. Justice Jackson and his brethren, which his engaging qualities of mind and heart rendered of the closest, I do not care to speak. We part with him with a keen sense of personal bereavement as he takes his place in the goodly company of those who have gone before, though still remaining with us one in the blood of common traditions and common labors.

There is little in the performance of judicial duty to attract popular attention or to win popular applause, but the influence of faithful service such as his—of labors so abundant—of a life shortened by effort in the public interest, "cut, like the diamond, with its own dust"—can scarcely be overestimated, and sooner or later will receive its meed of recognition.

The pathetic incident at the close of Mr. Justice Jackson's career, referred to by the Attorney General, was thoroughly

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characteristic. Devotion to duty had marked his course throughout, and he found in its inspiration the strength to overcome the weakness of the outward man, as, weary and languid, he appeared in his seat for the last time in obedience to the demand of public exigency. The response to the roll call under such circumstances gives complete assurance — though, indeed, it was not needed — that when, a few weeks later, he came to the passage of the river, Good Conscience, to whom in his lifetime he had spoken to meet him there, lent him his hand and so helped him over.

The resolutions and the remarks by which they have been accompanied will be entered on our records, and the court will now adjourn to Monday next.

II.

AMENDMENT TO RULES.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

It is ordered that the following additional rule of practice be, and the same is hereby, adopted :

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

November 25, 1895.

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The purpose of this index is to provide a convenient means for locating the various cases and authorities cited in the text of this book. The index is arranged in alphabetical order of the subject matter, and each entry is followed by the page number or numbers on which the subject is treated. Where a subject is treated in more than one place, the page numbers are given in parentheses. The index is intended to be used as a guide to the text, and not as a substitute for it. It is not intended to be used as a means of determining the law, but as a means of finding the authorities on which the law is based. The index is not intended to be used as a means of determining the law, but as a means of finding the authorities on which the law is based.