SUPREME COURT OF THE UNITED STATES.

MONDAY, JANUARY 16, 1922.

PRESENT: THE CHIEF JUSTICE, MR. JUSTICE MCKENNA, MR. JUSTICE HOLMES, MR. JUSTICE DAY, MR. JUSTICE VAN DEVANTER, MR. JUSTICE PITNEY, MR. JUSTICE MCREYNOLDS, MR. JUSTICE BRANDEIS, and MR. JUSTICE CLARKE.

MR. ATTORNEY GENERAL DAUGHERTY presented to the Court the resolutions above set forth, (*ante*, p. vii,) and addressed the Court as follows:

"MAY IT PLEASE YOUR HONORS: There is no higher virtue among any people than the reverence in which it holds the memory of its illustrious dead. To commemorate the life of a man who has spent his days in useful service to his country is not only a just tribute to him but is distinctively an example for those who follow after him. The richest heritage that any nation can have is the record of the lives and services of its distinguished sons who have devoted themselves unselfishly and faithfully to the cause of their country. Such lives furnish inspiration, give faith, point the way, and stimulate others to useful service. Hence, it is deemed fitting that these resolutions be presented to this court to commemorate the life and public labors of its late Chief Justice, who for twenty-seven years rendered most distinguished and useful service to his country as a Justice of the Supreme Court of the United States.

"Edward Douglass White, late Chief Justice of the United States, was born in Lafourche Parish, Louisiana, November 3, 1845. He died in the City of Washington at 2 o'clock in the morning on May 19, 1921. He was a soldier in the Confederate Army at the age of sixteen, entering in 1861; was taken prisoner at the fall of Port

Hudson July 6, 1863; received his education at Mount Saint Mary's College, near Emmittsburg, Md., at the Jesuit College, New Orleans, Louisiana, and at Georgetown University, Washington, D. C. He was admitted to the Louisiana bar in 1868 and immediately manifested an active interest in politics. He was elected to the State Senate of Louisiana in 1874, and was later appointed an Associate Justice of the Supreme Court of Louisiana in 1878 at the age of thirty-three. After serving with distinction and ability in this capacity he relinquished public office to resume the practice of law. For a time he was chairman of the board of examiners for admission to the Bar of Louisiana and was also a member of the board of administrators of Tulane University, of New Orleans.

"The high order of ability which he manifested while associate justice upon the Louisiana supreme bench, and the courageous and able fight which he made for clean government in Louisiana, and especially his efforts against the Louisiana State Lottery, which finally resulted in ridding the State of this evil, so impressed the people of that State that he was elected to a seat in the United States Senate, commencing his term March 4, 1891.

"His call, however, was to judicial and not to legislative service, for upon February 19, 1894, in the forty-ninth year of his age, President Cleveland appointed him an Associate Justice of the Supreme Court of the United States, and he took the oath of office on March 12 of that year.

"Then followed a service of nearly seventeen years as an Associate Justice upon the Supreme Bench, during which time he displayed such marked ability that, as a recognition of eminent attainments and special fitness for this office, he received the crowning reward of all judicial service in this Government and was appointed Chief Justice of the United States by President Taft December 12, 1910, at the age of sixty-five, and took the oath on December

19, 1910, thereby succeeding Chief Justice Fuller as the ninth man to be appointed to this high office. Such, in brief, is the outline of the facts of the life and public service of the late Chief Justice.

"Chief Justice White came to the Supreme Court of the United States a profound lawyer, an able jurist and statesman in the prime of life, then the youngest member of that body, with the full measure of physical strength, intellectual and moral endowment, and practical experience both as a lawyer and a statesman in public affairs, and was destined soon to take a leading place upon that bench.

"No greater eulogy can be pronounced upon Chief Justice White than to say that as Associate Justice for nearly seventeen years, and later as Chief Justice for more than ten years, he responded in full measure to the requirements of that high office.

"To be Chief Justice of the United States is the highest judicial honor in this country—in fact, in many ways it is the crowning honor that can come to any lawyer in the Nation—for in our whole history only ten men have occupied this position. Chief Justice White received this honor. He served his country well, and his memory is entitled to the reverence of a grateful nation.

"The Supreme Court of the United States occupies a unique position in the political science of the world; in fact, it was our chief original contribution to the science of government. It is not only like the courts of last resort of other nations in that it makes decisions upon juristic questions, but it exercises the additional function of declaring laws, in proper cases, unconstitutional.

"Great as is our debt to the fathers who gave us the Constitution, it may still be questioned whether the work of Hamilton, Madison, and other constitutional fathers would have been complete had not that long train of men from Marshall to White interpreted it and told us what it meant.

" This court has maintained its place not by force but by the power of logical reasoning, clear thinking, careful analysis, masterly argument, moral rectitude, and statesman-like vision to see and to understand. The people, through the work of this court, have come to realize what their Government is.

" The function of the Supreme Court of the United States is of vital importance. It is the anchor which holds us to constitutional government, the ever-watchful guardian of the liberties of the people against transgression by legislative or executive action, the balance wheel holding in equipoise and true relationship the various parts of our complex system. What higher or more noble work has ever been committed to the heart and hand and mind of man?

" Chief Justice White was deeply conscious of the great responsibility devolving upon this court. He realized fully the transcendent importance of its function and place in our system of government. He gave unreservedly all the power of his mighty intellect to upholding its dignity, its traditions, and its usefulness.

" It has often occurred to me, and especially in studying the life of Chief Justice White, that this court furnishes the most inspiring example of service, full, without stint, unselfishly given to the nation. In this respect, men far past the age when they might retire steadfastly remain at their posts. Chief Justice White for twenty-seven years labored faithfully in his work and died at his post in the service of his country. In this day, when men dare to scoff at the Constitution, when many prefer ease to the service of their country, when the whole world seems to have lost its balance and is in turmoil, it is indeed an inspiring hope to contemplate the lives and service of the men who have occupied this bench. They furnish encouragement to those of us who believe in the Constitution, in our country, and in its destiny.

" The period of Chief Justice White marked a great era for the Supreme Court of the United States. In the

thirty years between the Civil War and the advent of Chief Justice White to the Bench, the nation, by leaps and bounds, entered upon an era of industrial and commercial development unparalleled in the history of the world. This brought new problems.

"As to the opinions written by Chief Justice White it may be said that it would be a very inadequate and therefore futile tribute to him to present in digest form the points decided in a few of the more than seven hundred masterly opinions that he wrote. Certain common characteristics run through all of these opinions. They bear evidence of a profound legal mind, painstaking investigation, a wealth of knowledge, a statesman-like vision to see the probable consequences resulting from such decisions, and, above all, an intense belief in our constitutional system of government.

"In all the work of the court during this period Chief Justice White performed his full share. The record of his judicial labors is contained in one hundred and four volumes of the opinions of this court, as found in volumes 153–256, inclusive. During his incumbency upon the Supreme Bench the court disposed of, in one way or another, more than fourteen thousand cases, and rendered opinions in more than seven thousand cases. Chief Justice White wrote about seven hundred opinions for the court, ten concurring opinions, and thirty-three dissenting opinions. These opinions cover the whole range of the work of the court during this era. He was no specialist in that he confined his labors to any one particular field of work. On the contrary, his range of work was general and covered the main fields of litigation that came before the court.

"The first opinion that Chief Justice White wrote on any great constitutional question was a dissent in the case of Pollock *v.* Farmers' Loan & Trust Co. (157 U. S. 429), decided April 8, 1895. This opinion, delivered the first year after he came upon the Bench, is a prophecy of

the high rank he was to take as a jurist upon that Bench. In this first dissenting opinion he shows the characteristics as a jurist that followed him through his entire judicial career. The question before the court was whether a tax by the Federal Government under the revenue law of 1894 upon certain incomes was a direct tax and therefore repugnant to the provisions of the Constitution requiring direct taxes to be levied according to the rule of apportionment.

"A respect for precedent and a firm adherence to the doctrine of *stare decisis* are evidenced in this first opinion. After reviewing the history of all the cases from the beginning of the Government, showing that direct taxes within the meaning of the Constitution included only taxes on land and capitation taxes, he said:

'And now, after a hundred years, after long-continued action by other departments of the Government, and after repeated adjudications of this court, this interpretation is overthrown, and the Congress is declared not to have a power of taxation which may at some time, as it has in the past, prove necessary to the very existence of the Government.' (157 U. S., 637.)

" In this case Chief Justice White goes back of juristic arguments and reveals his political philosophy with reference to the doctrine of precedent and the sound reasons and principles upon which it is based. He takes the position that the Supreme Court is intended to be a stabilizing agency in making for certainty, uniformity, and fixedness of judicial decision, and says further:

' Break down this belief in judicial continuity, and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its bench, and our Constitution will, in my judgment, be bereft of value and become a most dangerous instrument to the rights and liberties of the people.'

"This opinion also reveals another favorite method of legal analysis of Chief Justice White; that is, to test the soundness of any decision by following its effect to its logical consequence. This, it may be said with assurance, is one of the highest characteristics that any jurist can have who occupies a place in the Supreme Court of the United States. Again and again, running through the opinions of Chief Justice White is the principle that the statesman-jurist will not plant himself upon a decision that works ill in its ultimate results if he can find a ground that will work beneficially. On this point in the Pollock case he said:

'The injustice of the conclusion points to the error of adopting it. * * * A rule which works out this result, which, it seems to me, stultifies the Constitution by making it an instrument of the most grievous wrong, should not be adopted, especially when, in order to do so, the decisions of this court, the opinions of the law writers and publicists, tradition, practice, and the settled policy of the Government must be overthrown.' (158 U. S., 712.)

"Closely akin to this last characteristic method in argument on this point is that to limit or to deny to Congress the power of direct taxation, as in this case, would mean that the nation would no longer be supreme, but would be at the mercy of the state governments. He concludes this point by saying:

'Hence, the decision now rendered, so far as taxing real and personal property and invested wealth is concerned, reduces the Government of the United States to the paralyzed condition which existed under the Confederation, and to remove which the Constitution of the United States was adopted.' (158 U. S. 714–715.)

"This opinion also gives the prophecy that Chief Justice White was a nationalist in political theory, believing and advocating that the National Government should be endowed with every power for its own functioning and should not be dependent upon the states to supply funds

for conducting the Government. Here we see the soldier of the Confederacy, the idol of his native state, born and reared and steeped in the political philosophy of states rights, developing in majestic splendor, and when the hour came for him under the responsibility of office, with broadening vision, we see him take his place as a worthy successor to Marshall as an apostle of nationalism. He protested against any decision in this case that would enfeeble the National Government and make it a helpless prey to the whim or caprice of the states. He lived to see the triumph of these views. After a lapse of twenty-one years they became the law of the land by the sixteenth amendment to the Constitution. That he fully realized this is seen from the statement in the case of Brushaber *v.* Union Pacific Railroad Company (240 U. S., 1), in which the income-tax provisions of the tariff act of 1913 were before the court. Rendering the opinion, he said:

'Indeed, in the light of the history which we have given and of the decision in the Pollock Case and the ground upon which the ruling in that case was based, there is no escape from the conclusion that the amendment was drawn for the purpose of doing away for the future with the principle upon which the Pollock Case was decided * * *.' (240 U. S., 18.)

"Another opinion especially important in illustrating the characteristics of Chief Justice White as a jurist is that of Knowlton *v.* Moore (178 U. S., 41), decided May 14, 1900. The main question involved in this case was whether a tax upon legacies under the war revenue act of 1898 was a direct tax, and therefore subject to apportionment, or indirect, and therefore to be governed by the rule of uniformity. Chief Justice White reviewed the inheritance tax laws of Rome and other ancient nations and the modern law of France and other continental countries, as well as those of England and her colonies, and declared that an examination of all shows that:

'Tax laws of this nature in all countries rest in their essence upon the principle that death is the generating

source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.' (178 U. S., 56.)

"Hence, the opinion held that the tax levied was upon the right to inherit and not upon the property itself. Being a tax upon the right instead of upon the property, it was in the nature of an excise tax, and hence indirect. For wealth of learning, thorough familiarity with the literature of the subject—economic, historical, and juristic—the discussion of Chief Justice White in this opinion has few superiors in our American jurisprudence. It is a genuine contribution to the jurisprudence of our country on the subject of taxation with reference to the devolution of property by inheritance or will. It fully vindicates and demonstrates the value of the study of comparative jurisprudence. Chief Justice White, profoundly learned in the jurisprudence of ancient and modern times, with a wealth of comparative knowledge of the civil as well as the common law, was able to bring his civil-law knowledge to bear as the handmaid to assist the common law when necessary, but was wise and judicious enough never, in a pedantic way, to force the discussion of the civil law in his opinions unless it was necessary and vitally contributive as an aid to the development of his subject.

"Neither the time nor the occasion permits an extended discussion of the Insular Cases. In working out the problems incident to these cases Chief Justice White made his full contribution of labor, of thought, and of learning. Starting as a dissenter, his views and those of others associated with him finally prevailed and became the rule of law for the court, and in the last of these cases (Rassmussen *v.* United States, 197 U. S., 516) he was able to write the opinion, reaffirming the views that he and his associates had held from the beginning, for the majority of the court.

"Among the most famous of the opinions of Chief Justice White are those defining the powers of Congress

under the commerce clause of the Constitution and legislation thereunder, such as the Sherman Antitrust Act of July 2, 1890, in which opinions the so-called rule of reason was announced. His position on this subject first occurs in a dissenting opinion in the case of United States *v.* Trans-Missouri Freight Association (166 U. S., 290), delivered in 1896. The court had occasion to consider this subject in other cases during the succeeding fourteen years, and the attitude of the court on this question was such that at the end of this interval the Chief Justice was able to write the opinion for the court, in 1910, in the case of Standard Oil Company *v.* United States (221 U. S., 1) and in the case of United States *v.* American Tobacco Company (221 U. S., 106). Speaking for the court, he said:

'Applying the rule of reason to the construction of the statute, it was held in the Standard Oil case that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-Trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition, or unduly obstructing the due course of trade, or which, either because of their inherent nature or effect, or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance.' (221 U. S., 179.)

" Chief Justice White never permitted economic theory to dominate his views of constitutional law. This is shown in the Pollock case, where he stood for the historic definition of the fathers as to direct taxes rather than to accept the definition as given by the economists in 1895. Likewise, he held his social and political philosophy subordinate to his juristic views of the Constitution. He did not believe that because legislation was desirable it was therefore constitutional. He should not, however,

for this reason, be classed as opposed to progress and as opposed to an interpretation of the Constitution as a living vital organism adapted to twentieth century needs. A careful study of the two cases, Lochner *v.* New York (198 U. S., 45) and Hammer *v.* Dagenhart (247 U. S., 251), as types of many other similar cases, will show that his position must be explained upon the theory of constitutional law and not upon any theory of social philosophy. He supported social welfare legislation by the states in the exercise of their police power. He opposed any definite enlarging the power of Congress to regulate commerce or any other power of the Federal Constitution to enact similar legislation, where such legislation, as he thought, was an exercise of the police power reserved to the states.

" Closely akin to this subject it may be said that he was no extreme advocate of absolute liberty, either of person or of contract, nor did he believe in the unnecessary extension of governmental control over individuals. In an address before the American Bar Association at Montreal, Canada, in 1913, introducing the Lord High Chancellor of Great Britain, after epitomizing the experiences of Roman government and the history of the development of jurisprudence as illuminated by the teachings of Christianity, he said:

'When analyzed, these conceptions give the clearest apprehension of the rudimentary truths underlying all constitutional systems of government, and demonstrate that mere questions of municipal law are of minor importance when compared with the fundamental considerations which are at the basis of the preservation of free institutions; that is, the conservatism which is necessary to conserve representative government, the willingness of one to submit to such restraints upon his own conduct as are essential to the preservation of the rights of all. In other words, the power of a free people to restrain themselves in order that freedom may endure.'

" Chief Justice White was a believer in the Constitution, yet he saw the dangers resulting from an abuse of the Constitution by those who seek to invoke it through the agency of our judiciary for their own purposes as against the legitimate rights of all the people. In an address delivered before the American Bar Association in this city, in October, 1914, he said:

'There is great danger, it seems to me, to arise from the constant habit which prevails where anything is opposed or objected to, of resorting without rhyme or reason to the Constitution as a means of preventing its accomplishment, thus creating the general impression that the Constitution is but a barrier to progress instead of being the broad highway through which alone true progress may be enjoyed.'

" Nature was kind to Chief Justice White. The elements were so mixed in him that he was destined to be one of earth's noblemen. His profound mind in all its manifestations was supplemented by a largeness of personality and of life. He was a man of dignity, yet his dignity was a natural manifestation of a great soul rather than of any conscious effort. He had the modesty, the simplicity, and the tenderness of a child, yet a firmness and courage that made him a power in any cause in which he believed. He was no egotist. In everything that he has written about himself, as well as in his personal demeanor, there is a significant absence of anything that would bear the impress of self-glorification. He was considerateness itself for those about him. To the members of the court, to the members of the Bar, to all with whom he came in contact, whether rich or poor or of high or low degree, he manifested a kindly, considerate spirit. He was courteous and polite, but he was far more than polite. Courtesy and politeness are sometimes formal rules of conduct. In him they were the outward expression of a nature that loved human fellowship. High official position, great learning, raised no impulse of false

pride in him. He was deeply conscious of the great obligations that power brought with it. With a keen sense of responsibility he cheerfully set forth for the accomplishment of his work and humbly fashioned his life to render service. He was humble, yet his humility was not that superficial deference that one man formally pays to another. His great mind had penetrated far enough into spiritual things to understand the smallness of man in the infinite purpose of God. Of him it could truly be said that his purpose was to do justice, to love mercy, and to walk humbly with his God. He had the true humanitarian spirit. He loved his fellowman. Those who came in contact with him felt the radiance of his nature, and men everywhere loved him. Such a nature as his must have been the inspiration of Lowell when he wrote those beautiful lines containing life's truest philosophy:

'Be noble! and the nobleness that lies
In other men, sleeping but never dead,
Will rise in majesty to meet thine own.'

"All these qualities of personal endowment, together with a tact and skill in his relationship to those about him, rarely equaled, combined to make him a leader of men. As leader of this court he will rank among the great Chief Justices—certainly the equal of any since the days of Marshall.

"In closing I can describe this great statesman and gifted jurist in no better way than to use his own eloquent words. Speaking on a similar occasion of one of his colleagues on the Bench—Mr. Justice Lamar—he said:

'O true American and devoted public servant, O cherished friend and faithful comrade, O sweet and noble soul, may it be vouchsafed that the results of your work may endure and fructify for the preservation of the rights of mankind, and may there be given to us who remain, wiping from our eyes the mists begotten of your loss, to

see that through the mercy of the inscrutible providence of God you have been called to rest and to your exceeding reward!' "

THE CHIEF JUSTICE responded:

" Mr. Attorney General, the resolutions of the Bar and the words in which you present them are an appropriate expression of the inestimable loss which the people of this country and the members of the Bar feel in the death of Chief Justice White. Expressions of sympathy and appreciation of his high standing as a jurist before the world from the Lord Chancellor of England and the Bar of that country have been forwarded to the court and will be preserved in its records.

" Twenty-seven years of service upon this Bench, sixteen years as an Associate Justice and eleven years as head of the court, makes Chief Justice White's record nearly equal to that of John Marshall. The critical period covered by the span of so many years, beginning early in the last decade of one century and extending into the third of the next, likens itself in importance to that covered by the term of the great interpreter of the Constitution. It embraced two wars, and a period of social and business reforms involving substantial and necessary changes in our methods of government, with the application of which this court has had much to do. In the necessary adjustment, the opinions of Chief Justice White were most able and helpful contributions.

" The enormous material expansion of the latter half of the nineteenth century developed a corporate power and political control through wealth which threatened the welfare of the Republic, and the abuses then existing led to the enactment of most far-reaching remedial legislation.

" The antitrust act directed toward dangerous restraints of trade and monopolies, necessarily couched in words of general import, required the adjudication of this court to interpret its meaning and apply the remedies to the evil which its framers had in mind.

" The interpretation of the Sherman Act by Chief Justice White, in his opinion in the Standard Oil case, is monumental and the most satisfactory exposition of its purpose and scope in the books.

" Of the same period and responding to the same popular impulse was the income tax, and the great difference of opinion in this court as to its constitutionality was followed by a popular reversal of the judgment of the majority through constitutional means. Mr. Justice White was one of the minority in that case, and it remained for him as Chief Justice, speaking for a unanimous court, to interpret the amendment which made the opinion of the minority the fundamental law.

" The capital importance which our railroad system has come to have in the welfare of this country made the judicial construction of the interstate commerce act of critical moment. It is not too much to say that Chief Justice White in construing the measure and its great amendments has had more to do with placing this vital part of our practical government on a useful basis than any other judge. His opinions in the case of the Texas & Pacific Railway Co. *v.* The Abilene Cotton Oil Co., and the cases which followed it, are models of clear and satisfactory reasoning which gave to the people, to state legislatures, to Congress, and the courts a much-needed knowledge of the practical functions the Commerce Commission was to discharge, and of how they were to be reconciled to existing governmental machinery, for the vindication of the rights of the public in respect of national transportation. They are a conspicuous instance of his unusual and remarkable power and facility in statesmanlike interpretation of statute law.

" The Interstate Commerce Commission was authorized to exercise powers the conferring of which by Congress would have been, perhaps, thought in the earlier years of the Republic to violate the rule that no legislative power can be delegated. But the inevitable progress and exigencies of government and the utter inability of Congress

to give the time and attention indispensable to the exercise of these powers in detail forced the modification of the rule. Similar necessity caused Congress to create other bodies with analogous relations to the existing legislative, executive, and judicial machinery of the Federal Government, and these in due course came under the examination of this court. Here was a new field of administrative law which needed a knowledge of government and an experienced understanding of our institutions safely to define and declare. The pioneer work of Chief Justice White in this field entitles him to the gratitude of his countrymen.

" The chief question presented by the Spanish War was the application of the Constitution to the new possessions of the Government. We were to administer them for the benefit of their peoples of races alien to ours and with but little understanding of our free institutions. Was there elasticity enough in our governmental structure to permit this to be done with the application of specific constitutional guaranties of liberty sacred to the traditions of our people, but dangerous and impracticable in a society untrained in their use?

" After much difference of opinion between the members of the court, the distinction in the rigid application of these guaranties as between territory acquired by the United States and belonging to it, and territory thereafter incorporated by Congress into the Union, originally insisted on by Mr. Justice White, became the settled opinion of the court and the law of the land. It enabled our Government to do a beneficent colonial work for retarded peoples. The once genuine fear of imperialistic tendency from the distinction has faded away.

" The enlargement of the national governmental functions by the use of the regulatory power over commerce among the States, in the lottery statute, the pure food act, the white slave act, and other measures, a power which in these forms of exercise had lain dormant since the beginning of the Government, was actively employed

to suppress growing evils. All presented new remedial legislation requiring accurate construction with a view to keeping within the limits fixed by the fundamental law on the one hand, and giving effect to their beneficent purpose on the other. Here, too, the genius of Chief Justice White as a statesman and a jurist shone forth.

"In the World War his opinions supporting statutes enacted to enable the Government to carry on the struggle, to mass all its resources of men and money in the country's defense, and to restrain sinister efforts to obstruct it reveal an intense patriotic appreciation of the necessity of vesting full powers in the nation when its integrity is threatened and of the existence of ample authority to this end in the Constitution. The Chief Justice, in the Selective Draft case, delivered one of his great opinions.

"Any association with Chief Justice White left no doubt of the force and strength of his convictions. Massive, dignified, impressive as was his physical mould, his mental structure was like it. There is an indefinable something about a leader of men that we call 'personality,' difficult to define, but which makes itself felt wherever they are. This quality Chief Justice White had in a marked degree. In the settlement of every issue he had to be reckoned with. With lofty ideals as a statesman, with profound learning, with a love of logical processes and of the manifestation of them in his exposition of his views, he drove home his conclusion with a confidence and a convincing assurance that distinguishes his judicial expression.

"His capacity for work was enormous. During his service on the bench the court in one way or another disposed of many thousands of cases, and he himself prepared more than seven hundred opinions for the court. The number of opinions is usually made the measure of a judge's work, but it is only a part of it. The study of cases with a view to their decision in conference is the greater task, and this varies with the individual judge and with his conscience and feeling of responsibility. No one

could be more sensitive in this regard than Chief Justice White. He carried for eleven years the additional burden of the executive direction of the court. In his later years he did his work with the burden of growing physical defects entailing obstacle and suffering, which he refused to betray and to which he would not yield. His whole being was absorbed by his anxious concern for the maintenance of the prestige of the court in the preservation of the Constitution and the upholding of its principles. He took infinite pains even in the lesser details of his duties. He regarded his office as a sacred trust, as a Holy Grail, which awakened an intense scrutiny of his own conduct and of that of every member of the court.

"Of the story of his career, which began as a soldier of the Confederacy at sixteen years, and the quick recognition of his power for usefulness from his early professional beginnings until by noteworthy steps he reached this Bench, there is not time to speak. His leadership of the long but successful fight against the lottery evil in Louisiana showed how formidable he was in organization and how courageous in action. His power as a speaker was revealed in later years only by the few addresses he was induced reluctantly to make to the American Bar Association. At Montreal and Washington his hearers were captivated by the grace and fluency of his diction, the exquisite charm, dignity, and force of his bearing, and the depth of his expressed conviction. His touching metaphor to illustrate his own change of heart toward 'Old Glory,' of the fading of the gray of the Confederacy into the blue of the Union, 'the invisible blue,' as he adapted it from the moving story of the Cricket on the Hearth, will never fade from the memory of those who were privileged to hear him.

"Edward Douglass White was the exemplary citizen, the considerate neighbor and friend, and the loving husband. He had a great heart, full of sympathy for mankind. He had an unfailing courtesy and a sweetness of manner which endeared him to all with whom he was

associated. The strength and ruggedness and dignity of his character were stamped in his face, and these things but lent a peculiar charm to his gentleness and kindly manner. He was a gentleman of the old school.

"Of his personal relations to the members of the court in the intimacy of conference, I can not, of course, speak from personal experience. They are shown in the touching words in which, immediately after his death, the senior Associate Justice of this court, so long a loved and loving comrade in service with Chief Justice White, expressed the affectionate esteem in which the colleagues of this great Chief Justice held him. In closing this response for the court to these resolutions, I can best express their estimate of his judicial work by quoting Mr. Justice McKenna when he said:

'Anticipating the future, I see no shadow on his fame or service. I venture to make comparisons. I make full concession of the recognized and distinguished merit of those who preceded him. I make full admission in assured prophecy of the ability of those who will succeed him. Yet, considering his qualities, their variety and degree, and estimating them, I dare to say that he will forever keep a distinct eminence among the Chief Justices of the United States.'

"The resolutions and the accompanying remarks will be entered upon the records of the court."