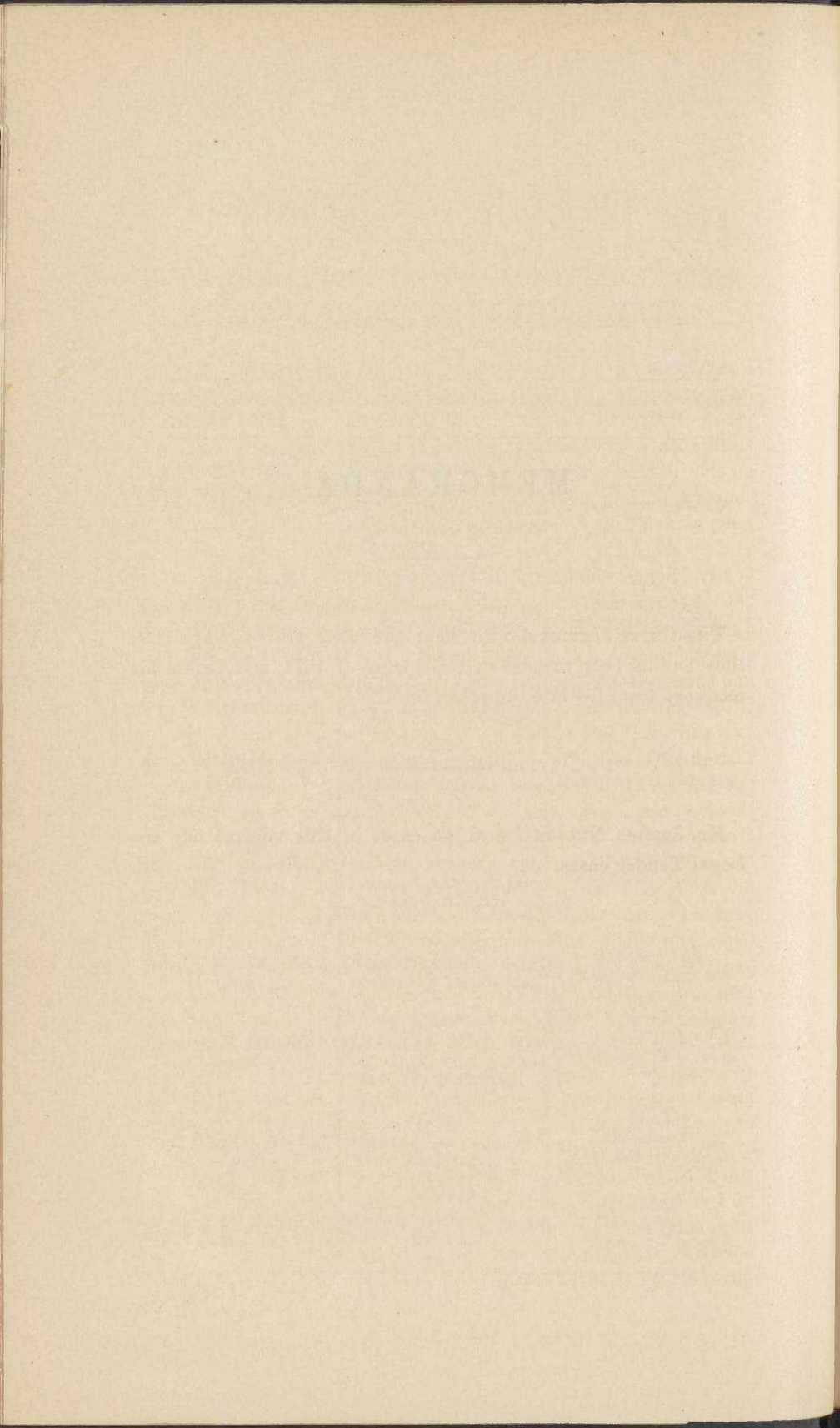


MEMORANDA.

THE CHIEF JUSTICE did not hear the cases prior to page 163; they having been argued in the spring of 1871, and before his recovery from his late indisposition.

Mr. Justice NELSON heard no cases in this volume but the Legal Tender cases.



DEATH OF THE HON. THOMAS EWING.

ALTHOUGH it is not a usual matter for this court to notice in its proceedings the death of members of the bar—the venerable years of Mr. EWING, his eminence as a lawyer, the long term, ending only with his life, in which he was constantly engaged at this bar, and the reputation which he had throughout the country, both in professional and public life, seem to have caused a departure from the practice in his case.

Mr. Ewing was born in Ohio County, Virginia, December 28th, 1789. His father, who had served in the American army during the Revolution, and had become reduced in circumstances, removed his family in 1792 to the Muskingum River, and thence to a place in what has since become Athens County, Ohio. He was here taught to read, by an elder sister, and by extraordinary efforts of his own acquired a fair elementary education. At the age of nineteen he left home, and worked in the Kanawha salt establishments, until, in the course of two or three years, he had saved money enough to enter the Ohio University, at Athens. His money being exhausted, he returned to his salt works, saved his earnings again, then resumed his studies, and in 1815 received the first degree of A.B. ever granted by the Ohio University. He studied law in Lancaster, Ohio, and was admitted to the bar in 1816, and practiced with great success in the State courts and in this court. In March, 1831, he took his seat in the Senate of the United States as a member of the Whig party, and became associated with Mr. Webster and Mr. Clay in resisting what were deemed the encroachments of the executive, and in support of the Whig measures generally. In March, 1837, his term of office having expired, he resumed the practice of the law. Upon the election of President Harrison, in 1841, he was appointed Secretary of the Treasury; an office which he retained under Mr. Tyler (who by President Harrison's death, in one month after his inauguration, succeeded to his office), so long as Mr. Tyler acted in accordance with the views of the party by whose electors he was elected. With most of the other members of President Tyler's

Cabinet, he resigned office in September, 1841. On the election of President Taylor in 1849 he was appointed Secretary of the then recently-created Department of the Interior, which was still unorganized. On the death of that President, July 9th, 1850, and the accession of Mr. Fillmore, a division in the Whig party caused a change in the Cabinet. Mr. Corwin became Secretary of the Treasury and Mr. Ewing was appointed by the Governor of Ohio to fill the unexpired term of Mr. Corwin in the Senate. In 1851 he retired very much from public life—in which he was engaged, taking it all together, for about nine years—and resumed the practice of the law. However, in 1861, when the Rebellion was imminent, he became a member of the assemblage known as the Peace Conference. This Conference was invited by the State of Virginia. The members of Ohio were appointed by the governor of that State. The Conference sat twenty-three days. But conciliations were impossible. The South was determined on rebellion, and the war came.

Mr. Ewing died on the 26th of October, 1871, at his residence, in Lancaster, Ohio, in the eighty-second year of his age. His abilities were known to those of the departed or departing generation perhaps more than to those of the present one, although he continued to practice in this court until within a short time; the last case which he argued having been, I think, *Maquire v. Tyler*, at December Term, 1869,* which, on account of his venerable years and imperfect strength, he was graciously requested by the court to argue sitting. Among the most elaborate of his written professional arguments are those in the case of *Oliver v. Pratt et al.*, involving the title of a large part of Toledo, Ohio; the case of the Methodist Church division; the *McIntire Poor-School v. Zanesville*, and the McMicken Will case, involving large bequests for education. By those who did not personally know Mr. Ewing, nor remember him in earlier life, the remarks of the Hon. Henry Stanbery, of the same State with Mr. Ewing, made on the occasion of his death, and than whom all will concede no one is more competent, by words to say, or by example better illustrates, what an honored and able and finished lawyer is, will be read with interest:

"I first knew Mr. EWING in May, 1824, then in his thirty-fifth year, a man marked with a grand physical organization, such as is rarely seen united to such mental powers as he possessed. Age had not yet impressed

* 8 Wallace, 651.

any traces of its advance. It was in the seven years, from 1824 to 1831, before he entered political life, and when his great powers and forensic abilities were all in full play, that Mr. EWING was to be seen to the greatest advantage. I confess I missed something of that fire when he left the bar for political life. I shall never forget him as he was from the age of thirty-five to forty-two, though from that day to this we must regard him as one of the greatest men of the nation. I may say that with one exception, and that is WEBSTER, I have seen none in whom I could recognize more ability and forensic power than in EWING. Among his chief qualities was his ability in discussing questions of fact before a jury. Though able to discuss any question before a court, it seems to me that his grandest efforts were as an advocate before a jury. Of all the men I have ever listened to, he was the greatest in the handling of facts. When he entered political life, our relations, though not so close, continued. He was often engaged in the Supreme Court, where I met him frequently, with Wirt, Lee, Webster, Choate, Davis, and the two Johnsons, and our own Doddridge and Hammond, among the greatest lawyers that we ever had. Among these he took his place in the foremost rank, second to none, as a great lawyer, save Webster alone. How these two names are associated in my recollection! Nothing could be more delightful than to hear their ordinary conversation, when the lawyers sat around, a listening and attentive audience.

"There are many that did not understand EWING in his character as a man. Great as he was as a lawyer, his private, domestic, friendly traits, his moral nature, attracted me even more. Never was there a more affectionate son, never a more devoted husband, never a more loving father. Some have supposed, seeing him at particular times, and when abstracted, that he was forbidding and repulsive. There never was a more loving nature than his. I have seen his manly face time and again suffused with tears. He was liberal, all-embracing in his friendship, never deserting a friend. That was the character of the man, and no one feels or can feel his loss more as a friend than I do; for, Mr. Chairman, if I have at all learned what must go to make up a lawyer, if I have attained to any success at the bar, whatever it may be, I owe more to the teaching and example of THOMAS EWING than to any man living or dead."

On the 28th of October, after the intelligence of his death reached Washington, a meeting of the bar of this court was held, when, on motion of Mr. Carlisle, the Hon. B. H. BRISTOW, Solicitor-General, was called to the chair, and Mr. D. W. MIDDLETON appointed secretary. The resolutions set out below were unanimously passed. On the opening of the court, on Monday, the 30th, Mr. Attorney-General AKERMAN in appropriate terms announced the melancholy event which had led to them, and laid them before the court, as follows:

"*Resolved*, That the members of the bar of the Supreme Court of the United States have received with profound sensibility the announcement of the death of the late THOMAS EWING, of Ohio, long and eminently distinguished as a jurist and statesman.

“Resolved, That we hold in high estimation the memory of the deceased as one of the great men of the country, illustrious for public services in the councils of the nation, and eminence and ability in the profession of the law.

“Resolved, That the Attorney-General of the United States be requested to communicate these resolutions to the court, with the request that they may be entered on the record; and, further, that they be communicated to the family of the deceased, with the expression of the sympathies of the meeting.”

The CHIEF JUSTICE made the following reply:

“The court share with the bar the sentiments expressed by their resolutions, which will be entered upon the records, in accordance with their request.

“We all feel that whatever honors can be paid to the memory of Mr. EWING are properly paid.

“His is the record of a youth patient of toil and full of aspiration; of a manhood worthily employed in various and honorable public trusts, and in forensic labors, which gave as frequent occasion to note the remarkable grasp and vigor of his intellect, and the great variety and extent of his attainments; of a protracted and serene old age, and of a calm and peaceful death, surrounded by children worthy of their father.

“To family and friends, the death of a relative and friend, so honored and beloved, however long deferred, comes always too soon. Counting ourselves as not the least affectionate among the friends of Mr. EWING, we yet find, and doubt not that all near to him in friendship or relationship will ever find, consolation in reflecting upon the brightness of the example he has left for the imitation of his countrymen.”