

MEMORANDA.

BENJAMIN ROBBINS CURTIS.

THE Honorable BENJAMIN ROBBINS CURTIS, for several years one of the judges of this court, but at the time of his death, returned to the bar, departed this life at Newport, R I., September 15th, 1874. On Monday, October 13th, at the opening of the term first following the sad event, the bar of this court met in the court-room, at 12 o'clock, to pay respect to his memory.

The Hon. JOHN ARCHIBALD CAMPBELL was appointed Chairman, and D. W. MIDDLETON, Esquire, Secretary.

On motion of the Hon. P. PHILLIPS, the chair appointed the following Committee on Resolutions, viz., Messrs. Reverdy Johnson, Philip Phillips, W. M. Evarts, Benjamin H. Bristow, George H. Williams, John A. J. Cresswell, Richard T. Merrick, T. D. Lincoln, and Richard M. Corwine.

The committee, through its chairman, reported the following resolutions :

THE BAR OF THE SUPREME COURT OF THE UNITED STATES, assembled upon occasion of the death of their brother CURTIS, in testimony of their great affection and esteem for him in life, and of their sense of the loss which the courts and the bar of the whole country and the community at large suffer in his death, adopt the following resolutions :

Resolved, That we find in the professional life, labors, and honors of BENJAMIN ROBBINS CURTIS, as displayed in an elevated and extended career of judicial and forensic duty and distinction, the imposing traits and qualities of intellect and character which, in concurrence, make up the true and permanent fame among men of a great lawyer and a great judge.

Resolved, That the example presented by his life, of great natural powers faithfully disciplined and completely developed, expanded by large acquirements, and kept vigorous and alert by strenuous exercise, applied to noble uses, and effecting illustrious results upon a conspicuous theatre of action and in manifold and diversified opportunities of public service and of public notice, is rare among lawyers as among men, and furnishes a just and assured title to permanent renown in the memory of his countrymen.

Resolved, That in the special qualities which mark him as a consummate forensic advocate and as an authoritative judge, the structure of Mr. CURTIS's mind, and its discipline, combined the widest and most circumspect

comprehension of all facts of legal import, however multitudinous; a luminous and penetrating insight into the intricacies and obscurities of the most complex relations; and an efficacious power of reason, which produced the many admirable exhibitions of his faculties at the bar and on the bench, which for forty-two years have served the administration of justice and attracted the attention of the profession and of the public.

Resolved, That we commemorate with no less satisfaction and applause the moral qualities which illustrate the whole professional service of our deceased brother—his justice to all, his kindness to associates, his fidelity to the courts and to the law, his scrupulous contribution of his best powers and his complete attention to every cause whose advocacy he assumed—his resolute maintenance of the just limits which separate the duties of an advocate and the duties of an adviser and of a declarer of the law upon professional opinions—his fidelity to society, to government, to religion, to truth—all these traits of *duty*, as the rule of his life, we present to the living lawyers and to their successors for their sincerest homage.

Resolved, That the Attorney-General be requested to present these resolutions to the Supreme Court, and to move, in our behalf, that they be entered upon its minutes; and that the chairman of this meeting be requested to forward a copy of them to the family of our deceased brother.

After the reading of the resolutions, the Honorable REVERDY JOHNSON said:

MR. CHAIRMAN: Before moving, as I propose to do, the adoption of the report of the committee, I beg leave to trespass for a few moments upon the time of the meeting. The event which has brought us together was a severe blow upon the heart of the entire profession. Of the many bereavements which we have had heretofore to deplore no one has given us more sincere sorrow than the death of BENJAMIN R. CURTIS. In all respects he was a man to be loved and admired. As a friend he was warm and sincere; as a lawyer, learned and accomplished; as a judge, of transcendent ability. To those who knew him intimately (and I am of that number) his death is a great personal affliction.

My acquaintance with him commenced when, in 1851, upon the recommendation of Mr. Webster, he became one of the Associate Justices of the Supreme Court, and this acquaintance soon ripened into a close friendship which continued unbroken to the last. And having been a very constant attendant on the court for the last six years of his connection with it, and during the seventeen years that have elapsed since his resignation, when, at every session, he appeared as counsel, I was afforded the best opportunity of forming an opinion of him as judge and lawyer. I think, therefore, that I have a just estimate of him in both characters. As a judge of this high tribunal, it is impossible to imagine one who could be more fully competent to discharge its high and arduous duties. With a wealth of learning always adequate to the occasion, he was ever felicitous in his application of it to the case before him. His judicial opinions, indeed, all of them, were models of a correct style. It may with perfect truth be said of them, what, upon an occasion like the present, he said of the opinions of the late pure and great judge, Chief Justice Taney, that they were characterized "by purity of style

and clearness of thought." His arguments at the bar possessed equally sterling merit. The statement of his case, and the points which it involved, were always transparently perspicuous. And when his premises were conceded or established, his conclusion was a necessary sequence. His analytical and logical powers were remarkable. In these respects, speaking from the knowledge of the great men whom I have heard during a very long professional life, I think he was never surpassed. And his manner of speaking was excellent. He ever suited "the action to the word, the word to the action," and never overstepped "the modesty of nature." He was always calm, dignified, and impressive, and, therefore, persuasive. No lawyer who heard him begin an argument ever failed to remain until he had concluded. Were I to select instances as exhibiting his highest judicial excellence and his highest forensic ability, I would point, for the one, to his dissenting opinion in what is known as the "Dred Scott Case," and, for the other, to his opening argument in the defence of President Johnson in the Impeachment Trial. Able as was the opinion of the majority of the court in that case, delivered by Chief Justice Taney, it was admitted at the time, I believe, by most of the profession, that the dissenting opinion of Judge Curtis was equally powerful. Lawyers may differ, as they have differed, as to which of these two eminent men were right, but they will all concede that the view of each was maintained with extraordinary ability, whilst those who knew them both will never differ as to the sincerity of their respective convictions.

As to the other,—his defence of President Johnson,—having listened to it, and having more than once read it carefully, I think I am justified in saying that it covered every question which the case involved, and, although it was afterwards enforced by his able associates, it of itself greatly contributed to the defeat of the impeachment. Nothing could have exceeded the clearness of statement, the knowledge pertinent to the contest, or the power of reasoning by which he maintained his conclusions. It was, I believe, and, having been one of the judges, I think I know, generally thought to be fatal to the prosecution. When such a man, lawyer, and judge, in the inscrutable dispensation of Providence, is taken from the profession, they cannot avoid feeling that it is not only a private but a public calamity. And it is due to his memory that we should express the sense of our loss and the great regard we entertained of him as a man, a lawyer, and a judge. And this will be accomplished by adopting the report of the committee. I therefore move its adoption.

Mr. Johnson was followed by the Honorable R. T. MERRICK, who said :

MR. CHAIRMAN: Few men in any age, either in this country or in England, have so faithfully illustrated the power, dignity, and honor of the legal profession as Mr. CURTIS.

His learning was profound and copious; his mind clear, earnest, and powerful, and all his faculties were severely disciplined.

His arguments at this bar, probably the most perfect models of forensic debate know not the profession, rested upon the fundamental principles of the science of law applied and analyzed by deep but seemingly easy thought, and enforced by a logic whose severe features were never disfigured by en-

feebling ornament. An appreciative listener could not refuse to follow him in his course of reasoning, for his statement of his case was so plain, simple, and persuasive, that it commanded attention to the fuller development of his propositions. However voluminous the record or complicated the nature of the case, a statement easy, clear, and concise, though full and comprehensive, disclosed at once the exact questions at issue, and deeply impressed upon all who heard him the convictions in the mind of the advocate. When, in that great trial in which the President of the Republic was arraigned before its Senate, sitting as a High Court of Impeachment, Mr. CURTIS had concluded his opening statement for the defence, there was—*nothing left of the case.*

His convictions were ardent, hearty, and earnest, and he clung to them with a firmness and tenacity that nothing could affect save only the proof that they were erroneous.

In the dark hours of our national trouble his voice was heard above the tempest of loosened passions vindicating the supremacy of law; and when the clash of arms had ceased but the storm still raged, he poured forth in this hall his appeal in behalf of a calm and considerate justice which should bear no sign of wrath or passion.

The death of such a man is a severe loss to the country as well as the profession.

I did not rise for the purpose of pronouncing a eulogy on Mr. CURTIS—that I leave to others—but only to gratify a demand of my own feeling. I knew him well and was honored by his friendship and a reasonable share of his confidence. I have listened to him with instruction and delight in public, and been greatly benefited by his counsels in private; and as I admired and loved him in life, I would place upon his grave an humble tribute of respect for his memory.

The Hon. J. A. CAMPBELL, Chairman, then addressed the meeting as follows:

A natural sorrow exists in the judicial tribunals and among the legal profession of the Union by the event of the death of the late Justice CURTIS.

His connection with the distribution of that justice which constitutions and laws define and regulate during a period of eventful history has been so intimate, so useful to the country, and so honorable to himself and to his profession, that its severance occasions a pause, and is felt as a calamity. To form and to maintain this connection was the aim of his life, the cherished and continuing aspiration of a mind and character well composed. To the members of the same profession, such a life, such a mind, such a character are objects of particular interest. His aspirations were favored in his birthplace, by his education and by his associations. The history of Massachusetts just before the Revolution, during the Revolution, and until the time that Justice CURTIS received his impressions and impulse, was determined in a great measure by its legal profession. During that period its courts were occupied by men of extraordinary endowments, and of large and liberal culture in law, jurisprudence, philosophy, science, and literature. The profession of the law was not misdescribed by the term of a learned profession. Dane and Parsons and Dexter; Otis and Story and Wilde;

Parker and Shaw, had stamped their names and characters upon it. The competitors that Justice CURTIS had to encounter were Webster, Choate, Loring, Bartlett, and others whose impulses were the same as his own. The scrutiny his arguments had to experience was that of Story, Parker, Shaw, Wilde, Putman, Dewey, Metcalf, Sprague.

His first conviction must have been that, to consummate his purpose, he must need to

"Pitch his project high : sink not in spirit."

His first counsel to himself,

"Let thy mind still be bent, still plotting where,
And when, and how the business must be done."

After twenty years of labor on this "project" and under this counsel, in 1851 he was selected, as was the report of that day, by Mr. Webster, as the fittest person to fill the vacancy, occasioned by the death of Justice Woodbury, in the Supreme Court of the United States. Mr. Webster said he wanted a full term of lifelong service. He called for Justice CURTIS in the meridian of professional life. The appointment came to Justice CURTIS. He was not required to pursue it or to beseech it. It came to him by a divine right—as the fittest.

At the time the court was presided over by Chief Justice Taney, who had established, to the acknowledgment of all, that his commission was held by the same title. He was then seventy-three years of age, bowed by years and infirmity of constitution. In the administration of the order and procedure of the court there was dignity, firmness, stability, exactitude, and with these benignity, gentleness, grace, and right coming. The casual visitor acknowledged that it was the most majestic tribunal of the Union, and that the Chief Justice was the fittest to pronounce in it the oracles of justice.

Justice CURTIS at the same time met seven associates—Justices McLean, Wayne, Catron, McKinley, Daniel, Nelson, and Grier.

All of these had passed the meridian of ordinary life before their junior associate had come to the bar. There was much stateliness in their appearance, and, with diversities of character, education, discipline, attainments, and experience, all of them had passed through a career of honorable service, were men of strong resolution, large grasp of mind, and of honorable purpose. The reception of Justice CURTIS was cordial and hospitable, and with all of these his judicial career commenced and terminated with a single exception. The death of Justice McKinley made a vacancy, and that vacancy was supplied by one recommended by the Justices—Justices Catron and CURTIS bearing their recommendation to the President.

The Reports of Howard disclose that during his judicial term he was generally in accord with the majority of the court. He did not dissent often, and his dissent was usually with a large minority—rarely, if ever, did he stand alone. They show that in some of the most important cases, he prepared the opinions of the court. That these opinions embraced intricate questions of constitutional law, of admiralty jurisdiction, of commercial law, of the law of patents, of common and equity law. The range of his professional experience in Massachusetts had been wide and comprehensive. His professional studies had embraced the principles of law and the under-

standing of jurisprudence, and the court rested with confidence upon his ability to expound principle and procedure. The opinions show elaboration, a mastery of facts, authorities, and arguments, and a skilful employment of precise and accurate statement and discussion. But these Reports exhibit an imperfect history of the duties actually performed.

The duties of the Justices of the Supreme Court consist in the hearing of cases; the preparations for the consultations; the consultations in the conference of the judges; the decision of the cause there, and the preparation of the opinion and the judgment of the court. Their most arduous and responsible duty is in the conference.

It was here that the merits of Justice CURTIS were most conspicuous to his associates. The Chief Justice presided, the deliberations were usually frank and candid. It was a rare incident in the whole of this period the slightest disturbance from irritation, excitement, passion, or impatience. There was habitually courtesy, good breeding, self-control, mutual deference—in Judge CURTIS, invariably so. There was nothing of cabal, combination, or exorbitant desire to carry questions or cases. Their aims were honorable and all the arts employed to attain them were manly arts. The venerable age of the Chief Justice, his gentleness, refinement, and feminine sense of propriety, were felt and realized in the privacy and confidence of these consultations. None felt them more, none has described them so well as Justice CURTIS has done in his graceful tribute to our illustrious Chief Justice since his death, in the Circuit Court of the United States, in Boston.

In these conferences, the Chief Justice usually called the case. He stated the pleadings and facts that they presented, the arguments and his conclusions in regard to them, and invited discussion. The discussion was free and open among the Justices till all were satisfied.

The question was put, whether the judgment or decree should be reversed, and each Justice, according to his precedence, commencing with the junior judge, was required to give his judgment and his reasons for his conclusion. The concurring opinions of the majority decided the cause and signified the matter of the opinion to be given. The Chief Justice designated the judge to prepare it. Justice CURTIS always came to the conference with full cognizance of the case, the pleadings, facts, questions, arguments, authorities. He participated in the discussions. His opinion was carefully meditated. He delivered it with gravity, and uniformly it was compact, clear, searching, and free from all that was irrelevant, impertinent, or extrinsic. As a matter of course, it was weighty in the deliberations of the court. The older judges spoke of this period with great satisfaction. Justice Nelson, in a letter written within the last year, said to me that it was the happiest period of his judicial life, and alludes affectionately to the share of Justice CURTIS in these proceedings. The Chief Justice so regarded it. The reverence of the junior Justices was gratefully felt and recognized by him.

The last event at the spring term of the year 1857, was the delivery of the dissenting opinion of Justice CURTIS, in the case of Dred Scott.

The court adjourned then, and it proved to be the last event in the judicial career of Justice CURTIS. I have never supposed that his resignation had any connection with that or any other occurrence in the court. There was nothing in the deliberations in that cause to distinguish it from any

other. Upon the argument in 1856, it was found there was a diversity of opinion upon the matter proper to be decided. A plea in abatement to the jurisdiction, which presented the capacity of a person of African descent to be a citizen, had been demurred to and the plea rejected. There was trial and judgment for the defendant, declaring the plaintiff to be a slave.

The question was, could he insist upon an error in the sustaining of his own demurrer after trial and judgment.

At that term, Chief Justice Taney, Justices Wayne, Daniel, Nelson, and CURTIS, held the affirmative and constituted a majority. A reargument was ordered, and at the next term, Justices McLean, Catron, Nelson, Grier, and Campbell, held the negative. Justice Nelson doubted at the first argument, and moved for a reargument, and upon that joined the minority, and so the plea in abatement and the questions arising upon it in the opinion of the majority of the court were not before the court. The case as reported in 19 Howard, discloses that each member of this majority held to this opinion, and that neither of them in their separate or concurring opinions examined the merits of the plea or passed an opinion on it.

The same report shows that each member of this minority did examine the plea and recorded their opinion of it. It was agreed at a day in the term that the questions should be considered and each Justice might deal with them as his judgment dictated. The abstinence of a portion of the court on the one side, and the discussion by the others, was regulated by their own opinion as before expressed. And the facts being understood, no censure was deserved by any. My belief is, that Justice CURTIS misconceived the facts and supposed a portion of the court had concurred in deciding a case which they had before determined was not before the court. I make this statement in justice to him as well as to my other brethren. The statement I make is confirmed by Justice Nelson in a letter of his published by the biographer of the Chief Justice. In respect to the merits of the respective opinions, I have no design to say a word. They are marked with great ability, and are an honor to the court which was able to produce them. They will be considered hereafter as a link in the chain of historical events, and justice will be done to all parties connected with them.

I am not aware that there was any hostility or unkindness felt or expressed to Justice CURTIS by those who did not concur with him. I can speak positively as to some, and shall speak as to myself. Our relations had been cordial and kindly. He informed me by letter of his resignation. I expressed to him my sincere regret for the occurrence, and I testified to the admiration and respect I bore for his ability and integrity and usefulness in the court. These relations remained undisturbed by time, distance, the corroding effects of sectional strife and civil war, until the hour of his lamented death.

My personal intercourse with Justice CURTIS after his resignation was limited, and I had but little contact with his subsequent professional life. During the period of his connection with the court, his ambition seemed to be to associate his name honorably and permanently with the administration of justice in this country, and for this end he sought to understand the whole science of law and procedure, and to have a clear conception of a legitimate internal policy for the Union. His ambition imposed a necessity

for labor, continual improvement, habitual intercourse with judicial and public administration, and the discussion of constitutional and legal questions, and oversight and counsel in the affairs of individuals and communities.

To reach the eminence to which he aspired and to which he attained he must have realized to himself

"This life of mine,
Must be lived out, and a grave thoroughly earned."

His plan was pursued with constancy, and the lives of few show more consistency and symmetry. The prizes of ambition he accepted were within the scope of this aim; those he relinquished or neglected were inconsonant. His tasks of real life were determined, and to these tasks he confined his appointed work. In his course he found that the justice a state or a nation can distribute bears a small proportion to the demands of society for justice.

He found, likewise, that justice, though the chief, is not the only virtue; that it is the ministry to reason and the master of human action, but is not all of humanity.

So, in his onward progress to the goal he had set before him, besides virtue and knowledge, public reputation for incorrupt integrity, large and useful endowments of mind, influence with courts and tribunals, he also acquired faith, knowledge of religion, and entered into a close communion with his God; and thereby he earned his grave and his rest from his labors.

The tribute which the courts and the members of the legal profession from different States have willingly rendered to his memory, expresses to his family, to his friends, and to the country that "blessings are on the head of the just."

The resolutions were thereupon unanimously adopted, and the meeting adjourned.

On the 23d October (that being the first day of the term when the court was full), Mr. WILLIAMS, the Attorney-General, addressed the court as follows:

MAY IT PLEASE THE COURT: BENJAMIN R. CURTIS, formerly an Associate Justice of this court, and one of the most distinguished members of its bar, departed this life on the 15th day of last month; and his professional associates here, feeling like a family bereft of its head, have expressed the sense of their bereavement in fitting resolutions; which, at their request, I have now the honor to present to the court. Our deceased brother was born at Watertown, Massachusetts, in the year 1809, and came down to his grave with all his faculties unimpaired by decay or the infirmities of age.

I can only speak of Judge CURTIS as a lawyer, and those who knew him in that capacity will not, I am sure, charge me with exaggeration in saying that all that has been said of the ablest and best of our profession may with fitness be applied to him. I was a member of the High Court of Impeachment when the President of the United States was put upon his trial before that body; and had, therefore, an excellent opportunity to see and hear the deceased, who was the leading counsel for the defence in that case. The late Chief Justice presided. Senators and Representatives occupied the floor

of the Senate, and distinguished people from all parts of the world filled its galleries. The political pulses of the nation throbbed with intense anxiety. The scene was thrilling and historic.

When the prosecutors had submitted their evidence in support of the articles of impeachment, Judge CURTIS followed with a statement of the respondent's defence. I was greatly impressed with his presence. When he arose to speak, he seemed to be the personification of solidity and strength. Added to his striking features and form he had a peculiarly firm and broad way of standing while he spoke which seemed to express an inflexible determination not to be moved from his positions. He was not excited or embarrassed. He commenced with the composure of conscious power. He presented the facts and points of the case in such a comprehensive, compact, and logical manner, as to make the speech a model of forensic discussion. Brougham or Burke would have displayed upon that occasion a wealth of imagery and illustration; but the language of Judge CURTIS was as pure and chaste as the lectures of Blackstone.

I will not venture to say that our departed brother was the equal of Webster; but it is safe, I think, to assert that he was more like Webster than any man who has of late years, if ever, appeared in this court. Some one has said of Lord Mansfield, that his statement of the facts of a case was worth the argument of any other man; and few gentlemen will feel disparaged, I presume, if this remark is made applicable to Judge CURTIS.

His eminence as a Justice of this court has been universally acknowledged. His opinions indicate an enlightened and conscientious judgment. Masterly expositions of constitutional law have been given from time to time by the great Judges of this court; but none ever delivered here was more exhaustive in its learning, or far-reaching in its results, than his dissenting opinion in the *Dred Scott* Case. Chief Justice Taney and his Associates, excepting CURTIS and McLean, labored with great ability to make color a constitutional criterion of American citizenship; but Justice CURTIS, with a broader appreciation of the true principles of our government, affirmed that the free native-born citizens of each State are citizens of the United States; and on account of the overwhelming force with which he made the reason and justice of this declaration to appear, the contrary opinion of the court has been without any considerable weight or influence. Civil war has since followed upon this and cognate questions; but it yet remains for this court to define the rights, immunities, and privileges of citizens of the United States, and to determine to what degree of protection, as such citizens, they are entitled to from the government of the United States.

Our deceased friend was not distinguished in the political world. He was never drawn into the vortex of partisan strife by the prospect of official honors. His ambition was to be a great and successful lawyer. Seventeen years ago he gave up his exalted position upon the bench of this court to resume the practice of his profession, and since then he has hardly been equalled in the number and variety of the great causes in which he has appeared.

His solid and massive intellect was enriched by acquisitions from every branch of jurisprudence. He argued questions as to the functions of government, the construction of statutes, and the doctrines of the unwritten law, with an equal fulness of learning and profoundness of thought. There were

no fanciful quotations or pomp of words about his speeches. They were as plain and simple as they could be. This is the highest style of speaking at the bar. Weakness of argumentative power, as often as otherwise, displays itself in turgid and showy declamation; but to make each word a necessary link in a chain of logic, that draws and binds the judgment of the hearer to the conclusion of him who speaks, is the work of a master mind; and in this Judge CURTIS excelled. Few cases come before this court in which there is not a great variety of debatable points—some vital and others incidental to the controversy—and very often all of these are discussed as though there was no difference in their value; but, in addition to his other fine faculties, Judge CURTIS had the power to detect and eliminate from a case its decisive issues, and with these alone he occupied the time of the court.

I would not seek vainly to pour flattery into the "dull, cold ear of death," or seem to praise one who is dead as though he had none of the infirmities of human nature; but, leaving out of view his personal, domestic, and social qualities and habits (of which I know little or nothing), and judging only from his professional character, I feel at liberty to say that, as nearly as any one I ever knew, he filled the measure of a perfect lawyer. When an intellect so highly gifted by nature, and so developed and invigorated by discipline and culture, is extinguished, society, as well as friends, suffer a great loss. The bench and the bar are stricken with a real sorrow.

Our sad duties to-day forcibly remind us of the brevity of human life. All those who with Judge CURTIS occupied the seats now filled by your Honors are, with one exception, dead; but they are not forgotten, and will not be so long as in this supreme tribunal of justice, questions relating to the powers of government, the relations of states, and the rights of citizens are argued and decided. No more, forever, will they be seen here; but their words of wisdom and authority remain. Grateful memories silently linger around their recorded opinions. Our successors, and those who come after them, will, as we do now, ponder over their imperishable thoughts with pleasure and profit. Humbly following their example and emulating their virtues, we may hope that when our time comes to go from this earthly court to a higher judgment seat, we can look cheerfully into the Great Hereafter, and like them, too, leave behind us "footprints in the sands of time."

After the reading of the resolutions, the CHIEF JUSTICE replied as follows:

The court unites most cordially with the bar in honoring the memory of the late Judge CURTIS. I had not, myself, the pleasure of his personal acquaintance, but it needs no such acquaintance to know that, as a lawyer, he was true to his clients and just to the courts, and that, as a judge, he was upright, learned, and practical. An able and useful lawyer, and an honest and honored judge is dead. The court mourns his loss, and trusts that the time is far distant when his professional and judicial life will not be looked upon as worthy of imitation by lawyers and judges.

The clerk will enter the resolutions of the bar, and the remarks of the Attorney-General in presenting them, upon the records, and as a tribute of respect to one who while a member of this court performed all his duties faithfully and well, we will now

ADJOURN FOR THE DAY.