

## PROCEEDINGS

In Memory of

### ASSOCIATE JUSTICE WALLACE BARTON DOUGLAS

On the morning of February 7, 1931, the court being assembled at the state capitol, Chief Justice Samuel B. Wilson called upon Morris B. Mitchell, vice president of the Minnesota State Bar Association,

Mr. Mitchell then said:

May it please the Court:

On December 9, 1930, Honorable Wallace Barton Douglas, formerly associate justice of this court, departed this life at Ferndale, Washington.

The Minnesota State Bar Association, in appreciation of the distinguished public career of Judge Douglas, has appointed a committee to prepare a memorial to his life and public service and to present the same to the court, with the request that it be made part of the permanent records of the court. With Your Honors' permission, Senator F. H. Peterson of Moorhead, a member of the committee, will read the memorial.

Chief Justice Wilson then said: Senator Peterson,

Senator Peterson then said:

May it please the Court:

In the absence of Honorable Carroll A. Nye, one of the judges of the seventh judicial district, who is unable to be present because of judicial duties, I have been asked to read the following tribute prepared by the committee of which he is chairman.

#### MEMORIAL.

Wallace Barton Douglas was born on a farm near Leyden, New York, September 21, 1852. His parents were Asahel M. and Alma E. (Miller) Douglas. The former was of Scotch and the latter of Holland descent. The father was descended from the Clan Douglas in Scotland, his direct ancestors, Sir William Douglas and wife, who was a Miss Ringstead, having migrated from Scotland to New England in 1640. One at least of their descendants served in the Continental Army in the Revolutionary War. Another scion of the family was the well known Stephen A. Douglas of Illinois,

There were three children in the Asahel Douglas family: Cordelia, who died in childhood, Wallace Barton, and his twin brother, William A., who died several years ago. The family removed from New York to Momence, Illinois, in 1866. The father died three years later; the mother lived for many years thereafter.

Wallace was educated in the common schools of New York and Illinois. As a youth he worked as assistant agent of the railroad company at Momence, then spent one year in study at Cazenovia Seminary in New York. Returning to his home he obtained employment for another

year at the local hank, and with the money so earned he entered the law department of the University of Michigan and was graduated there from in 1875 with the LL.B degree. He was admitted to the bar and began to practice law in Chicago the same year.

In 1883 he removed to Minnesota and settled at Moorhead, where he continued the practice of his profession. He served there as city attorney of Moorhead, member of the board of education, and county attorney of Clay county. He was elected to the house of representatives of Minnesota and served in the legislatures of 1895 and 1897. He was elected to the office of attorney general of Minnesota in the fall of 1898 and was re-elected in 1900 and 1902. He resigned this position March 31, 1904, and on the same day was appointed associate justice of the supreme court by Governor Van Sant and served in that capacity until January 1, 1905. He then retired to private life and practiced his profession in St. Paul as the head of the firm of Douglas, Kennedy & Kennedy.

He died December 9, 1930, at his farm at Ferndale, Washington, where he had gone to recuperate his health. His body rests in the cemetery at Moorhead, the scene of his early struggles and victories.

Judge Douglas was married May 19, 1881, to Miss Ella M. Smith of Illinois, and of the children born to them two are still surviving, Harold B. Douglas, who is engaged in dairy farming near Seattle, Washington, and Lila L. (Douglas) Tousley of Colorado, Texas.

The public career of Wallace Barton Douglas was a distinguished one. In speaking of him nothing need be suppressed or withheld. His life is an open book, clear, upright, and free from the breath of scandal. His honor and integrity have always remained unquestioned. He was fearless and devoted to the duties of his position. There came before him in his capacity as attorney general many important questions of public policy, and in dealing with them he did not shrink from taking the stand which he concluded was for the best interests of the state although he knew that he thereby might incur the determined opposition of a large and powerful group of people who would be interested in forcing him into retirement. No question of policy or personal popularity ever caused him to make a compromise with what he considered an evil to the state.

As a lawyer he reached the goal of his ambition when he became a member of this court. His long and varied experience at the bar and in public life, his mental equipment, his broad knowledge of the law, and his preeminent love of justice and fair play marked out his course for a long and useful career in this court; but that opportunity for useful service was prevented by the shifting sands of political upheaval, and he was retired at the end of the year.

The work done by him however in that period was of a high order. The opinions written by him are models of judicial literature—terse, clear, comprehensive, and full of promise of what the author might do in the future.

His private practice covered a large field. Business men and those needing legal assistance hastened to avail themselves of the services of this man, and he maintained until his death the high standards of practice with which he had begun his work. He was fair and just with his clients, the public, and the courts, whose respect and confidence he held in large measure. He was a tower of strength for those whom he represented.

Judge Douglas was a Master Mason, and his religious views were in accord with the doctrines of the Unitarian Church.

His family and home life were beautiful. He was simple in his tastes and habits, sociable and friendly by nature; blessed with a life companion of rare charm and character and with children who responded freely to their parents' thoughts and desires, and this rendered his home

life almost ideal.

Judge Douglas was an ardent lover of nature and of the great out-of-doors. He served for 20 years as a member of the state forestry board, and it was largely through his personal efforts that the beauty spot known as Itasca State Park escaped the woodman's axe and was set apart and preserved for this and future generations. One of the principal buildings in that park has been named Douglas Lodge in his honor. He was one of the first and strongest advocates of laws to protect the wild life of the state and assisted in drafting the first statute for its protection.

Edward Florance of Humboldt, Minnesota, a comrade of the woods and streams, wrote his tribute to this phase of our friend's life, in which I am sure we all can join:

"His spirit roams the woods today  
Where tall pines moan for the heart that's still;  
With oak and alder and birches gray . . .  
He sleeps tonight on a wind swept hill.

"Itasca, could thy wooded hills  
And waters read the human heart  
And lend thy tongue to one that thrills  
To this, that was of him a part,

"I'd voice the charm of thing he knew  
And put such meaning in each word  
That when its message spoke to you  
You'd think it was his voice you heard.

"But though imperfect to express  
His worth to me; his gifts to you;  
I know he'll thank me none the less  
For any verse that I can do.

"And now I thank thee, noble friend,  
That I can miss thee unto tears  
And bless the memories that bend  
To comradeship of other years."<sup>1</sup>

CARROLL A. NYE, Chairman  
F. H. PETERSON  
THOMAS D. O'BRIEN  
JAMES D. SHEARER  
HENRY N. BENSON  
FRANK E McALLISTER  
ASA G. BRIGGS  
JOHN P. KENNEDY  
GEORGE W. PETERSON

<sup>1</sup> Unpublished.

The following tribute prepared by Honorable Thomas D. O'Brien, who was unable to be present, was read by McNeil V. Seymour, Esq.

May it please the Court:

Wallace B. Douglas was a man who served the public well in many important positions and at the same time retained the simplicity and gentleness of a sincere and kindly disposition. As attorney general of the state he conducted the very important litigation arising in connection with the organization of the Northern Securities Company and met in opposition some of the leading lawyers of the United States. Naturally, litigation of that magnitude took on many different aspects, but ultimately the fundamental position taken by the attorney general of Minnesota was sustained. As associate justice of this court he wrote many able and important opinions, which were characterized by clearness and brevity.

He loved nature and delighted in the beauty of the forests and lakes of this state. Douglas Lodge on Lake Itasca, filled with historical associations, will long remain a monument to his appreciation of one of Minnesota's beauty spots.

Justice Douglas was an unusually able lawyer, whose high integrity and honest manliness fitted him to adorn the bar. When he left the bench in 1905 he at once secured with his associates a lucrative and credible practice, and continued until his death to be an honored citizen of the city of St. Paul, where his talents, coupled with his unassuming kindness and good will to all the members of his profession, gave him their respect and affection.

Chief Justice Wilson then said: Mr. Shearer

Honorable James D. Shearer then said:

May it please the Court:

It is fitting and proper that the passing of one who has filled two such important positions in the state as attorney general and supreme court justice should move his associates and friends to pause in the day's work of this busy life to pay tribute to his life and services. It is not to be expected that anyone in this world so impresses himself and his personality and characteristics upon others that even his intimate daily associates can justly and completely evaluate his life and services after he is gone. This is because we are all many-sided; and, while glimpses of all these sides of our nature may occasionally be seen by intimates, some of them are never revealed to anyone, outside of his own immediate family, for there are few who wear their hearts on their sleeves.

So, on occasions like this, one cannot hope to do more than present some small part of that kaleidoscopic thing which we call life and character.

I was not one of Judge Douglas' intimate personal friends; therefore my impressions of him must be given as to certain natural qualities of mind and heart, leaving to others those more public, outward, and acquired qualities manifested in his public career.

Wallace B. Douglas was of Scotch ancestry. He had strongly the racial characteristics of that lineage, some of which are industry, frugality, common sense, a mind of his own, and a strong sense of duty.

I had occasions to meet Judge Douglas chiefly while he was attorney general and during legislative sessions. He was reticent and reserved on those occasions—I had to do most of the talking. He was a good listener. One felt during the interview that the interests of the state were being well looked after. Sometimes he had a peculiar way of looking you intently in the eye, while his eyes seemed to grow smaller and smaller. That to me was his signal that he did not

agree.

Some might think that Wallace B. Douglas was not what we know as brilliant. How few are. And how much more useful in the world are those who are not. Brilliance is largely for show, and is neither for strength nor permanence. Iron, steel, and copper are more important and useful than diamonds.

I asked a lawyer friend who practiced law with Mr. Douglas for years before his public career what was his outstanding characteristic. He answered, "Independence."

It would have been much easier to concur than to dissent, as he did, in the case of *State ex rel. Frank A. Day v. Peter E. Hanson*, 93 Minn. 178, where the question involved was the right and duty of the secretary of state to place on the election ballot after the name of Calvin L. Brown, as a candidate for associate justice of the supreme court, the party designations "Republican—Democrat"—since he had been renominated for that office by both parties. The majority opinion by Special Judge Brill of St. Paul, concurred in by Special Judge Brooks of Minneapolis (Judges Brown, Lovely, and Lewis all being candidates and not sitting) granted the writ, but Justice Douglas was joined by Special Judge Cant of Duluth in a dissenting opinion. Notwithstanding an associate on the bench would have been greatly benefited by the granting of the writ and the question was not one of substantive law but merely construction of a transitory statute, he followed the gleam. This was an evidence of independence of thought, where independence might have cost him the friendship of associates on the bench or at least have been embarrassing.

During his short period of service on the supreme bench Judge Douglas wrote the decisions in 51 cases. It may have been entirely without significance that of these 51 decisions he wrote, 12 were reversals, and during the nine months that he served he wrote six dissenting opinions. Independence requires courage. And it requires less courage to go with the crowd than to follow one's own conscience or convictions. One cannot hope to be right all the time in this world, but it must be true that one is doing his best when he does not compromise with his convictions. And the record tends to show that Judge Douglas was a man of strong convictions and was not afraid to stand alone.

There are few prosecuting officers, even in this age of enlightened jurisprudence, who can and do, from the beginning to the end of a criminal trial, maintain a just poise between their duty to protect the innocent and their duty to punish the guilty—to be dispassionate and compassionate at the same time. Yet we are told by county attorneys that Attorney General Douglas, assisting them in such cases, seemed always able to maintain that attitude,

A former official of the supreme court who saw much of him officially and in a friendly way had this to say: "I think Justice Douglas' most noticeable characteristics were his kindness and consideration for others. He was always a student and somewhat reserved—almost shy at times; and while for the most part his attitude and demeanor were serious and earnest, he had a sly vein of humor and knew the value of a smile."

On page 77 of vol. 94 *Minnesota Reports* Justice Douglas had, in writing the opinion of the court, reversed the lower court's decision and granted a new trial. Upon reargument he said:

"A re-examination of this case upon reargument convinces us that the court misapprehended the force and effect of the instruction which was the basis of reversal in the decision heretofore filed,"

It takes a deal of courage to make so frank an avowal.

The pearl of great price in the Anglo Saxon system of government is justice between men. If that be accomplished, then is our system secure. How fortunate as a people are we when our judges endeavor to dispense that even-handed justice enjoined by Holy Writ:

"Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him."<sup>2</sup>

Chief Justice Wilson then said: General Benson.

Attorney General Henry N. Benson then said:

May it please the Court:

I deem it a great privilege to have had the personal acquaintance of the late Judge Wallace B. Douglas over a long period of time. I knew him first as a practitioner at the bar and later and more intimately as attorney general of this state and as an associate justice of this court. He was elected attorney general in 1898 and assumed office in January following. He was re-elected attorney general in 1900 and in 1902 and served in that office until the 31st day of March, 1904, on which date he was appointed an associate justice of this court by the then governor, the Honorable Samuel R. Van Sant.

Mr. Douglas was a successful lawyer in the best sense of those words. He enjoyed and merited the confidence and the respect of the courts before which he practiced as well as the members of the bar with whom he practiced. His home was at Moorhead," Minnesota. My acquaintance with him prior to his becoming attorney general was not intimate, but his close associates in the practice of law speak in the highest terms of his personal and professional qualities. After he assumed the office of attorney general I had occasion to confer with him in reference to legal matters in which the people of my section of the state were interested as well as on matters which concerned individual clients. I found him at all times a most friendly, helpful, able, and honest public officer. He was broad-minded, alert, and candid. He was anxious to find the truth and to act in accordance therewith. He brought to the office of attorney general a trained capacity and seasoned experience for the duties of that important office. His long and varied experiences as a practitioner afforded him not merely a helpful background for the solution of legal problems which arose in the conduct of the office of attorney general, but also for that which is almost equally important, a full appreciation and understanding of the executive duties which are required in the administration of that office and in the discharge of the manifold duties were many and often extremely difficult. He approached them with a calm, open, and judicial mind. He invited discussion and information upon difficult questions; but, having reached a conclusion therein, he was firm and unafraid in his position. He discharged his duties as attorney general with an eye single only to the faithful service of the people of the state. He had a very keen appreciation of the responsibilities of his office. A great many requests for official opinions came to him, and he gave them the most serious consideration. These opinions disclose the breadth and clearness of his legal perception. They speak with unusual commendable clearness. The fact that he discharged his duties well is probably best evidenced by the fact that the people of the state twice re-elected him to that important office.

As attorney general he conducted many and important cases for the state of Minnesota. A considerable number of these cases were of the greatest importance, and the prosecution of the same discloses the personal and professional qualities of Mr. Douglas in a very marked degree.

<sup>2</sup>Deuteronomy, 1.16.

It might be of interest to call attention to several of these cases, but this is not the occasion; neither will the time permit of an extended discussion of any of them. One of these cases, however, assumed special importance and was of such state-wide and national interest and importance that it may not be amiss to mention the same.

The cases in question was a suit brought by the state of Minnesota in the Supreme Court of the United States to restrain the consolidation of two great systems of railway through the Northern Securities Company, which consolidation was deemed to be inimical to the best interests of the people of the state. He was also associate counsel with the attorney general of the state of Washington in a suit brought by that state for a similar purpose. While these cases were pending a suit was brought by the United States against these companies for a similar purpose, and the litigation was in effect consolidated and finally brought to a successful conclusion by decision of the United States Supreme Court in the case of Northern Securities Company v. United States, reported in 193 U.S. Reports 197.

In these and the many other cases which he conducted in behalf of the state he evidenced high personal and professional endowment, sincerity, and steadfastness of purpose. After serving more than five years as attorney general he retired to accept the appointment as associate justice of this court.

He assumed the office of associate justice of this court on April 1, 1904, to succeed Justice Loren W. Collins, who had resigned to become a candidate for governor of the state. Mr. Douglas was succeeded in the office of associate justice by the late Edwin A. Jaggard, who was nominated and elected to that office in the fall of 1904. Since his retirement from this court and almost up to the time of his death, Justice Douglas was engaged in the active practice of law at the city of St. Paul.

I knew him personally during his long experience at the bar, while he was attorney general and an associate justice of this court, and since his retirement from the bench; and during all of that time he was held in the highest esteem by all who knew him for his splendid personal and outstanding professional qualities. His service in these important places and at the bar was actuated by the purest motives, and he exemplified at all times the highest ideals of the legal profession. The elements were so mixed in him that of him it might truthfully be said that he was a lawyer, a jurist, a loyal friend, and a Christian gentleman. His conduct in both private and public life was spotless and above reproach. In the passing of Mr. Douglas the legal profession had lost an outstanding lawyer and the state one of its valued citizens. I feel that we honor ourselves in presenting to this court this tribute to his memory.

Chief Justice Wilson then said: Mr. McAllister

Frank E. McAllister, Esq. then said:

Mr. Chief Justice and Members of this Honorable Court:

I appear before Your Honors today as a lawyer and as a plain man who loves his friend, to pay my tribute of esteem and affection to a former member of this court, the Honorable Wallace B. Douglas, who lately passed away.

I spent the period of my novitiate with Judge Douglas, and was associated with him for many years thereafter. It was my good fortune to enjoy his sage counsel and guidance for many years; those years so trying to a young lawyer and to his associates. It was my privilege to know him intimately, and to see his fine, noble qualities at first hand. To his inexhaustible patience, his ripe experience, his profound knowledge of the law, and his kindly encouragement I owe

whatever legal skill or experience I have ever acquired. He was my pattern and my mentor.

No one knowing Judge Douglas but was struck with his great qualities; his quick analytical perception, his strong logical powers, his tenacious memory, his unflinching devotion to the highest principles and ideals of his beloved profession, his indefatigable zeal, his leonine courage, and above all, his kindness. He often said, with Lincoln: "I have never willingly planted a thorn in any man's breast."

He was one of the most modest of men, devoid of affectation and hypocrisy; he would be the first to decry the use of superlatives or of fulsome praise in his behalf. And so I speak these few words only as truth and justice to his memory, which I revere and honor.

His cheery and sunny temper and flashing humor gave a quaint touch of philosophy to all of his life and acts. In a hard fought case he would often ease the tension and lighten the strain with a witty anecdote or timely story. He despised sharp practices, trickery, and selfish greed. He was not a loud or noisy lawyer. His court manner was so kind, so winning, and so fair that he was a master cross-examiner, who disarmed witnesses and then quietly destroyed their false testimony. His deep, penetrating mind instantly detected fraud, sham, and lying, and he quickly and mercilessly exposed them in court. His fortitude was admirable. Never a rich man, he bore the "whips and scorns of time"<sup>3</sup> with calm and resignation. He loved people, and was a brilliant conversationalist. His versatility was astounding; no subject was alien to him.

He never supported an unworthy cause. He would never compromise with principle. He adorned both bench and bar and excelled as both jurist and as advocate. He lent dignity to judicial robes. His decisions in 92, 93 and 94 *Minnesota Reports* bear eloquent witness to his industry, his deep knowledge of the law, and his mastery of clear statement of it and the ease, accuracy, and comprehensiveness of his grasp of complicated facts. These qualities ever remained with him, and as an advocate he still retained his judicial mien and was detached and dispassionate in his analyses of cases.

His love for justice was the great and abiding passion of his life. In following it he exemplified the fighting heart of the crusader. Yet his life was like his works; simple, sincere, direct.

He loved nature. His hunting trips especially gave him keenest delight. He would recount the searching fire of questions leveled at him on such trips by guides and rough woodsmen, miles in the forests and the interior, upon their nearest and dearest law subject, that of self-defense, and his analyses of their involved hypothetical cases, the while extolling their own common sense solutions. His duties as chairman of the state forestry board carried him to all the forests and ranges of the state, and he rendered yeoman service to the cause of forestry. He was an authority on wild life, and Itasca Park was the fruition of his dream.

His greatest fight was probably his celebrated attack upon the merger of three great railroads, which merger was planned by the Northern Securities Company and its officers. He was then attorney general of Minnesota. For years he relentlessly waged this battle through to the highest United States courts, performing prodigies of labor personally, later to see the case completed by the federal department of justice, and the merger dissolved by a divided United States Supreme Court. Arrayed against him were the wealth, power, and influence of the then Titans of industry. He never wavered in his objectives, and he prevailed.

His record is an enviable one. His viewpoint was always sympathetic, liberal, and broad, and his humanity above all controlled his judgments. His life and achievements well merit this solemn and reverent tribute by this court. When he wrote to me shortly before his death that if

<sup>3</sup>Hamlet, *Act iii, Sc. 1.*

anything should happen to him he desired that I should appear and say a few words before this court, I little suspected that his words were prophetic. His end came before I was able to answer his letter. During the last years of his life he sometimes spoke of "feeling tired." Yet he could not bring himself to the idea of retirement until a short time before his death. He did not outlive his professional life long.

In an age of crass materialism his words upon law practice come to me like the voice of another era:

"Never turn away a deserving client. Some will be rich and prosperous and will pay well. Others, poorer in goods, may not be able to pay at all. Some, such as the widow and the orphan, can pay you only with their tears and their prayers. These will be the richest of your fees."

His political idealism was upon the same high plane. He often said, with Brutus:

"By heaven, I had rather coin my heart  
And drop my blood for drachmas, than to wring  
From the hard hands of peasants their vile trash  
By any indirection."<sup>4</sup>

In a nature so gentle, kind, benevolent, and forgiving there was no place for malice or vengeance. He never complained over defeat or betrayal. He spoke of men to praise them, or he spoke not at all.

Our profession has lost a worthy and illustrious member, who consecrated himself to the loftiest ideals of truth and justice. Yet his life and deeds live forever in the hearts of those who knew and loved him. His voyage is closed and done, and the objects are won. He left the world better for his having lived. We who remain are poorer for the loss. We mourn the passing of a fine, noble, lovable gentleman, whose life was an inspiration to young men, challenging them to "come-up higher."

"After life's fitful fever he sleeps well.  
\* \* \* nothing can touch him further."<sup>5</sup>

This court honors itself in honoring such a man.  
In closing I will quote a poem he loved and often read:

"Under the wide and starry sky,  
Dig the grave and let me lie.  
Glad did I live and gladly die,  
And I laid me down with a will.

"This be the verse you grave for me:  
*Here he lies where he longed to he;*  
*Home is the sailor, home from sea,*  
*And the hunter home from the hill.*"<sup>6</sup>

<sup>4</sup> Julius Caesar, *Act IV, Sc. 3.*

<sup>5</sup> Macbeth, *Act, III, Sc. 2.*

<sup>6</sup> Robert Louis Stevenson, *Requiem.*

Chief Justice Wilson then said: Mr. Briggs.

Asa G. Briggs, Esq. then said:

May it please the Court:

I join in the other tributes to Judge Wallace Barton Douglas given here today and wish to add a brief statement of some of his personal characteristics as I saw them.

I first met Judge Douglas, shortly after he came to St. Paul, as attorney general of the state of Minnesota. We soon came to know each other intimately through membership in a club organized for discussion of questions of the time. This acquaintance grew more intimate, so intimate that I had good opportunity to know his opinions and his character.

During the 30 years of our acquaintance I never heard him utter a mean word or knew that he had done an unworthy thing. His voice was ever raised and his acts were performed in support of what he understood to be right and to confound that which he believed to be wrong. He was a mild-mannered, soft-spoken, sympathetic, kindly, sincere, intellectual man; bluster and boasts were not in him. He was courageous and firm in support of his understanding and convictions.

He was a sportsman; he looked forward with great anticipation to an annual big game hunt in the north woods. He took great pleasure in those hunts and in relating to friends his interesting experiences in connection with them.

He was an intense lover and defender of his country and of his government. He feared for their future welfare. He believed that our people and our nation are seriously menaced because of general disregard of law and order, not in respect to one law, or a few laws, but because of general disrespect and disregard of all laws. He felt that great newspapers and great men were justifying and advocating disobedience of some laws, thereby leading unreasoning men, who do not distinguish between the gravity of different crimes, to believe that they had the support of what they thought to be a higher class in committing these crimes.

He also knew that the people of our nation are divided into two classes, each of which believes uncompromisingly that its opinions are right and that the opinions of the others are wrong. He knew this difference had been widening and growing more and more bitter and acrimonious for 140 years. He could not see the way out of the serious dilemma in which he believed we are involved. He looked forward hopefully however to a time when an unexpected happening would clear the situation and avoid disaster. The situation disturbed him.

This is but an example of the tendency of his mind and his conclusions.

Judge Douglas has gone; his seat at the club is vacant; his voice in discussions will not be heard again; his handshake and a few minutes' friendly talk whenever and wherever he was met will be missed. But the compensations of having known him and associated with him have been many and pleasant.

Our loss is great.

Chief Justice Wilson then said: Mr. Kennedy.

Honorable John P. Kennedy then said:

May it please the Court:

Mr. Douglas began the practice of law in the city of Chicago. He was very successful there, but close application to professional duties undermined his health. He was advised to change his residence to the western prairies. In 1883 he reluctantly closed his office and came to Moorhead, where his health was restored and further success and distinction awarded him.

As an illustration of the lasting impression which he made it might be mentioned that some of the clients whom he counseled in Chicago more than 40 years before still sought his services in St. Paul until the end of his career. Also his former clients in the vicinity of Moorhead frequently came to him in St. Paul

On January 30, 1931, the house of representatives of Minnesota adopted a resolution of condolence upon his death in which his career was summarized as follows:

"The people of Minnesota called him to many positions of great importance, all of which he filled with singular ability and distinction. \* \* \*

"In his intercourse with his fellowmen he was always kind and friendly and tolerant of the opinions of others. He loved Minnesota and its institutions and contributed liberally of his genius and learning for their advancement. His personal charm and kind friendship will long be cherished by those who enjoyed the pleasure of his acquaintance."<sup>7</sup>

He was also highly appreciated by the executive department, which frequently requested his advice. Three governors appointed him to important positions in the state service. He enjoyed the esteem and confidence of his successors in the legal department of the state. He always cherished the kindness and friendship of those who ministered in the courts.

On the 9th day of December, 1930, at Ferndale, Washington, in the fullness of years, with his faculties unimpaired, he answered the final summons. With Masonic rites he was consigned to the tomb in the city of Moorhead, where he received the sorrowing tribute of a great concourse of people. As we trace his footsteps we marvel that so much could have been accomplished in a single lifetime.

As these accomplishments are reviewed we believe they will receive the approving acclaim, "Well done, thou good and faithful servant."<sup>8</sup>

Chief Justice Wilson then said: Mr. Peterson.

Honorable George W. Peterson then said:

May it please the Court:

I esteem it a compliment that Judge Douglas in his declining days expressed a desire that I participate in this memorial. I was hardly aware of such an intimacy. All have friends, but to a few only are intrusted the closest things.

Most worthy lawyers and judges are above mere praise, and simple declaration of a good and useful life, held to right standards of preparation, work, and purpose, is all sufficient. Such a spirit characterizes this memorial and rightly reflects Judge Douglas.

"Speak of me as I am; nothing extenuate,  
Nor set down aught in malice,"<sup>9</sup>

is the index of what Judge Douglas would wish in his memorial.

Courtesy always animated his expression. The stream of his life flowed quietly but deeply. He was simple, sincere, and honest. He restrained any feelings in dignified statement. He welcomed the humblest suitor, was easy of manner, and his presence always provoked respect.

<sup>7</sup> Journal of the House, p. 5, Friday, January 30, 1931.

<sup>8</sup> Matthew, 25.21.

<sup>9</sup> Othello, *Act V, Sc. 2*.

One's background and trial of life and the discipline of life is about the same for all of us, and one's perspective, spiritually, intellectually, and judicially are the true countenance of a man, and Judge Douglas had these things in nicely balanced measure. He was a good judge, and ever wore the white mantle of this morning's freshly fallen snow. He never shaped his works and ways that "thrift may follow fawning."<sup>10</sup>

Judge Douglas, in the fortune of politics, failed to receive the nomination to succeed himself in the Republican convention of 1904. Believing he was entitled to the nomination, I cast my vote in the convention for Judge Douglas. He was defeated by Judge Jaggard, whose popularity was unusual and who had great strength because of his affiliations as a professor of law at the University. Mere defeat is not serious, for one may always rise on stepping stones of his defeated self to better things.

To this court he added the qualities of sympathetic consideration, fine ethics, a right sense of public service, respect for authority, and a good appraisal of our people and the state.

And he could truly say: "I have done the state some service, and they know't."<sup>11</sup>

It properly appears in the remarks of others that Judge Douglas loved trees. It is true it is "only God can make a tree."<sup>12</sup> I presently recall the following figure as appropriate. It was said of Lincoln by Edwin Mark-ham:

"And when he fell \* \* \* he went down  
As when a lordly cedar, green with boughs,  
Goes down with a great shout upon the hills,  
And leaves a lonesome place against the sky."<sup>13</sup>

Chief Justice Wilson then said: Mr. Witherow.

James M. Witherow, Esq. then said:

May it please the Court:

I studied law in Judge Douglas' office and was associated with him in practice for nearly three years—1895 to 1898. Few had a better opportunity for observation of his character and habits than I, and few knew him more intimately.

He exemplified many of the higher and better qualities of both the lawyer and the gentleman. He was kind; he was faithful and honorable to his clients; he was fearless, indifferent to criticism and abuse when he was convinced that he was right. He was hard-working, with a very keen sense of both justice and equity. In the 30 years that I have known him intimately I never knew him to resort to dishonest strategy or chicanery. He was a splendid legal strategist. I have never known a better director of the trial of the lawsuit than he was.

Judge Douglas was a highly moral rather than religious man. He had a sincere appreciation of the province of a Divine Being, but disliked exuberant vocalization of platitudes as an expression of religious convictions.

He had remarkable control of his temper and emotions. Never once, even under many annoying, irritating circumstances, did I see him exhibit temper or profanity.

In the "fun side of his life," as he called it, he dearly enjoyed a good horse, a good dog, and a good gun. He loved horse racing and hunting as an exhibition of scientific breeding and

<sup>10</sup> Hamlet, *Act III, Sc.2.*

<sup>11</sup> Othello, *Act V, Sc. 2.*

<sup>12</sup> Joyce Kilmer, *Trees.*

<sup>13</sup> Edwin Markham, *Lincoln, the Man of the People.*

physical development, but never once could he be induced, to gamble a penny in betting, drinking, or any of the other undesirable practices usually connected with that line of sport. In all his desire for the open and for hunting no one could persuade him to violate even the spirit of the game laws by hunting out of season or bagging more than the required number.

As a legislator he did a great many things by which the state as a whole has benefited. He helped to arrange the finances on a sound business basis. He was the author and draftsman of the greater portion of our drainage laws, our game and conservation laws. Our laws against monopolies and trusts are also his workmanship. He drafted a distance railroad tariff law for agricultural products which eventually became embodied in the so-called Cashman Law. Always friendly and gentlemanly, he was subservient to no one, constantly maintaining his independence of thought and action both as an individual and as an official.

In his passing this court has lost one of its counselors who always observed the highest ethical standards of the bench in a clear and vigorous exposition of the principles of law and justice as he understood them, with utmost fidelity to the bench in recognition of the canons of his profession not to mislead the court to its prejudice, and at the same time present the interests of his client with the utmost fidelity and fearlessness. Believing all this in the ultimate triumph of right through the maintenance of the highest ideals of both the bench and the bar.

We shall miss him in his kindly sympathies and cheerful example as a friend and in his high ideals and splendid, fearless qualities as an advocate and counselor.

For these reasons I deem it fitting that this tribute should be entered on the records of the court of which he was a splendid member and example.

Chief Justice Wilson then said:

Is there anyone else present who desires to say anything at this time? If not, Justice Stone will speak for the court.

Justice Royal A. Stone then said:

Gentlemen of the Bar:

By a lifetime of professional and public service, most of it spent in Minnesota, Judge Douglas well earned the tribute you pay him this day. You do not overrate his character when you say concerning him, that "nothing need be suppressed or withheld \* \* \*. He was fearless and devoted to the duties" put upon him by any position either of a public or private nature. Truly he was a living epistle, the reading of which by all men need never to have been feared by its author.

Before becoming an associate justice of this court he had, as you well point out, a distinguished career of public service. As usual, public recognition of professional merit followed as the natural consequence and reward of an efficient, thoroughgoing, and always high-minded service to private clients. In his professional activities, both in and out of public office, he exemplified the highest ideals of the American bar. However absorbed in private practice, he never forgot that both as citizen and lawyer it was his duty always by precept and example to support the constitutions and other laws of the land. The Minnesota bar probably has never had within its ranks a more devoted champion of the ideals and objectives of American constitutionalism than Judge Douglas.

His professional accomplishments, great when he became attorney general, were of course enlarged and embellished by his years of strenuous service in that office. His experience there rounded out and so completed, his professional equipment that when he became a member of the supreme court he brought with him unusual qualifications for the place.

If anybody is disposed to question that the unfortunate feature of his service on this bench was its brevity, let him spend even a short time in a studious examination of the opinions of Judge Douglas. He will be struck first by the admirable manner in which they achieve comprehensiveness of consideration with brevity of treatment. He did not resort to that elaboration either of facts or law which so easily becomes tedious supererogation. But on the other hand he did not scant either the facts or law of a case. There was always the most careful consideration not only of the result but also of the manner in which it was reached. He was careful not only to cite the authority but also to assign the reason for the rule announced.

One needs read but a few of his opinions in order to come to the conclusion that in each case the writer had a very clear notion not only of what he was deciding but why. Complying with the traditional rule of the court he of course prepared his own syllabi. They are models of brevity and yet comprehensive indicia of the bases of decision. That is a result frequently difficult of achievement, but so far as possible Judge Douglas did it in each case. To an unusual degree the headnotes of his decisions are accurate and complete digests of the opinion.

There was in him a quiet courage of conviction which, though always tempered by a due and courteous regard for the opinions of others, never permitted him to submit quietly to a result which he considered seriously in error. Deferential in disagreement as in all else, he yet stated his dissenting views fearlessly and clearly, setting forth his reasons in such fashion as to show that he had given the opposing opinion full consideration—both as to fact and law. Not for anyone or any price would he prevaricate with either his own conscience or his own judgment. The opinions of Judge Douglas have now stood the test of a quarter century's use by the bench and bar. The resulting appraisal of them is such that the all too early termination of his judicial service is now recognized as a distinct loss to the state.

You do well to stress the distinguished line from which he came. If America is great she owes it largely to the strength and high character of the many and diverse racial sources from which she has drawn her citizens. In Judge Douglas was a typical combination of the best that some of the first families of Scotland and Holland could give. Against such a background of distinguished heredity was a life much affected by near frontier conditions in our own Red River Valley. Their broadening and humanizing influence surely had a fine exemplification in the kindness of Judge Douglas, a trait always dominant and manifesting itself constantly in his daily walk and conversation. As friend and lawyer, as citizen and public official, and particularly as judge he endeared himself to all who knew him and made the state and its people debtor to him forever.

To an unusual degree was the life of Wallace Barton Douglas one of duty performed, one of noble example, by force of its own intrinsic value a potent factor in building higher and better the fabric of the social, economic, and legal integrity of a state still new. His private life and public services were such as to richly entitle them to the memorial and permanent record you are making on this occasion. The supreme court of Minnesota joins therein and records with you our deep affection for the man and our high personal and professional estimate of the life and services of a departed colleague.

Chief Justice Wilson then said:

My personal recollection of Mr. Justice Douglas is that he was conspicuous for his genteel kindness and consideration of others.

The memorials which have now been presented to the court will be published in our reports.