

IN MEMORIAM.  
  
CHIEF JUSTICE GILFILLAN.

Memorial services, held January 7th, 1895, commencing at 11 o'clock a. m., in the Supreme Court at the State capitol in honor of the late Chief Justice, Hon. James Gilfillan.  
Present: Chief Justice Start, Associate Justices Mitchell, Collins. Buck, and Canty.

MEMORIAL.

The bar of Minnesota, as an appropriate testimonial of its appreciation of the character of the late James Gilfillan, respectfully request that the deliberations of this Court over which he so long presided as its Chief Justice yield to a brief tribute to his memory.

On the 16th day of December, 1894, James Gilfillan, in the midst of his official duties and before the powers of his mind had been enfeebled by wasting age, was removed by an all-wise Providence from the ranks of the living.

That the deceased was a great jurist the voice of the bar of this country and numerous volumes of the reported decisions of this court bear ample witness. How he adorned his high office by wealth of legal learning, marked powers of analysis, great breadth of mental grasp, quickness of apprehension, unfailing courage, probity and industry, none know so well as those who during the last twenty years have most frequently appeared before him. All who knew him in the private walks of life testify to the purity of his thoughts, the warmth of his affections and the simplicity of his manners.

With what wisdom he wrought and how deep was his influence in shaping the jurisprudence of this State must indeed be left to the final judgment of the future, but tested by the opinions of his cotemporaries, he has by such labor reared an enduring monument to his fame. His own words, fitly spoken on another solemn occasion over the bier of one he loved, are most appropriate now:

"The judge, who, for a considerable time, occupies a place in a court of last resort in a comparatively new country, makes his impress upon the future of the State and society more than almost any other man. True, it is usually done quietly, without display, and almost imperceptibly, as the dew falls or the trees grow. His decisions concern men in all their daily lives and business, and establish their code of business morality. He marks out the path in which those who come after him in the judicial office, or in the profession of the law, must follow."

A veil, impenetrable to mortal vision, has been drawn between him and us. The State has thereby lost one of its most illustrious citizens; the bench, a shining ornament; the bar, its most conspicuous member; a family, a devoted husband and father.

We therefore respectfully request that this memorial, although but feebly expressive of our regard for the memory of the deceased, be entered at length upon the records of the Court, with such other proceedings as may be had in connection therewith, and that a copy thereof be transmitted to the afflicted family.

*Address of Hon. Henry W. Childs, Attorney General.*

May it please the Court:—In presenting this memorial, I am prompted to say a few words suggested by the occasion.

A great brain and heart have been stilled by the mystic touch which we call death, and know no more. A bright light which has long illumined our professional pathway and directed the course of the jurisprudence of this State, has been extinguished forever. James Gilfillan who but yesterday presided over the deliberations of this Court, a tribunal which he strove with all his great powers to elevate in the estimation of the bench and bar of this country, will hereafter live only in the hearts of those who knew him, and in that noble work which he has left behind him for the guidance and instruction of this and future generations.

The day is most appropriate for this proceeding. It was today, in the ordinary course of official events, that he was to have relinquished his exalted station among you to resume his place in those ranks which twenty years ago, he reluctantly and at great personal sacrifice abandoned in obedience to the call of duty. The ermine which fell upon his shoulders then, now descends unsullied upon the shoulders of his successor.

He was a great judge. Many of the decisions of this Court written by him, bear unmistakable evidence of his masterful abilities. They will be received everywhere as authoritative expressions of the law. They will, moreover, serve as notable examples of judicial writing. Conciseness of expression was his characteristic. Years of careful self discipline and exhaustive research had brought to him a profound and unfailing knowledge of the law. His comprehensive mind grasped instantly what the ordinary mind attains by slow and laborious process. His decisions are models in their paucity of citations. In expounding the law, in applying its principles to a given case, he found slight occasion to fortify his position by reference to authorities. So quick was his perception of the truth, so accurate his power of analysis, that his deductions were rarely at fault. He felt safe upon his ground not because it had the endorsement of some other court or judge, but because he knew by those infallible tests never absent from a powerful and analytic mind, that he was right. In vain will his writings be searched for expressions penned for mere effect. Words with him were vehicles of thought and never the trappings of display. Not always faultless, either in his choice of language or the structure of his sentences, he has, however, rarely failed to dress his thoughts in diction so clear as to leave no doubt as to his meaning.

No man can worthily occupy a seat: upon a judicial bench who is not endowed with great fortitude of mind. It is the duty of a court to declare the law. Who has ever yet long presided in a court of justice without hearing the voice of that tempter whose presence is always a profanation of that sacred temple? It comes rarely in the form of a bribe; but in the more familiar guise of fear, or passion, or prejudice, or ambition; infirmities from which human flesh can never wholly free itself. Few judges, be it said to the great praise of the deceased, have allowed such considerations to influence them less than he. Where weak men have fallen by the wayside, he has maintained the straightforward course, counseled only by that inward monitor which rarely leads astray. Through good report and through ill report, whether the popular clamor was for or against him, whether the fortune of friend or foe was in the balance, that brave and sincere man and just judge was moved neither to the right nor to the left in the discharge of manifest duty. He removed not the landmarks.

What higher praise of a judge than this?

Gradually and imperceptibly the true character of the judge may become masked by an austerity of bearing which wounds and repels. This was to some extent true of the deceased. The generous hearted sympathetic man, had become more or less obscured by the formal, judge, schooled to listen while withholding that subtle chord of sympathy which is the life and soul of speech. And thus it has sometimes happened that counsel who saw only the judge upon the

bench and knew nothing of the lovable nature of the man, closed his address to the Court with a belief, deep rooted and pernicious, that his cause had been prejudged, his argument unappreciated, and himself ill used. This was more especially true of young men to whom the attentive ear and appreciative kindle of the eye are requisite to any degree of success in argument. But time, association, and truer insight rarely failed to efface the error. A word exchanged in the private chamber, in the library, at the home, or on the street, was a beam of sunshine which melted away the ill-timed frost.

But why these words? The ear of the venerable Justice will not heed them, and the lips of all who participate in this memorial proceeding will, in a few years at best, be as silent as his own.

"Can storied urn, or animated bust,  
Back to its mansion call the fleeting breath?  
Can honor's voice provoke the silent dust,  
Or flattery soothe the dull, cold ear of death?"

We speak to-day not to the dead but to the living. We raise our voices in testimony of the virtues of a great and good man that they may serve to inspire others to emulate him. To the bar of this State, both of to-day and the future generations, we present the life of the late Chief Justice as illustrating the value of industry and integrity in the pursuit of a noble profession.

*Address of Hon. Isaac Atwater.*

May It please the Court:—I doubt not but that every member of the bar in this room, if permitted, would be glad to pay his tribute of honor, love and regard to the memory of the lamented Chief Justice James Gilfillan. I can trespass but for a few moments upon your patience to give expression to the feelings to which this occasion gives rise. But, from my own acquaintance, and I may say somewhat intimate relations with, the deceased, I would not willingly keep entirely silent upon this occasion.

It is thirty-seven years since I first made the acquaintance of the deceased, upon his appearance before the first Supreme Court of this State, in the argument of his cases. Even now, his argument in the first case presented, is hardly less vivid than it was at the time. The names of the parties to the case and the decision have passed from my memory, but his clear and concise statement of facts, the application of legal principles thereto, the logical deductions drawn therefrom, his broad grasp of equitable principles, left an abiding impression on my mind of a lawyer of rare legal acumen and ability. Indeed, I am reminded even now, of a remark made by a prominent member of the Hennepin County bar, a few days since upon an occasion such as that upon which we have assembled, of the prediction I then made in regard to the deceased, that, if he lived, he would stand front in the profession in this State; and even then we had men eminent at the bar, such as Hollinshead, and Rice, and Ames, and Brisbin, and Bigelow, and Chatfield, and others I could name, with all of whom he stood easily the peer.

It would take too long to enumerate the eminent qualifications which the deceased enjoyed for the bench which he so long honored—his fearlessness in expressing his honest convictions whenever demanded, even at the sacrifice of personal interest; his broad grasp of equity; and his entire impartiality between suitors, whether persons, corporations or political parties,—you know them all, I need not enumerate them. Indeed, in the presence of those thirty-nine volumes in the adjoining chamber, which form his imperishable record and monument, any

eulogy which we could pronounce here would; seem tame and common place.

It has been my fortune in over forty years of experience at the bar to have appeared professionally before the twenty judges, if I remember the names correctly, including the Territorial, who went upon that bench; and I may say without disparagement to any among them, he was facile princeps.

But what has been said relates to only one side of his character. Eminent lawyers are not always great men. His broad sympathies were never dwarfed by his devotion to his profession and his judicial duties. He recognized the claims of humanity and Christianity to his services and his time so far as possible. The church to which he belonged and which he loved, honored him, and I may say equally herself, by conferring upon him the highest positions accorded to a layman. For years he was a member of the standing committee, a trustee of the diocese, a delegate to her general councils, and to each and all of these he devoted time so far as he possibly could from the labors of his judicial duties. No man has found a warmer recognition in the church which he so well served.

And in these three relations of which I have spoken, the honest lawyer, the incorruptible judge, the sincere Christian, it seems to me all others are comprised.

I know not what impressions may have been formed upon others; they depend upon the point of view at which one looks at his character, the intimacy of acquaintance and its length of continuance. If faults are to be found—as indeed they must be in everything human—they are so insignificant as not to obscure, nor even dim the luster of his greatness. The State which he adopted is the richer for his learning and genius; the community in which he lived has been uplifted by the purity of his life and the savor of his good deeds, and posterity blessed in the ages to come by the rich inheritance which he has left. His life has been a daily benediction upon all that came within its influence. Fortunate and thrice happy he who can leave so noble a record, and an example so worthy to be followed.

*Address of Hon. Chas. E. Flandrau.*

May it please your Honors:—The prominent position which has been assigned to me in these memorial proceedings arises no doubt, from the fact that I occupied a seat upon this bench, when the first session of this Court convened in the year 1858. It may be a fact worth noticing that every judge of the Court who sat at its first session is still alive and well, and one at least of them in active practice, although thirty-seven years have passed since that interesting event took place.

I think the love of a man for the State of his adoption becomes much stronger than that which he entertains for the State of his nativity. He generally emigrates at the period of early manhood from a State, the institutions of which are practically matured, and have become and will probably remain so without his ability to influence them. He comes to a community, the governmental characteristics of which are, like the commonwealth, in their infancy. His active participation in their formation and growth engenders profound interest and deep sympathy; as they develop they become part of himself, and his pride or sorrow largely depends upon their success or failure.

We all recognize that the judicial arm of the State is the protector of our liberties, the guardian of our property, and the conservator of our happiness.

The temporary aberrations of the legislative branch, growing out of the ill-directed passions of the people, may be regretted, but do not affect the confidence of the citizen in the stability and excellence of republican government, while the fantastic eccentricities of the

executive which are sometimes indulged in, only excite the good natured derision of thinking people, as long as they feel assured of the purity, wisdom and courage of the courts.

If your Honors please, my heart swells with patriotic pride, when I can stand in this conspicuous place and proclaim without a shadow of reservation that never since the organization of this our own Supreme Court has it, or any member of it, been charged or even suspected of entertaining in the slightest degree any attribute that would detract from the full and deserved possession of the most exalted title that can be worn by man—a *just judge*. Happy is the State that can say so much; no record can surpass it. The glories of successful war are superb; the triumphs of literature and inventive genius are rich possessions, but the certainty of a pure and just judiciary is a jewel surpassing in value the riches of the world, and approaching those of our promised heaven.

The highest encomium that I can pass upon our deceased Chief Justice is to say that his long presidency of this Court, has done as much, if not more, than that of any other man to create and perpetuate all its admirable traits which I have alluded to. No one can add a word to the well deserved tribute to his life and career which has been presented by the Honorable, the Attorney General.

*Address of Hon. S. J. R. McMillan.*

Among the elements entering into the early settlement of Minnesota, one of the strongest and most favorable was the influence and power of the lawyers who gave tone and character to the bar of the State. They were men in the vigor of manhood, well equipped and disciplined for their professional labors—men of broad and vigorous intellects, diligent and faithful in their duties, and loyal to the high principles and honorable traditions of our profession. Among such men at the bar of St. Paul, and as one of them, James Gilfillan, upon coming here to live, took his place, and throughout his professional career was regarded as one of the ablest lawyers of the State.

In 1869, upon the resignation of Hon. Thomas Wilson, Chief Justice of the Supreme Court of the State, Mr. Gilfillan was appointed to fill the vacancy, and held the office under this appointment for a short time. Subsequently and on the 5th of March, 1875, he was again appointed to the office of Chief Justice, which he held until his death.

It was my privilege to be associated with Chief Justice Gilfillan during the time he held his office under the first appointment I have adverted to. His professional life was the basis and the prophesy of his judicial career. His legal knowledge was extensive and profound; his judicial views were broad, comprehensive and clear; his judgment was sound and wise. He was conscientious in all his duties, impartial and upright in his consideration and determination of all matters submitted to him, and the strength of his convictions were equaled only by the courage with which they were declared. He was an able, upright Judge. What higher tribute can be paid to his memory?

By his ability and integrity through his long judicial career, he has rendered high and noble service to the State, in his faithful and efficient labors, in extending and establishing a system of jurisprudence of which every citizen of this State may well be proud. In the midst of his work he has been called from earth. He laid aside unsullied his judicial robe, and in its stead has put on the spotless robe of the righteousness of the Christ whom he loved and served in his life.

*Address of Hon. Greenleaf Clark.*

I should not be satisfied to let this occasion pass without a word of personal tribute to the memory of James Gilfillan, nor do I fear that my love and respect for the man will carry me beyond the limit of just encomium.

We have to contemplate a marked and vigorous personality: marked and vigorous both in mental and moral qualities. I cannot hope in the short time I feel at liberty to consume, to cover the ground of an analysis of his mind and character. It would require a commemorative oration. I can only allude to a few salient features which have most impressed me.

If I were called upon to designate the most prominent characteristic of his mind, I should say it was analytic power. He had a gift, the result both of natural endowment and development, to a degree that is possessed by but few men, of seeing through the obscurities and false issues, to the very pith and substance of the matter, not by an intuitional jump, but by a deliberate though rapid analysis.

Most important legal determinations turn upon one or two, scarcely ever more, leading legal principles correctly applied. Judge Gilfillan excelled in the readiness with which, brushing away the extraneous matter, he grasped strongly hold of the principle involved and applied it. Nor was this incisive, logical process, at the expense of breadth or strength. No jurist of his time brought to the consideration of grave constitutional questions or others, involving weighty consequences, broader or more far reaching views. Not as ready as some men to exert his powers, if he erred, it was more likely to be in comparatively trifling cases involving no important principles, upon which his powers were scarcely got to operate in their best estate.

If I were called upon to designate the prominent trait of his character, I should answer self-abnegation. This showed itself in his splendid moral courage. No man ever sat on any bench who was more fearless in the discharge of what he deemed his duty than James Gilfillan. No consideration of what popular prejudices might be antagonized, or current theories having some dissemination overthrown, or animosities against him personally aroused, as the effect of a decision, ever had the slightest lodgment in his mind, or effect, perceived or unperceived, on his action. If he satisfied his own mind and conscience, that was enough for him, and it was all. In this respect he was the stuff of which martyrs are made.

It showed itself further, in the direct, simple method of his work. In his written opinions he goes straight to the work. He had literary ability of a high order, and he wrote strong, vigorous English. He had the analytic power to define and set out a legal principle in the abstract so as to make it circulate through the whole realm of jurisprudence clothed in his language. But there never was apparently the slightest effort for any such effect. He seemed to do nothing for his own fame; to all appearances was indifferent to it. And it may be partly due to this that personal contact with the man never failed to produce in one who had that privilege a higher appreciation of his strength of mind and character. He showed it in simple, unostentatious ways.

Take him for all in all, I have no hesitation in saying that Chief Justice Gilfillan was competent for and would have adorned a position upon any bench administering English law.

I will not attempt to speak of him as a soldier, but leave that to those who are more competent.

As a man he was single minded and true; it was yea, yea, and nay, nay. Deception had no place in his make-up. Policy had no more. As a companion he was delightful. The first crust of acquaintance being broken through, he was one of the most genial of men. He had a keen sense of humor, and quite a fund of anecdote collected from his extensive general reading, and he was quite happy when he could have a chat with his friends, letting the conversation drift and take its

own course.

A marked man has fallen: one who has done honor to his State and to his race; one of the chiefs among the powerful men of his time. He now rests from his labors, but his memory will live in the record of his work and in the hearts of those that loved him.

*Address of Hon. Geo. B. Young.*

After the high tribute and just presentation of the characteristics of our great Chief Justice, in the memorial which has been read, there is very little, if anything that can be added by me.

It was my good fortune, however, during many years, to be in a sense the "organ" of the Court, in reporting its decisions—including, of course, those of the Chief Justice. In performing those duties, it became necessary for me to make a more exact and thorough study of the cases in which they were delivered than would ordinarily fall to the lot of one simply consulting the reports. As a result, I had early impressed upon my mind the very marked ability which characterized Judge Gilfillan in at once grasping the real point, the real issue, the real merits, of a case, disregarding and brushing aside all extraneous matter, whether of law or of fact.

Another characteristic I noticed was in the expression of his judgment in many instances it seemed ragged, uncared for, unadorned; yet, the legal principles, and their application to the case in hand, were expressed with singular felicity.

Of the many decisions, by which he made his mark upon the jurisprudence of this State and country, one stands forth preeminent, his decision in the case of the State Railroad bonds. It has always seemed to me that that decision touched the highwater mark of judicial opinion in this generation. I think it will bear comparison with the best constitutional opinion of any court in the land, save possibly the greatest opinion of Chief Justice Marshall.

In Chief Justice Gilfillan we had a judge who would rank with Judge Gibson and the greatest jurists who have adorned the bench in other States of the Union.

*Address of Hon. Chas. E. Vanderhugh.*

The Governor of the State in his proclamation closing the public offices of the Capitol on the day of his funeral, characterizes the late Chief Justice as a most able, fearless, upright and impartial judge.

That tribute implies a great deal, but it is eminently just and well merited, and it is precisely the tribute which every honest man, who knew him, spontaneously accords to him. There were not many abler jurists in his generation and certainly none more fearless and upright.

He was eminently qualified for the position of Chief Justice, his perception of correct legal principles was unusually clear and accurate. His strong analytical mind readily grasped the leading in a case, and he surpassed any man I ever knew in his ability to separate and state them concisely and clearly. This made him a model chief in the consultation room. The late Justice Berry, whose public services will not soon be forgotten, and whose memory will long be revered, used often to speak of the remarkable power of mental concentration possessed by Chief Justice Gilfillan and the facility with which he was able to dispose of the most difficult cases, and decide them well.

Absolutely truthful and thoroughly honest and independent, he was no respecter of persons. He would turn neither to the right nor to the left to secure personal favor, and doubtless his manner was often misunderstood by those who did not know him well. Yet he was one of the kindest of men, and a most faithful and devoted friend.

He was not only a strong man but a just and good man, a man with a conscience, and of strong convictions of right and duty. His character was grounded on sound morals and religious principles—fundamental qualities of a good judge, which can not safely be undervalued.

The Chief Justice commanded the respect and confidence of his associates on the bench in a remarkable degree. Upon the separation of the members of the Court as formerly constituted a year ago, he remarked with much satisfaction and evident feeling that during all the previous years that the Court, as then constituted, had served together, and even extending back through his whole term of service, there had hardly been an incident to disturb the harmony of feeling and pleasant intercourse among the members of the Court in which he had so long presided.

During that time his contemporaries on the bench in other States, have been Cooley and Campbell of Michigan, Dixon, Ryan and Cole of Wisconsin, Dillon of Iowa, and Brewer of Kansas, and it is safe to say without disparagement to them, that if we consider the full measure of his abilities and judicial qualifications, he stands the peer of any of them.

*Address of General John B. Sanborn.*

In the fall of our illustrious Chief Justice, example and emphasis is given to the poetic conception that

"Death loves a shining mark, a signal blow,  
A blow which, while it executes, alarms,  
And startles thousands with a single fall."

It was but yesterday that our departed friend was walking on the high places of the earth in "The excellency of dignity and the excellency of power;" his voice was the voice of magistracy and dominion, a sovereign voice, potent and controlling in all the litigations and controversies of fifteen hundred thousand men. Today day all is changed; the voice is silent, power and dominion have departed, and nothing visible remains except what is seen in the light and hues of immortality. On such occasions and more than on any others, we turn to immortality as the only solution of the problems of human life, the only teacher that deciphers man and explains the mysteries involved in his life and death. With firmness, faithfulness and zeal, our departed friend met and unraveled all the knotty problems of his own life, with patience and undying faith in the great future. Born a Scotchman, educated an American, he possessed the firmness, decision of character, clearness of mental vision and strong reasoning powers of the former, and the activity, zeal and patriotism of the latter. At the bar he at once became conspicuous for his learning, sound judgment and careful practice, never failing to reach a determination of his case on the real merits of the controversy.

His public spirit and patriotism were unbounded. Personal interest and personal security were without power to restrain him, and fatigue, hardships, danger and death, were without power to deter him in the least from the fullest discharge of all his duties as a citizen of our State and country. Although enjoying the sweets of quiet civil life and the practice of his chosen profession, far more than the great majority of men, he at once abandoned all, and cheerfully took his place in the ranks with those who were ready to sacrifice life, health, property, all that men hold dear, for the preservation of the institutions of his country, and the liberty of all men. In the military service of the United States, which he voluntarily entered on the 6th day of August, 1862, a service always most trying to those of sound judgment and independent thought and action, he was governed by one motto and one principle—obedience even unto death of all the lawful orders of his superiors, whether personally entertaining for such superiors respect or

contempt. Success in this branch of the public service could not fail to attend him, acting upon such motives and under such a motto. His military service was one of the most arduous and trying character, and of such a nature as could not in the very nature of things bring fame and renown. It is but the slightest impression that is made upon the mind by the statement that the deceased, with the rank of captain, marched on foot at the head of his company from the Mississippi to the Missouri river through Northern Minnesota and Dakota in the summer of 1863. Our minds are so constituted that they do not grasp from such a statement the wearisome march for ninety or more consecutive days in burning suns across alkali deserts and plains, with the air filled with dust and the tongue swollen for want of pure water, or the difference between sleeping in comfortable beds in quiet homes and resting upon the ground in cold and storms, disturbed constantly by savage and wily foes. Language cannot portray the hardships, sufferings and exposures endured by officers and men on such a campaign, and only those who have participated in them can form any just appreciation of such a public service. The public interest required this service in 1863, and it was rendered by our departed friend with the determination and vigor that characterized all his acts.

Afterwards, at the head of his regiment, on the bloody field of Tupelo, on July 14, 1864, he stood with his command as a rock unmoved amid the varying fortunes of that hardly contested field. After the battles of the summer and autumn of 1864, he was assigned to the important, hazardous, annoying and inglorious service of guarding and protecting the line of communication to the armies at and south of Nashville, where the least failure at any point might result in the greatest possible disaster to the government, and force the withdrawal of troops and the abandonment of the country from Atlanta to points far north of Nashville. This is that kind of military service which oftentimes covers an officer with disgrace, but, even when well performed, never is known to bring to him any glory.

This fatiguing, trying, hazardous military service made serious inroads upon his physical powers, and undoubtedly shortened his days on earth. So great had been the strain and wear that, in the weakness and delirium of his last sickness, although the long period of thirty years had intervened, the exciting, trying scenes of the war seemed again to pass in review before his mind. The tried and trusted veterans of his command, with faces scarred and ranks thinned by battle and disease, again appeared in line waiting his command to hold their positions or move against the foe. He again seemed to see the flag of his country full high advanced over bleeding and prostrate enemies, and again shared in the excitement of glorious victory.

On account of the character of the military service he was required to perform, it may be that his larger fame will be best preserved, and will most securely rest; on the great service he has rendered the State in the judicial department and as Chief Justice of this Court. Through the long period of twenty years, during which the state has passed from infancy to manhood, the great questions that rise from rapid development, have come before the Court and have been considered and decided, upon sound principles of law and with due regard to precedent. He always recognized and acted upon the fundamental truth that the primary object of every judicial system is to establish justice, and that the only lawyer and only judge who can gain preeminence is he who can so apply remedies and principles as to secure justice in the highest degree. Judged by this standard, the illustrious Judge will always stand preeminent. His views upon all the great questions that have come before this Court for twenty years are expressed in a body of case law that will run through forty volumes of the *Minnesota Reports*, and constitute an enduring monument to his memory and, at the same time, remain a light and guide to future generations.

"So when a great man dies,  
For years beyond our ken,  
The light he leaves behind him, lies  
Upon the paths of men."

*Address of Hon. Wm. J. Hahn.*

It is eminently fitting when death invades the ranks of our profession and removes one of its honorable and honored members to pause for a moment, give public voice to our sense of loss and register a brief memorial of his worth and public services. We have met for that purpose today. Our ranks have again been broken. A noble, modest, pure man; an upright, faithful, distinguished citizen; an eminent, conscientious, leading member of our bar; a great, fearless, spotless judge, has fallen. No eulogy which any of us may be able to pronounce and no memorial which we may enter on the rolls of this Court can add one jot or tittle to the well earned fame which he himself has achieved and left on record here. It is with no such hope; it is with no such purpose that we ask this minute to be made. It is for the living and not for the dead; it is for us, his comrades at the bar, who still remain, we ask this to be done, that thus we may say to those who come after us, we knew, we appreciated, we honored this, our brother.

I have not the ability, neither was my association with Judge Gilfillan intimate enough, to warrant my attempting an analysis of his character. That is more ably done by others than I could hope to do. But I esteem it a privilege to be permitted to lay my poor, though willing, tribute on his tomb. I knew him well enough to say with all my heart that he was "a true and brave and downright honest man," who held faithfulness and sincerity as first principles; that he was a citizen who valued duty more than success, and who esteemed an upright and irreproachable character more highly than distinction; that he was a pure, just, wise and fearless judge who, by his great gifts and noble character, adorned the judicial office, added luster to our profession and materially advanced the cause of good government and of right living.

I would name as one of the distinguishing and most commendable characteristics of Judge Gilfillan, his fearless independence. I think he showed in his entire career that he was a firm believer in the truth of Ben Jonson's epigram that "He that departs with his own honesty for vulgar praise doth it too dearly buy." He cannot and will not be charged with truckling in any way to popular influences or excitements. Fearlessness of opinion deliberately formed, is a *sine qua non* for a judicial position. Judge Gilfillan possessed this in a more than usual degree. He was by nature, by temperament, by character, exalted above popular influences, and therefore, was enabled to serenely administer the noble science of the law. It is such an administration which has heretofore been and will continue to be the sheet anchor of the republic. The judiciary of this country, state and nation has been, is, and must continue to be, if our noble heritage is to be handed down to future generations unimpaired, the great balance wheel in the machinery of our government, as it must be in the government of every free people who desire to preserve and maintain their freedom. It and must continue to be, the compass which steadily, unerringly, constantly points toward the great polar star, so that when storms rage and darkness overshadows us and danger surrounds us, we may confidently look to it to guide and direct us. It is the great dyke whose staunch timbers and solid masonry must protect us if we are to be protected from the storms of passion and the waves of faction which are sure to arise and roll. To maintain this position, to exert this influence, there is no qualification more necessary to be possessed by the men who occupy these exalted positions than this fearless independence. The importance of this

trait in the judicial character cannot be, in my judgment, overestimated Without it, no man, however great he be, either by natural gifts or individual acquirements, can ever attain the ideal conception of the judicial office or discharge the duties of such a position in a way to command the lasting respect of bar and people.

As was well said by a distinguished member of our profession in concluding a brief review of the life of one of the most eminent men who ever graced the bench of the Supreme Court of the United States (Chief Justice Taney): "Ours is a profession whose labors and talents are expended for the most part upon the controversies of individuals and about transitory affairs. And yet it is of all professions the one most important to good government and to just living. In our favored land, with its great natural advantages and its freedom from arbitrary government, where individual rights are protected even against the government itself by fundamental laws, the administration of the law is that exercise of government which is at once the most frequent and most important. To it we must look for relief from injustice, for the preservation of personal rights and for the protection of property. We may differ about political questions, about the nature of government, about public policy; but for ourselves and our daily lives, what we most need, what is of the highest importance to each one of us, is a pure, just, wise and fearless administration of the law."

*Address of Hon. Moses E. Clapp.*

The fact that we are prone to eulogize the dead has been regarded as one of the weaknesses of human nature. This is a mistake. It is but one of the many evidences of the wonderful power of the mind to adopt itself to conditions. When bowed in grief for the dead, we naturally turn to a contemplation of their virtues, that in so doing we may at least somewhat dull the keen edge of our sorrow. We do this, not so much to extol the dead, as to lessen our own grief. This is the mainspring from which flows, among the immediate associates of the dead, the recollection and appreciation of their virtues, carrying out into the world beyond only the recollection of good deeds and exalted character; thus it is that the evil is forgotten and the good remembered.

Fortunate the living if, beyond the mere office of eulogy, they can discover in the life and character of the departed those qualities which enlist respect and admiration, and thus, in a measure, divert the mind from grief. Such is our lot to-day. To do right is but simply duty. We ask ourselves sometimes why we should extol the mere performance of a plain duty. The fact is that in our willingness to praise and crown with honor the name and memory of one who has been conspicuous for his conscientious discharge of his duty, we may not, perhaps, recognize man's proneness to do wrong, but it is at least a recognition of man's frailty in the light of the temptations which beset him. It is one of those many forces, little thought of in themselves, yet all powerful, as factors in shaping and molding thought and action.

Those who knew our late Chief Justice recognized in him a man of such sterling qualities that, while they mourn his loss, they can find consolation in paying a tribute to his memory as deserved as it is voluntary; a free-will offering from the heart, freely paid to one who is powerless alike to punish or reward. The law is sought, declared and administered by a profession in touch with the world around them; their lives and associations, social and professional, are interwoven with those of all about them; they lay no exclusive claim to the virtues, nor are they free from the vices incident to human nature, except so far as their character may be molded by their pursuit.

This is not the time or place to speak at length of our profession or to defend it from the

attack of those who hate the law and our profession because they stand the sole unsurmountable barriers to oppression upon the one hand and disorder upon the other; nor from the aspersions of the thoughtless, who overlook the fact that human law must be declared and administered through the agency of fallible men, and cannot overlook their occasional mistakes. Suffice it to say, that in the law society finds its only safeguard and protection; the order-loving are its votaries, the bench and bar the ministering priesthood; at its shrine every true friend of human rights must worship.

While at times complaints—oft-times just complaints—of our ministrations may be made, yet it is the one universal faith, as perfect in its aims and objects as man's instinctive longing for the right can be; as imperfect in its administration as man's fallible nature falls short of perfection.

While our late Chief Justice was esteemed as a citizen and soldier, yet he will be remembered chiefly as a lawyer and a judge, an honorable member of this profession, wherein, above all others, responsibility finds a parallel only in its attendant duty, and I know of no higher tribute to pay him than to say that as a lawyer he was as learned as he was honorable; as a judge deaf alike to clamor and applauses—as fearless as he was just.

*Address of Hon. John M. Oilman.*

May it please your Honors:—I can, of course, add nothing in commemoration of our dear Chief Justice to what has already been said; but in view of my long acquaintance it perhaps is not out of place for me to join with others in moving the adoption of the memorial which has been read.

I came to St. Paul to live the same year as did Mr. Gilfillan – 1857. We soon became acquainted, and from that hour to the day of his death we were most intimate and cordial friends.

Mr. Gilfillan came with a mind well stored with a knowledge of the law in all its departments and ramifications. He at once took a leading position at the bar. His abilities were widely recognized, not only by the bench but by the bar from the start.

Mr. Gilfillan was distinguished more for strength, breadth, grasp and force of intellect than for brilliancy, yet he was a very strong man at the bar. His candor, his sincerity, his purity, which shone in his very countenance, his power of analysis, his clearness of statement, his logical reasoning, made him a formidable antagonist before the jury as well as before the court.

He continued in the practice of his profession and was in the full and successful tide of it when the civil war broke out. When volunteers were called to go forth in defense of the Union, Mr. Gilfillan locked the door of his office, shouldered his musket and went into the military service of his country. He served until the close of the war, when he returned home in the fall of 1865, I believe. Receiving his discharge, he again unlocked the door of his office, brushed away the dust which had accumulated upon his books, resumed the practice of his profession, and again took the same position at the bar which he held when he entered the service of his country.

The bar, as I well recollect, had marked him as eminently fitted for the bench, long before he was called to that position, and, in fact, he was exercising the functions of a judge long before he was called to the bench. In those days we had here, in the first place, but one District Judge; afterwards we had a Court of Common Pleas, but those judges could not do all the business that was brought before them. As a result, most of those cases, which are denominated court cases, were tried by referees, and Mr. Gilfillan was, I may say, a standing referee in all cases where he was not an attorney. Such was the confidence that the bar had in him that no one objected to his acting as referee. I have tried many cases before him, and he evinced the same qualities as a

referee that he did as a judge—dispassionate, cool, calm, courteous, kind, clear-headed. He decided many cases, and I do not recollect a single instance where his decision as a referee was reversed.

Continuing in practice up to the time that there was an opening, he was called to the bench, as we all know. Of his career on the bench no encomium is needed from me. There is his record. I may say, however, of the position Mr. Chief Justice Gilfillan will hold in the estimation of the bar of this State, he will be spoken of as is Chief Justice Parsons, of Massachusetts, by the bar of that State, and Chief Justice Gibson, of Pennsylvania, by the bar of that State—"The great Chief Justice."

Now, may it please your Honors, he has gone from us, and when we go into that court room, where he sat for so many years, and miss his manly figure from the seat he so long occupied, we cannot but feel oppressed with a feeling of sadness, especially so when we reflect that we are never to see him occupy that seat again. All we can do is to spread upon the records this memorial, that the future bar of this State may refer back and have before it some evidence of the estimation in which Chief Justice Gilfillan was held by his contemporaries. I therefore join in moving its adoption.

*Associate Justice Thomas Canty said:*

I shall delay the proceedings but a few minutes. As one of the members of the bar who was called to the bench, I will just say a few words, as I have been both before and behind "the scenes" a little.

When I was practicing, I felt—as a good many others of the younger members of the bar and some of the older ones felt—that he was just a little contrary sometimes, and a little brusque and curt in his rulings. Sometimes he would "sit down" on me in a way that I did not like.

But I must say that, since I became more intimately associated with him, I formed a different opinion of his character. I found him, on closer association, to be a man of great simplicity of character, absolutely unaffected and unprejudiced.

I found him to be a man of very strong character, of great will power, clear-headed, logical and very analytical. In fact, he paid no attention to subterfuges at all, he simply struck for the central principle, and rested at that.

Generally, in his conferences, I found him to be a man that was easily approached, easily got along with. He and I have had a good many controversies in the short time I have been on the bench, but it never created the least ill feeling; the warmer we got over it the better friends we were before we got through.

I found him to be a very companionable man, and I began to think a great deal of him.

*Associate Justice Daniel Buck said:*

My Associates and Gentlemen of the Bar:—On the 16th day of December, 1894, there died in this city James Gilfillan, the Chief Justice of our State. His chilled form lies pulseless and still, and over his grave have been said the sad words: "Earth to earth, ashes to ashes, dust to dust." There is a vacant chair here; and at his home a grief-stricken household, for the old arm chair has ceased its rocking and a loved one gone over to the other side. He died, not in the season of beautiful flowers, gleaming grain and ripening fruit, but with the judicial harness still upon him he passed away as the dying year was singing its last requiem. "The wheels of weary life stood still," for "God's finger touched him and he died."

When the pall of death falls upon our fellow man, we draw nearer together and keep faith

with the usages of the past, while we respect and mourn for one who sleeps beneath the fresh earth and the changeless stars. Over every threshold death sweeps with a resistless force, and there is a vacant chair in nearly every household. We know not the mysteries of this coining and going, this living and dying. We do not know the hour when life's struggles shall be over and the heart cease its beatings, although—

"We know when moons shall wane,  
And summer birds shall cross the sea—  
But who shall tell us when to look for death?"

And it is well that we pay a tribute to the honored dead. Then the shadows of selfishness are stilled, and in the presence of death we forget the jealousies which sometimes mar our better manhood. With the sting of death and the victory of the grave, come the white robes of charity and the balanced scales of a truer justice, and to-day we do well to honor the memory of our great Chief Justice.

It is a great honor to be the Chief Justice of a great State; but it is a greater honor to be fully worthy of it. Chief Justice Gilfillan won that honor, and deserved it, for he won it through merit. He pandered to no partisan spirit; he climbed no mountain peak in search of the tricks of the demagogue; he floated upon no popular wave to win judicial honors. He knew what it was to labor and toil upon the farm in boyhood days. There, amid the fragrance of the clover blossoms, the perfume of a thousand flowers and the development of physical strength is the best starting point for the battles of after life. The victories of manhood are frequently the result of the struggles of boyhood. With the maturity of his years came the industry and love of labor that marked his early life.

Fearless in the cause of right, he would not turn aside to avoid an enemy, nor bend to grant unjust favors to a friend. He wrote no opinions to obtain notoriety; he made no decisions at the dictation of wealth or political influence. He could defy the storm because his knees were strong as the "unwedgable and gnarled oak." He would rather go down with colors flying than be silent when justice was endangered.

The judiciary travels no flowery pathway. Selfish greed, partisan malice and criminal violence may hurl their poisoned darts into the judicial forum; but the burning torture must be borne with unflinching silence. Criminals, and sometimes, unfortunately criminal lawyers, would pull down the pillars in the temple of justice that they may revel in the ruins their power has wrought. When liberty is confused with chaos and unbridled license with righteousness; when violence would nullify the law and strike down the constitution—then we need a Gilfillan among our judiciary, stern and brave, but able and just, to proclaim the ban of his disapproval, even though threats and thorns beset his judicial path.

It was not great learning and great intellect, merely, that made him our noble Chief Justice, but because with these elements of character he never flinched from duty nor bowed to unjust popular clamor. At Thermopylae, he would have been one of the Spartan heroes; at Balaklava, he would have charged with the six hundred; and he would have died at the stake or suffered martyrdom on the cross rather than yield his convictions of human right. Although born where, rise the Grampian Hills and Ben Nevis, in the land of John Knox, Walter Scott and Robert Burns, yet he loved this great American Union, and in its hours of peril he stood ready to offer up his life in behalf of its starry banner. He had a patriot's love, because he knew a patriot's duty.

There are no mists hanging over his life or grave, of clients wronged or public trusts betrayed. There is no hoarded wealth, in home or bank, purchased at the price of dishonor and violated faith. His life's sun, burnished with golden hues, has gone to its western setting to rise, perchance, upon some fairer shore. Silently he sleeps upon the banks of that majestic river whose waters come and go; and if over his grave there shall be no monumental stone, yet in your library there will be the enduring monument of his fidelity and his intellectual greatness.

People of Minnesota, keep fresh and green the memory of your Chief Justice—  
Gilfillan—for

"Thy stalwart sou deserves a Roman's fame,  
For Cato was not more supremely just;  
Augustus was not greater in the state,  
Nor Brutus truer to the public trust."

*Associate Justice William Mitchell said:*

Having, during the past fourteen years, been brought into very intimate relations, personal and official, with our late Chief Justice, I feel that I owe it to myself on this occasion, even at the risk of repetition, to pay my humble tribute to his memory.

One of the chief inducements to my acceptance of a place on this bench, was the rare combination of talents possessed by the three judges then composing this Court. There was Justice Cornell, with his remarkably clear, acute intellect, Justice Berry, with his sound judgment and great fund of practical common sense, and Chief Justice Gilfillan, with his great mental vigor and remarkable power of analysis. A better combination of talent to constitute a safe and able court is not often found on the same bench at the same time. The peculiar talents of each seemed to be the complement of those of the others. All three fell in the harness at the very height of their intellectual powers,—first, Cornell, then Berry, and last, Gilfillan.

If I were to name what I considered the most marked moral and mental qualities in the character of the late Chief Justice, I would say moral courage and the power of accurate analysis. His single aim was to decide a cause rightly, according to legal principles, and this he did to the best of his ability, regardless of the effect of the decision upon himself or of adverse popular criticism. I never knew a man more impervious to outside pressure than he in the discharge of his official duties. In the consideration of a cause, he knew neither class nor condition among litigants or counsel. This was not the result of mere indifference to public opinion, but of fearless independence and of a profound sense of duty. He never talked about his duty—I never heard him mention it once—but I never knew a man who was actuated by a higher sense of it than he, and he always performed it, as he understood it, regardless of consequences. You will not find in all his opinions a single utterance designed to catch the popular ear, or to trim to the passing popular breeze.

As has been already remarked to-day, he possessed an unusual power of analysis. Many cases are obscured by immaterial issues and inconsequential argument. These his vigorous mental grasp and great power of analysis enabled him to strip off and brush aside with celerity and thus reduce the case down to the real questions upon which its determination depended. And, having done this, his acute and extensive knowledge of legal principles enabled him to decide the case with the clearness and conciseness which always characterized his style. His opinions were usually noted for their brevity. He did not consider it any part of the duty of a judge to write essays on the law, and he never stepped aside to deliver lectures on either law or

morals. Above anything like pedantry or affectation of learning, master of his subject and of the English language, he did not waste pages to express an idea. Having made up his mind as to the principles upon which the decision of a cause turned, he said neither more nor less than was necessary to the decision and to state the grounds upon which it rested. His written language was a transcript of his mind. It was accurate because he accurately understood the principles he discussed. It was readily understood because he understood himself. His clear, pure, terse English is decidedly refreshing amidst so much diffuse rhetoric in this day of type-writers and stenographers. And yet with all his powers, I never knew a more modest man in his estimate of himself. He never thought of display and seemed unconscious that he had the power to make any.

While he was too great to be the slavish follower of mere "case" law, and while he well understood that the law was not a code of cast iron rules, but a system of principles capable of application to new conditions, yet he was a firm believer in strict adherence to established legal principles. He looked upon novelties of decision, in derogation of those principles, as "the plague of the commonwealth," and, with Lord Camden, he believed that "the discretion of the judge is the law of tyrants." Hence, he believed it better to apply established legal principles inflexibly, even if it seemed to work harshly in the particular case, than for the Court to bend them or depart from them to meet a "hard" case.

All of my colleagues will join me in testifying that in the consultation room he was a most helpful counselor and adviser. His discussion of a case never digressed into immaterial side issues. He never indulged in mere elusive legal platitudes, but went directly to the pith and core of the case. Everything he said was helpful and suggestive, and if we did not always agree with his views on a question, we often found it easier to overrule him than to answer him.

From my mere general acquaintance with Chief Justice Gilfillan, before coming on the bench, I had the impression that he was somewhat cold and reserved in disposition, and blunt and even brusque in manner, which might prevent the forming of warm personal friendships, although his ability and integrity would command the highest respect. But I soon found out my mistake. While never demonstrative, no man ever possessed a warmer heart or was more capable of forming sincere and close personal friendships and I can truly say that I became attached to him by as warm a personal friendship as to any man with whom I have ever been associated on the bench.

His apparent bluntness or even brusqueness was a mere unconscious mannerism, and was never intentional.

And I think the bar will bear me witness that, even in the exhibition of any such bluntness of manner, he was, as in all other things, strictly impartial. He was as liable to display it towards the oldest and ablest members of the bar as he was to the youngest or most obscure. The only difference was that the former generally understood and overlooked it, while the latter did not always do so.

The State has lost an able and upright Judge. We, the surviving members of the Court, have lost a most helpful associate, and I, certainly, have lost a most valued personal friend.

*'Chief Justice Charles M. Start said:*

Gentlemen of the Bar:—The Court receives with grateful appreciation your just and merited tribute to the worth and work of Mr. Chief Justice Gilfillan.

The special work, to which he gave long and laborious years of useful service, was the molding of the jurisprudence of our young State. To this work he brought natural abilities of a

high order, the ripe experience of a learned lawyer, a keen sense of justice, an extraordinary command of the resources of reason, perfect integrity and great moral courage.

His judicial opinions in this Court are the rich fruit of that work. They are the landmarks in our jurisprudence, and disclose a lawyer like penetration to the very heart of the matter in hand, and a clearness of statement which leaves no uncertainty as to the point involved and decided; while his conclusions follow naturally from the underlying reasons and principles upon which the science of jurisprudence is based.

These opinions are a monument to his fame as a jurist. That fame will widen as the years advance. He administered justice without fear or favor, giving to the weak and the strong, to individuals and corporations, their legal rights. His life was pure and his reputation stainless; neither was ever tarnished by an unmanly or dishonest act. Few men have left behind them stronger claims to public respect and esteem and none a more undoubted title to the grateful remembrance of the whole people of the State.

It is fitting, then, that your memorial should be recorded in the records of the Court for the day, there to remain a lasting testimonial to the virtues and public services of an honest man and a great judge. It is so ordered.