

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICE LOVELY.

On the afternoon of April 7, 1908, in the court room at the State Capitol, Charles W. Farnham, Esq., Secretary of the Minnesota State Bar Association, in behalf of the committee of that Association appointed to draft a memorial of Hon. John A. Lovely, late an Associate Justice of the Court, who died at Albert Lea, Minnesota, on January 28, 1908, addressed the Supreme Court, then in session, and read the following

MEMORIAL.

"John A. Lovely was born in Burlington, Vermont, November 18, 1843, and came West in 1863, was admitted to the bar at Milwaukee in 1864, practiced law in Watertown, Wisconsin, until 1867, when he moved to Albert Lea, Minnesota, where he engaged in the practice of his chosen profession and where he resided at the time of his death.

"At the general election in 1898 he was elected to the Supreme Bench of this state, and served as Associate Justice from January, 1900, until October, 1906, when he voluntarily resigned to resume the practice of law, and was engaged in active practice when he was stricken by illness that resulted in his untimely death. "He became a resident of this state early in its history and during his long residence and useful life occupied many high positions of trust and honor, with distinction and credit to himself and strict fidelity to all concerned. He was an intellectual and highly-gifted man, an eminent lawyer and jurist, forceful and aggressive at the bar, calm and deliberate on the bench, persistent and insistent in his con-justice, and above all an unyielding respecter of truth and a lover of justice, and his elevation to the Supreme Bench was a fitting tribute to his character and attainments.

"His official professional and private life was marked by such couragenousness of action, fearlessness in the expression and defense of his convictions, and loyalty to friends and the cause which he expounded, as won the love of his friends and the admiration of those whom he opposed. Such a man necessarily exerts a strong influence upon his surroundings, and always the life of such a man is a useful one. The death of such a man cannot but bring great loss to his state and the community in which he lived and great sorrow to his associates, as well as to near friends and the members of his family.

"In every position in which he served, whether by appointment or chosen thereto by the people, he fully met all requirements. He never disappointed his friends nor betrayed the confidence reposed in him. His integrity and sincerity of purpose no one ever questioned. He enjoyed the unbounded confidence of all who knew him.

"While loyal and devoted in his personal friendships, he never allowed them in matters of importance to override his judgment and sense of duty. When confronted by difficult problems his strong common sense and intuition to deal justly, and his quick sense of justice, always enabled him to correctly solve them. His example in public and private life was beneficial and helpful to all who knew or came in contact with him. In his untimely death this state lost one of its most honorable, useful and best beloved citizens. It is therefore fitting that we pay tribute to

his memory, and place in the minutes of the proceedings of this court an enduring record of the high esteem in which he was held.

"We respectfully submit the foregoing brief and imperfect statement of the life and virtues of our deceased brother and friend as an expression of the high esteem in which we held him in life, the regret we felt at his death, and the honor in which we hold his memory, and ask that the same be spread upon the records of this court.

"Lafayette French,
"John D. O'Brien,
"Henry A. Morgan,
"Howard H. Dunn,
"Frank E. Putnam,
"Committee."

Hon. Lafayette French then addressed the court and said:

"May it please your Honors:

"When these proceedings are at an end the record of our deceased brother is closed. I wish before that record is closed to pay a brief tribute to my friend.

"We met for the first time nearly thirty-six years ago at the first judicial convention held to nominate a candidate for judge of the Tenth Judicial District. We were delegates from our respective counties. Our brother had been in practice in Wisconsin and this state five or six years. I had just started in my practice. He was at that time a young lawyer of great promise. He had high ideals of his profession. With him the practice of law was a profession, not a trade. He possessed a fine form, a strong well-modulated voice, a rich vocabulary. He had heard Ryan and Carpenter, and had become inspired by the latter and courted the graces of the orator. He was fond of books; he read much, and his marvelous memory enabled him to remember what he read that was worth retaining. It was said of William Pinckney, that he never read a fine sentence from any author without committing it to memory. When a young man this could be truthfully said of our friend. His fund of anecdotes, general information and keen wit lent a peculiar charm to his conversation. There was scarcely a subject on which he conversed that he could not illustrate or adorn by a quotation from the poets or the classics. He fully realized as Mr. Wirt once said, 'that a mere bookworm is a miserable driveller, and a mere genius a thing of gossamer fit only for the winds to sport with.' He was not a book-worm, nor did he rely upon his genius. He read much, both in his profession and general literature. He had the habit of not only reading but thinking and observing. One possessed of such varied gifts, with sound judgment, long experience in his profession, coupled with a strong sense of justice, could not fail to be other than a great judge. A great judge should have his sense of equity and justice attuned to the living humanity of today. To this rule our brother tried to adhere.

"I have been told by the young lawyers that they were inspired while he was on the bench by his sympathetic courtesy. But his temperament was rather forensic than judicial. His fearless and aggressive personality had full scope in the trial of causes. It was there that he showed to the greatest advantage.

"For a quarter of a century I have been associated with him or on the opposite side in the trial of many important cases, and I now repeat what I have often said when he was living, that in my judgment he was one of the strongest and best *nisi prius* lawyers in the state. When he believed that his client had suffered some great wrong through fraud perpetrated upon him or

wrongful oppression, he arose to his greatest height and displayed the consummate ability of the advocate.

"The spirit of commercialism never appealed to him. He preferred to commune with the great authors rather than converse with Captains of Industry. Nothing was more abhorrent to him than to witness the spirit of greed and commercialism take hold upon the members of his profession like creeping paralysis. He lived and toiled for his family, the success of his clients, and to gain an entrance into the front ranks of his profession; but was absolutely indifferent to retainers and fees.

"He had his faults, but he would not have been human without them. He did not wear his heart upon his sleeve. He occasionally excited enmity, but it was not necessarily to his discredit. He attracted troops of friends who are bound to him by hooks of steel. If at times a sturdy fighter, yet toward those whom he respected and loved he possessed the affections of a brother. He possessed a religious nature, but he judged religion by its duties rather than by its dogmas, and he was the most tolerant of men in matters of conscience. A devoted husband, a kind father, a good citizen—kind and sympathetic to the poor and needy—he leaves behind him not only the members of his own family but a host of friends to mourn his loss.

"I was associated with him and his partner in the last case he ever tried. He possessed an intense interest in its results. His whole being was aroused because he believed that a young life had been needlessly and thoughtlessly crushed out. During the trial of this case I noticed that he was not what he had been, and 'that the glow which in his spirit dwelt was fluttering fast and low.' A few days afterwards I went to Albert Lea to attend an adjourned term of court. I met him in the corridor of the hotel in the early morning waiting for me. He seemed to have a premonition of what was to befall him. He informed me that he was going that day to St. Paul to be examined by an eminent physician of that city. At the noon recess, as I entered the hotel, he came up to me and affectionately put his arm around me and said, 'I want you to take lunch with me at my table. Harry (referring to his partner) will be with us also, and it may be the last time we will lunch together.' His words were prophetic. It was the last time we dined together. Within a few weeks after he left us his great intellect went into an eclipse, which finally terminated in his death. While at the table I tried to divert his attention from himself, but he seemed to be conscious that the end was near. During the conversation he quoted from Swinburne:

That no life lives forever;
That dead men. rise up never;
That even the weariest river,
Winds somewhere safe to sea.

"Let us hope that our friend and brother has at last found rest in the love of our Heavenly Father."

John D. O'Brien, Esq., then addressed the court and said:

"May it please your Honors:

"I had intended to say nothing further than was writ down by my duty in making the report and memorial which has been presented to your Honors, but it has been thought fitting because of my personal relations to Judge Lovely that I should say a word,

"It is so difficult on such an occasion to say the right thing, difficult to express a feeling

instead of an idea,—and feeling must be -predominant at this time.

"Judge Lovely always reminded me of the best traditions of Rufus Choate. There was something about him—the swarthy complexion, the flaming eye, the impassioned utterance, his fondness for the arena in the trial of jury cases, his success in the management of jury cases—that always reminded me of what I have read of Rufus Choate; and there was with it all that further characteristic, a mordant wit that he brought into effective play in the trial of his cases.

"How can we better eulogize Judge Lovely than by saying that he was a worthy lawyer? That meed of praise nobody can deny him. Does that not sum up everything that can be said to a man's honor? Does it not fulfil the highest eulogy that any of us could expect to have spoken over our grave?—a 'worthy lawyer,' engaged all his life in the administration of justice. Justice is a divine attribute. In the administration of justice man is in a certain measure, at any rate, attempting to approach the divine ideal, and to say that a man was a worthy lawyer, that he was a priest in the temple of justice, honestly and fairly engaged in the administration of justice, is the highest eulogy that can be paid to any human being.

"It is one of the ironies of life that in literature, tradition and public sentiment, the lawyer has been pictured as greedy, self-seeking, avaricious, cunning; indulging in selfish subtleties for his own purpose. Anybody who has a slight acquaintance with the profession must know that the contrary is the case, that the very heart of the profession consists in its unselfishness, its devotion to ideals, its giving of himself for the service of others, and that there is no occupation in the world which touches humanity at so many different points as the profession of the law; that it is applied sociology; that there is no relation of life where the lawyer's view of the science of life does not become important. When a lawyer performs functions of this sort in society, he must be an idealist, and such a man was Judge Lovely.

"As has been intimated by Mr. French in the address to which we have just listened, Judge Lovely was not what in the parlance of the day is called a business lawyer. He was a business lawyer in the sense that every lawyer must be a business lawyer, because it is with the business of life, as I have said, that the lawyer has to do, but in the modern sense of commercialism Judge Lovely was not a business lawyer. His was not the character, his was not the disposition that could be made a mere panderer in the train of wealth or power. He was a business lawyer to the extent only that in this larger sense he took the business of mankind, the affairs of men and women and of society and whatever was best in the ideals of men, into his scheme of thought and action.

"But the thing I think that, perhaps more than anything else, attracted people to Judge Lovely was his humanity. We were made to feel at once that he was one of ourselves. He was not removed into an atmosphere of cold, impersonal intellectuality. His emotions we recognized as being ours. His strong likes and dislikes made him very human, and we loved him, and so he came nearer to men's hearts perhaps than he did to their intellects. When we come to die we shall be pleased if we can realize that in our lives we came near to men's hearts, and that, after all, is the attainment we should seek in life; to try to get nearer the hearts of men, nearer their emotions, nearer their best instincts. Judge Lovely was a highly attuned man; he could not take things indifferently; everything affected him one way or the other, and affected him deeply. He was fond of men's approval, and loved to think that his actions merited the approbation of his fellowmen; he was much cast down by criticism. The same impulses that led him to hope and wish for approval led him to shrink from criticism, and, in both his intense nature made him very often magnify the situation, which was not always to his peace of mind.

"I honored him in life, I regret him in death. He died at an untimely age. He was at an

age when his powers should have been at their very highest, but for many years before Judge Lovely died I often thought that he had not a long period of life before him. He seemed like a man who was burning himself out by the very intensity of his feelings and emotions, often upon matters more sluggish men would consider of slight importance; the very tenseness with which he pulled the cord of life I felt sure would result in its being snapped before the normal period was reached. He died when he had reached the very pinnacle of his profession. It is idle to moralize over these things, and I shall not attempt it, but lay my humble tribute of admiration and grief before the court in memory of my friend."

Hon. Henry A. Morgan then addressed the court and said:

"May it please your Honors:

"I apprehend that it is perhaps more difficult for me to express my severance and high regard for Judge Lovely than any person present, and perhaps, than any person outside of his immediate family. I desire to say a word at this time simply to pay tribute to a man whom I always admired.

I entered his office twenty-eight years ago, when Judge Lovely and my late brother, D. F. Morgan, constituted what was then considered one of the strong law firms of Minnesota. I learned to know him, and he said to his dying day that I was one of the few men that he had been associated with for any great length of time that he never had any friction with. In many ways the Judge was a man moved by strong impulses. He had as big a heart as ever grew in the human body.

"We never had a word during all of our twenty-eight years of association, simply because we knew each other, we respected each other, and acted together and acted for the interest of the clients and interest of the public. That seems to me to be the highest aim that an attorney can gain; to be honest, to be truthful, and to be fair; and he always had that. He could look straight through an individual, determine almost intuitively or instinctively whether a man was deceiving him or wanted to deceive somebody else.

"He was a man that didn't look for a retainer, didn't say you have got to lay down so much money here or so much money there. He sympathized with the unfortunate, and oftentimes to his financial loss.

"He was not a politician; he didn't have the faculty of making his way in politics. I don't think that his greatest achievements were on the bench. I think that he made his mark always as a trial lawyer. He was an upright judge, an intelligent judge, and hard worker; but it was harder for him to work on the bench, to write his opinions, than to try cases. The writing of opinions to be printed in the books and laid down as the law is one thing; to try a case and try it according to the facts and according to the interests of justice is another thing. As a trial lawyer I don't believe that he has had a peer in this state in many years. During the twenty-five or thirty years that I have known him, I admired him as a man. He was always honest, truthful, and had no patience with any person who undertook or attempted to dodge a fair question or dodge the truth.

"He was stricken at a time when he was in the last case he tried. I have a very strong recollection of having tried on the opposite side the next to the last case that he tried. He had others associated with him in that case, but he summed up the case magnificently, and it is idle to say that he got a verdict. When he had finished his argument in that case he was practically stricken, in my judgment. It wasn't a case that called forth any great amount of energy; it was fought and tried as earnest suits are tried, but he was very much exhausted. Later on, and within

a few days after that, he was stricken as your Honors well know, and never recovered his ability to transact business. I met him a number of times. I did visit him quite often immediately after he had the shock, but it became more painful each time, and I prefer and always have preferred to remember my friends as I knew them at their best, so I didn't see him very often in the later days of his illness.

"I only speak now for the purpose of expressing the sincere regret that I have, the pain that I feel, in the loss of our brother, Judge Lovely. Having gotten the greater share of my legal training from him, and knowing all of his moods and temper, of course there is nobody that can more truthfully, conscientiously and earnestly pay tribute to him than I can; and my sentiments are expressed in the resolutions that were adopted by our local bar association, of which he has been a member during all of the time he has lived in Albert Lea. In closing I want to say that memorial embodies my sincere, honest, conscientious feeling and disposition."

In behalf of the Court Associate Justice Brown then said:

"The court is in full accord with the sentiments expressed in your memorial, and with the eloquent tribute paid the life and character of Judge Lovely.

"It may be truthfully said of Judge Lovely that he was a lawyer of eminent ability with few, if any, superiors in the art of conducting litigation either before court or jury. His keen penetrating observation, comprehensive and quick conception, thorough knowledge of human nature, and complete command of the language, prepared him, in a degree approaching perfection, for those scenes of intellectual and forensic exertion in which the greater part of his life was spent. His natural genius always accompanied and never failed him in an emergency. As a practitioner he was direct and honest, aggressive and fearless, tactful, prompt in meeting unexpected situations with which the lawyer is often confronted, bold and insistent in the presentation of his client's cause, and feared an encounter with none of his brethren at the bar. He abhorred shams and sophistries, believed with Lord Broughan, that law is 'the staff of honesty and the shield of innocence,' and the guiding star of his life work was truth, almighty and earnest sympathy for persons in distress. One of the prominent features of his character was his earnest sympathy for person in distress. His whole life was embellished by commendable, yet unostentatious, acts of benevolence and kindness. This characteristic naturally made him averse to espousing the cause of the rich and powerful; though he entertained toward them no ill will, his kindly sympathetic nature made it to him an odious task to employ the powers of his eloquence against the defenseless and oppressed. His long record at the bar finds him, with few exceptions, on the side of those to whom his kindness of heart never permitted a deaf ear. Yet he did not regard himself as a mere agent of his client, whether rich or poor, to gain a verdict or favorable decision at all hazards, but with a knowledge of what was due to himself, and to his honorable profession, his efforts were tempered by considerations affecting his character as a man and lawyer, and also by considerations affecting the orderly administration of justice along the lines of truth and equality before the law. It may well be said of him, as he spoke, when a member of this court, of the late Senator Davis, 'He may not have been upon the right side of every cause he advocated, but he developed in his advocacy of every cause transparent candor, acknowledged respect for correct principles, and enforced his views in behalf of his contentions upon the plane of exalted sentiment, with genuine love for truth and sturdy hate of wrong.'

"He served as a member of this court with distinguished ability. In the discharge of his duties he was calm, deliberate, thorough, and his opinions, found in volumes. 79 to 96 of our

reports, furnish abundant testimony of his character and worth as a judge and jurist. He brought with him here no previous judicial experience, but was endowed by nature with a sound discriminating mind, possessed a wide knowledge of the fundamental rules and principles of law, which, together with his long experience at the bar, enabled him readily to adapt himself to his new surroundings. He believed that justice is the foundation of liberty. Not that liberty or freedom of action which justifies the doing of those things our inclinations may prompt, but that liberty which permits the doing of those things the law, enacted for all, sanctions and approves. And he always insisted, and on broad grounds, that it was best preserved and protected by an administration of the law on the basis of truth and substantial justice, wholly divorced from technicalities, or what the late Justice Mitchell would term lawyer's quibbles.'

"His elevation to this bench was a fitting tribute to his character and attainments. His retirement therefrom, not for unfitness or unfaithfulness to duty, an occasion of sincere regret to all his friends. "Your memorial will be spread upon the records of the court for today, there to remain in testimony of his high character as a citizen, lawyer and jurist."

Chief Justice Start then said:

"As a further tribute to the memory of Justice Lovely it is ordered that this court do now adjourn."