

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICE BROWN

On the afternoon of April 6, 1915, in the Court Room at the State Capitol, **HON. CHARLES M. START**, formerly Chief Justice of the Supreme Court, addressed the Court, then in session, and said:

May it please your Honors:

Your committee to prepare a memorial of Justice Philip E. Brown has discharged the duty, and the Secretary of the Minnesota State Bar Association and of the committee, Mr. Caldwell, will now read it with your permission.

CHESTER L. CALDWELL, Esq., then read the following

MEMORIAL

Philip E. Brown was born on the nineteenth day of June, 1856, in the town of Shullsburg, Lafayette County, Wisconsin, and was the son of George O. and Sarah (Robson) Brown. He died February 6, 1915.

He was graduated from the University of Wisconsin and received his degree of Bachelor of Law from the Albany College of Law in 1881. The following year he began the practice of law at Luverne, Minnesota. In 1891 he was appointed judge of the Thirteenth Judicial District. He was elected to that office in 1892 and re-elected in 1898 and 1904, which position he filled with marked ability until his election as Associate Justice of this court in November. He assumed the duties of that office in January, 1912, and a member of this court until his death.

He married Ellen Ford in 1882, who survives him.

Judge Brown was a plain man, retiring, unassuming and never sought public attention or applause. He was learned in the law, honest and conscientious both as a lawyer and a jurist. No man ever was more industrious or painstaking in his work. He never slighted any task. His days were spent in arduous and conscientious labor in the performance of his duties. He was possessed of strong common sense; a natural love for justice; always courteous and considerate; a patient and candid listener; firm and fearless in the discharge of his duties, both as a lawyer and a judge. He was a pronounced aid to both the Bench and Bar and his death is an irreparable loss to both.

His character in private life was as unsullied as was his public life.

While records of court endure, they will be a memorial to industry, ability, integrity and sense of justice.

Our deepest sympathy is with his family and friends—their loss is our loss.

We move that this brief expression of our sincere regard be spread upon the records of this court.

Charles M. Start, Chairman.

John G. Williams,
Lorin Oray
David F. Simpson,
Alexander L. Jaynes,
J. H. Town,
Chester L. Caldwell,
Committee.

HON. CHARLES M. START then addressed the Court and said:

I desire briefly to express my appreciation of the work and worth of Mr. Justice Brown, and to add a word of personal tribute to memory.

Our acquaintance began while he was judge of the Thirteenth Judicial District, and the longer I knew him the greater was my esteem and affection for him. For some years it was a part of my duties, in connection with my associates on this bench, to make a critical study of his rulings and decisions in the district court which were brought to this court for review. The Justices of the Supreme Court have a good opportunity, when studying appeal records, to determine the ability and character of a district judge. If he is able, fearless, fair and true, controlled by no motive except a sincere purpose to do justice without fear or favor, giving to all their legal rights as he understands them, the record will show it. If he be the reverse of his, a trimmer, shaping his rulings and decisions to win popular applause, or to avoid a reversal, the record will also show it. The truth is that, under our system of reporting trials in the district court, an appeal record is, to an appellate judge, a mirror unerringly reflecting the mental and moral characteristics of the trial judge, Minnesota has been and is exceptionally fortunate in the character of her district judges, and it would be invidious to say that Justice Brown was the ablest and best of them all. But my deliberate opinion, based upon the appeal records of this court and my personal knowledge, is that Minnesota has never had a better or fairer judge Philip E. Brown. His opinions in this court show judicial ability of a high order, laborious and conscientious work, and a firm grasp of the pivotal facts and controlling principles of the case in and they also show that he was possessed of a keen sense of justice which no quibbling of counsel could obscure. His knowledge of constitutional law is shown in the opinion of the court, written by him, in the case of *State ex rel. v. City of Mankato*, 117 Minn. 458. The question in that case was the constitutionality of commission form of government. The opinion is a masterly one and entitles Justice Brown to rank with the great Justices of this court who have passed, not away, but on to a higher and better life. In his judicial work he was dominated by a sense of duty which would not permit him to spare himself although suffering from physical ill, for he was responsive to every call of duty and resolute in his devotion to right. He was an unassuming, heart-true, lovable man, of positive convictions, great ability, pure character, and high ideals. He was a loyal and loving husband and father, a sincere friend, tender and true, and a brave chivalrous gentleman, worthy of Brutus' eulogy:

"His life was gentle; and the elements
So mix'd in him that Nature might stand up
And say to all the world: 'This was a man.' "

HON. J. L. WASHBURN then addressed the Court and said:

May it please the Court:

In the mighty conflict now pending in the very heart of the advanced civilization of the world, the intellect, the learning and the inventive genius of educated man are all brought into full activity to the end that the greatest number of men may be destroyed in the shortest time possible.

Brave men, good citizens, of the best blood of the warring nations have been destroyed by the million in a few months, and their places in the serried ranks of the combatants filled by others of the same character who carry forward the contest of battle and the work of carnage with equal courage and ferocity.

Men are scored only by numbers en masse, and they share in common and without identification the shallow burial trenches the heroic dead.

The individual is ignored only as he is a part of a great fighting machine. Losses are counted by numbers and if only a few hundred or few thousand are slain it is given out that the losses were slight. Only the effectiveness and fortunes of aggregations receive interested attention from the recorders and readers of the conflicts upon hundreds of miles of battle lines.

Nevertheless the fact remains that the power, the value, the effectiveness and morale of the contending armies all depend upon the mettle of the individuals. The men who fight and die side by side in such conflicts have known the worth of one another.

It is our province in the peaceful struggle of life to know even more thoroughly one another individually, to measure one another's worth, to bear an individual part in the upward striving for social development, and to mark with sorrow the calling of an individual comrade.

It may not be possible for surviving soldiers or commanders to pause in the conflict to give extended attention to the dead, and too often but little care to the wounded, but we may pause in our work, however strenuous it may be, to consider the life and character of those to whom the final summons has come, and to do deserved honor to their memory.

It is both fitting and beneficial that we should do so. It is fitting that a good citizen should be remembered and honored and it beneficial to the living to recount the virtues of the noble dead.

When Philip E. Brown was touched by the wand of Death he was occupying a place in the first rank of distinguished citizens of this commonwealth.

He was endowed with a mind of power and discrimination. A liberal preparation, followed by his years of careful, conscientious application, gave him in his maturity superior strength as a lawyer and jurist.

Judge Brown was born in Lafayette County in Southern Wisconsin, June 19, 1856. He was educated at the University of Wisconsin, and graduated from the Albany, New York, Law School. He began the practice of law at Darlington, the county seat of his native county but after two years settled in Luverne, Minnesota, where he practiced from 1882 to 1891, and where he continued to reside until his death. In 1891 he became judge of the Thirteenth Judicial District of this state and continued in that position until the close of 1910, having that year been elected to the bench of this Court of which he was an honored and most efficient member until his death.

It is to be noticed that Judge Brown's career has run along a definite line. He was not diverted from giving his undivided efforts to the pursuit of the law as practitioner and as a jurist. There was that confidence in the accuracy of his judgment and justice of his conclusions that

only such a course and such habits can inspire.

I met him for the first time in the early eighties. I think he had not long been at Luverne. I had heard of him, for that he was a lawyer who knew how to work and who was an adversary to be feared soon became known.

We first met at an encampment of the old Second Regiment of the Minnesota National Guard, and I deem it an honor to myself to say that I believe we always thereafter felt that we were friends, although after my removal to Duluth we lived in extreme opposite parts in the State, and did not often meet. I was glad to see him elevated to this bench, for he was fit.

My brethren of the Northern part of the State and especially the members of the Bar Association of the Eleventh Judicial District, whose guest he was on several occasions acquired a great fondness for him and a high appreciation of his judicial abilities and his personal character.

It is, as their representative that I assume to occupy any time or place in these memorial exercises.

At the risk of repetition of what others may say, I recount that a discriminating sense of justice; a keen judgment of the law; modesty of assertion; unlimited courage; a genial and generous disposition and chivalrous spirit; a high sense of personal honor and an elevated standard of duty as a citizen, all crowned with habits of industry and sobriety, were the dominant characteristics and virtues of distinguished citizen.

The tug at the sleeve that such a life makes tends to stimulate his companions who still abide to emulate his virtues and. when the summons comes to them, to courageously cross the threshold into the unknown, but let us hope not unknowable, sequence of human life and human effort.

HON. ROYAL A. STONE then addressed the Court and said:

May it please the Court:

The inadequacy of words on this occasion is as painful as it is obvious. Our hearts are full, but because the content is grief for a departed friend, brother, leader, we cannot lighten the burden.

But that is not our purpose here. We are met at the bar of this Court to bear witness as to the life and character, and more especially the judicial life and character, of one who was an Associate of your Honors upon this Bench.

For many years prior to his coming to this Court, he was a judge of the Thirteenth Judicial District. As district judge and as Associate Justice of this Court, he made for himself an enviable reputation. He became unusually well known, personally, to the Bar of Minnesota.

His place among us has been vacated by Death, and, as is always the case, we are thereby, for the first time, brought to an adequate appreciation of his great merits as a man, his true value as a citizen, and his splended service as a judge.

"We are to say what we take the law to be. If we do not speak our real opinion, we prevaricate with God and our own consciences."

These words of Lord Mansfield furnish a most fitting text for any dissertation on the life of Philip E. Brown, and especially his work as a jurist, as an expounder of the law.

"We are to say what we take the law to be."

How simple, how direct, how courageous, a statement is that of the duty of a judge!
And how simply, how directly, how courageously did Philip E. Brown perform that duty.

"To say what we take the law to be,"—and to that task Judge Brown applied a persevering diligence, a profound learning, a ripe experience and a balanced judgment.

"If we do not speak our real opinion, we prevaricate with God and our own consciences."

There we have, in the language of a judge of a bygone century, motif of the judicial work, aye, of the very life of him, in tender memory, in loving respect for whom we are now gathered at the bar of the Court from which so recently the hand of Death has snatched him.

The fearless and confident expression of his "*real* opinion" was Judge Brown's most outstanding trait.

Careful in judgement, seeking all proper aids, applying carefully the most rigid tests, he had an unusually accurate process of reasoning.

Not opinionated, he yet had that confidence in his own conclusions which such mental processes ought to beget in their fortunate possessor.

The frankness and confidence with which he expressed his deliberate judgment was equalled only by the open-mindedness with which he listened to and weighed the contrary view and the readiness with which he would detect, acknowledge and remedy his own error, if any.

And when finally his conclusion was reached—his "*real* opinion"—it was expressed without fear; expressed confidently because without fear of "prevarication with God" or "his own conscience."

What a horror he had of such prevarication—of intellectual dishonesty!

If all that can be said of a deceased lawyer, especially if he be a judge, is that he was morally honest, better far that his brethren not attempt to memorialize such relatively scant virtue.

But if, in addition to moral rectitude, there is an uncompromising upstanding and outstanding intellectual cleanness and honesty, we have a man indeed.

Judge Brown was as much an exemplar of intellectual as of moral honesty.

Quibbles, indirections, uncertainties, evasions, were all abhorrent to him, whether they pertained to considerations of ethics or of logic]

Justice was ever his goal; to be right his constant aim.

These are days of progressivism. So have been all days since creation. So will be all days to the end of time. It must be so or the philosophy of civilization and the tenets of Christianity are alike untenable.

Human conduct is ruled by law. Therefore, as humanity is constantly progressive, so must law be constantly progressive. Static or retrograde law cannot achieve justice.

How accurate, how broad, how human, was Judge Brown's conception of this truth.

If ever there was a sanely progressive expounder of the law, it was Judge Brown. With wonderful clarity of vision he discriminated between precedents. He properly and courageously discarded those, and only those, that had been rendered *passé* because the changes wrought by time had deprived them of all propriety, if not of all possibility, of application to modern conditions.

Appreciating to the full the undying and unchanging attributes of truth, of justice in the abstract, he yet realized that justice in the "myriad of single instances," the controversies that arise between man and man, must be found and expressed, not in the records and rules of a dead past, but in the ideals and terms of contemporaneous humanity.

As district judge, as Associate Judge of this Court, his life was preeminently one of

service, to his community and the state.

His "community" the Thirteenth Judicial District, there, where he had his home, where his "daily walk and conversation" were known of all, is the place to find the best record of Judge Brown's great qualities of mind and heart and soul. It is in the high opinion, the great and affectionate regard of lawyer and layman, of those who have known him longest and best.

Some years ago, it was my good fortune to attend a banquet tendered to Judge Brown at Windom, (or was it Worthington), by the Bar of the Thirteenth District. The occasion was Judge Brown's return to active service after a considerable absence, which had been enforced by his ill-health. Never has there been a more genuine expression of good will, of confidence, of admiration; aye, of affection, for a public man.

Our modern citizenry is ready enough to proclaim its admiration for a political servant for the time being in its good favor. It is very slow to give expression to any appreciation of the work of a judge, however long continued and distinguished his services may have been.

But on that occasion the Bar of the Thirteenth District broke down the usual reserve and spoke what was in their minds, as to their regard for judge Brown. So sincere, so affectionate was their greeting, so genuine their pleasure at having him back on the Bench and in his accustomed place, that it seemed to be a large family festival held to celebrate the return, after a long absence of the *paterfamilias*.

It was an occasion unique in the experience of the judiciary of this State, and showed, in an unusually convincing manner, the high regard in which Judge Brown was held by his professional "home folks," and their opinion in such matters is always the best.

The illness which at that time had temporarily removed him from his judicial labors, never entirely left him. He was urged to retire; but, even though he might have saved himself by leaving the Bench, he refused to do so.

He kept on, and finally his life was a forfeit to his work, a sacrifice on the altar of his duty as a citizen and a judge of this great Commonwealth.

His loyalty to his ideals of judicial duty kept him at his labors long after physical affliction justified, and his own circumstances permitted, his retirement. The ills of the flesh availed not against his courageous soul. But they finally overwhelmed his body, and struck him down at the post from whence they could not drive him.

Thus ended a mortal career in which there was realized a high ideal of service.

Truly this life was a living "epistle * * * known and read of all men." In his life, but still more in his untimely death, there is that which should inspire all, especially the members of his profession, to that life of unselfish service, by which only its highest purposes can be achieved, its greatest privileges enjoyed, and its richest awards attained.

HON. ALEXANDER I. JAYNES then addressed the Court and said:

It is with a strong sense of my own inability, but with a feeling of obligation that I rise here to add a few words to what has already been said about Justice Brown.

I knew Judge Brown probably as well as any man. To me he was not only a friend, but almost a father, and all that word means with its kindly love and sympathy. When I was a boy he played with me; in my college days he did much to direct my course and inspire my energy. Later in the practice of law in his court in a kindly manner he corrected my errors and endeavored to inspire in me a sense of the nobility and dignity of our profession. I say this, for mine was the common experience of all young men who began the practice of law before him.

He inspired all of us to do the things that were right. We knew that his mind quickly detected the false and arrived unerringly at the truth. To him we always went for advice, whatever our difficulties—love, law or politics. It was as freely given as it was freely sought. He knew and understood young men. He loved young men. He was always young. Our ambitious dreams he could make his own—our faults overlook—our virtues encourage. He conferred upon us all the same consideration and interest that he would have given to a son. All of us who grew up in the Thirteenth Judicial District loved him and he loved us; nothing more can we say. Why then at this moment when for the last time we give public expression to our common loss should our hearts be sad, but rather, in the language of one of England's great poets, we say:

"Enough of sorrow, wreck and blight;
Think rather of those moments bright;
When to the consciousness of right his course was true;
When wisdom prospered in his sight and virtue grew."

HARRISON L. SCHMITT, Esq., President of the Minnesota State Bar Association, then addressed the Court and said:

May it please the Court:

We are here today to commemorate and perpetuate upon the permanent records of this court, the name and fame of a brother lawyer who was at the time of his death an honored member of this the court in the state and who, through his uniform kindness, his great ability and sterling honesty, had become very dear to us all.

I cannot add to what has already been said by members of the Bar of Minnesota in honor of Justice Brown. I want to endorse every word from the bottom of my heart. No human mind frame or human voice express any sentiment that Justice Brown did not deserve. However, in behalf of the Minnesota State Bar Association, of which Justice Brown was a valued and active member, I feel it my duty to call the attention of the members of our Association and members of the Bar of Minnesota in general to a few things.

For years every lawyer here present, in fact every lawyer in the state, having knowledge of the enormous amount of work members of this court have been compelled to do in order that unjust delays in the meting-out of justice might be avoided, has known that no human being could continue to do that work for any considerable length of time without ruining his health, and paving the way to an early grave.

For years, and notably during the 1914 campaign, this association endeavored to bring home to the voters of the state, knowledge of the fact that our Supreme Court Judges were being shamefully overworked and that it was imperative to increase the membership of, the Court, to secure relief.

But as usual, the voters of the state, on account of lack of knowledge of the facts and general indifference, said "No, the Court is keeping up the work, why add to the expense of the taxpayers by increasing the number of judges?" Members of the Bar generally have not done their duty as citizens, in that they have not used diligence in informing their friends upon this important matter.

The result is that Justice Brown is but another victim who has been sacrificed upon the altar of public duty, and we lawyers must bear the stigma of having contributed to this our irreparable loss. Justice Brown was always under all circumstances, while holding public office,

a public servant in the truest sense. So deep rooted was his sense of public duty, that rather than permit the work of the Court to fall behind, he labored beyond all human endurance.

We have been and are requiring our Supreme Court Justices and Commissioners to hear three appeals a day, five days every week, almost the year round, in order that the lawyers and litigants of this state, and of many other states, might not be denied speedy justice. Justice Brown assumed this burden cheerfully and went to his grave with a smile on his face, and nothing but love in his heart for his fellows.

In view of all this, is it not our solemn duty to see to it that these conditions are speedily changed? We can and must do it. We must do our utmost in this regard if we would purge ourselves of blame for future conditions Justice Brown does not need our praise. His name and fame will continue to shine as a beacon light showing us and our followers the way to glory and success. If his untimely death shall wake us up and shall show us our responsibility to such an extent that there will be no cause for blaming ourselves in the future for such conditions, we may at least feel that our sins of the past have been condoned.

Let us therefore take the lesson home to' our hearts and remembering that our departed brother labored unceasingly in the public service, and thereby crowned his career with everlasting pillars of honor, try to profit by his example.

ASSOCIATE JUSTICE BUNN responded on behalf of the Court:

Gentlemen of the Bar:

You do well to commemorate the life and services of Philip E. Brown. Minnesota has before mourned great judges but I doubt very much if she ever had greater cause. The elements were so mixed in him that it is no disparagement of either living or dead to say that Philip E. Brown was one of the greatest judges that Minnesota ever had. He was a man with a passion to be right and wonderful capacity for seeing the right. He possessed a keen and sane wholesome mind, thoroughly equipped. He was a tremendous and tireless worker. He met every question squarely. He never dodged. He was no temporizer or compromiser. Himself a man of broad and human views, he had little sympathy with technicality and none at all with anything that approached dishonesty. No case was ever presented to this court that failed to receive the most painstaking scrutiny on his part, and it mattered not how small the amount involved was. He never wrote an opinion without exhausting the law on the subject in his researches. He was absolutely fearless. Never courted popularity with the people or with the Bar. Never thinking for one moment of the possible effect on his own future of an unpopular decision he nevertheless stood exceedingly high in public esteem. I feel the personal loss deeply. We were very close to each other during the last few years. He was a loyal friend, a lovable companion and a big-hearted man.

CHIEF JUSTICE BROWN also responded on behalf of the Court and said:

The memorial presented is a fitting tribute to the character and worth of a just and upright judge. It may be truthfully said that no member of any court ever entered upon his judicial duties with a firmer or more determined purpose faithfully to discharge every duty imposed upon him, even to minute details, than the late Justice Philip E. Brown; no member of any court ever devoted himself more laboriously and earnestly in the examination of every cause presented for

decision, and the labor and research disclosed by the opinions written by him furnish an illustration of the time and attention given to other causes. He neglected no duty, was faithful to every trust and pre-eminently qualified for judicial work. He was not in robust health during his term of service, yet he labored continuously from early morn until late at night, striving to master the records and briefs before the Court, and uniformly come to a clear understanding of every cause presented. By his constant application he obstructed the healing qualities of nature and undermined his strength, gradually weakening his vital forces until the end of life's journey came without warning. He was a martyr to his fidelity.

Your memorial will be entered in the records of the court, there, to remain in perpetual remembrance of a member of this court of whom it may well be said, "Well done, thou good and faithful servant."

And as a further tribute to his memory it is ordered that the court; do now stand adjourned.