

PROCEEDINGS

IN MEMORY OF

CHIEF JUSTICE McMILLAN.

On the afternoon of Thursday, November 15, 1897, in the Supreme Court room at the state capital, Hon. George Brooks Young, as chairman of a committee of the Bar of the state, presented to the Supreme Court, then in session, the following memorial of Chief Justice McMillan, and moved that it be entered upon the records of the court.

MEMORIAL.

To the Honorable the Supreme Court of the State of Minnesota:

The members of the Bar of the State respectfully offer to the Court, this memorial of their respect and affection for the Honorable Samuel J. R. McMillan, who for many years filled the offices of Associate Justice and Chief Justice of the Court with an integrity, learning and ability that were never brought into question, and with a kindly courtesy which has endeared his memory to all who knew him.

As a District Judge, and as Associate Chief Justice of this Court, and as a Senator of the United States for twelve years, he illustrated in those various stations all the virtues of a just judge, of a wise and patriotic statesman, and of a sincere and consistent Christian. In his death our profession has lost a most distinguished member, and the community in which he lived, and our State which he served so long and so well, one of their most eminent and upright and beloved citizens.

In our own deep sorrow for the death of our beloved friend and his family our sincere condolence in their great bereavement.

Judge Young then addressed the court as follows:

"May it please the Court:

"It is now nearly twenty-three years since Chief Justice McMillan-presided in this court. It is more than ten years since he retired from public life. Of the present members of the Bar many—perhaps most—never argued before him in this court. With them his judicial reputation rests on his reported opinions and on the report of the elder members of the profession. Even to them he needs no eulogy, and the memorial in which they have joined, and which it is my high, privilege to present to the court, expresses the respect and affection in which Judge McMillan was held by all the members of the Bar. But as one of those who practiced before him and was for a brief time his associate in his judicial duties, and who was honored with his friendship, I desire to add a few words touching his life and character as they appeared to those who knew him best.

"Samuel James Renwick McMillan came of Scottish ancestry, and was born in Brownsville, Pennsylvania, February 22, 1826. He received a liberal education, and was graduated from Western University of Pennsylvania in 1846. Having studied law, he was admitted to practice in 1849. He removed to the then territory of Minnesota, in 1852, settling at Stillwater. Upon the admission of Minnesota as a state, he was chosen Judge of the District

Court of the First Judicial District. In that office, which he held till 1864, he gained an enviable reputation. I have been told by those whose practice in our courts covered that now remote period (among others by the late Gordon E. Cole, than whose opinion on this point none could be higher) that the state never had his superior as a district judge. In 1864, on the resignation of Judges Atwater and Flandrau from the bench of this court, he was one of the two associate justices appointed to succeed them. The appointment met with universal approval, and in 1864, and again in 1871, he was elected to the same office. In April, 1874, on the resignation of Chief Justice Ripley, he was appointed Chief Justice of this Court, and again the choice of the Governor was approved by the people, and in November, 1874, he was chosen Chief Justice for the constitutional term. At the next session of the Legislature he was elected a Senator from Minnesota in the Congress of the United States, and in March, 1875, resigned the office of Chief Justice. In 1881 he was again elected Senator, and continued such until March, 1887. For many years he was a trustee of the State Reform School. From March, 1887, until the illness which resulted in his death he was engaged in the practice of the law in this city.

"The opinions of Judge McMillan in this court begin in Volume 9 and end in Volume 21 of the Minnesota Reports. They are characterized by ample learning, a clear comprehension of the questions involved, a firm grasp of legal principles, a terse and lucid expression. They usually go to the heart of the matter, to the real merits of the case, unless the presentation of it made this impossible. There is no parade of learning or acuteness, no attempt to appear wiser than his predecessors, no yielding to the temptation to decide questions not really involved—to decide too much. But there is no weakness, no paltering, no attempt to evade questions that called for decision. They are replete with that judicial wisdom which is better than mere legal learning or dialectic skill. They exhibit him as the fearless, wise, clear-sighted, prudent and careful judge.

"As a senator of the United States he exhibited the same high qualities which characterized him in the judicial office. With strong political convictions and local attachments, his patriotism and statesmanship were yet broad enough to embrace the whole country and all its citizens. He was not and never aimed to be a party leader. He early won and always retained the respect and confidence of his fellow senators without regard to party; he was entrusted with the chairmanship of important committees, and the charge of important legislation, and proved himself a wise, judicious and faithful senator.

"It was my own great good fortune to enjoy a friendship and intimacy with Judge McMillan, which, beginning in an official association early in 1874, continued until his death. No one could know him well without recognizing that his was a character of the highest type. The man was more than the jurist or the statesman. He was free from all self-seeking. While not careless of the approval of his fellow men, it was the approval that follows worthy actions not that which is sought after, that he valued. His disposition was amiable, modest and retiring. He had a kindliness of manner as gracious as it was sincere, a humility as genuine as unobtrusive, a smile that was a benediction, and a heart open as day to melting charity.

"Yet he would be much mistaken who should have inferred from this amiability of disposition that Judge McMillan was a man of weak character or timid spirit. He had the unflinching courage, the unbending and uncompromising devotion to duty of those heroic Scottish Covenantors whose blood flowed in his veins and whose faith he had inherited. Over his grave as over that of John Knox might it be said: "There lies one that never feared the face of man. To him the judgments of men were as nothing in view of the eternal and immutable decrees on which, as he believed, the fate of all mankind depends. Except for their outward

austerity, their uncouthness and their extravagances, he was a Puritan such as Macaulay depicts them in his famous essay on Milton. Had his lot been cast in the seventeenth instead of the nineteenth century, he might well have been among those

“ ‘Who sat with Bibles open around the Council board
And answered a King's missive with a stern—Thus saith the Lord.’

"And he would, I believe, have sealed his faith with his blood as; fearlessly as any in the roll of martyrs commemorated by the historic tablet in the old Greyfriars Churchyard in Edinburgh—a roll which ends with a name which he himself bore—James Renwick.

"And with their rock-ribbed strength of character, he had a sweetness that was all his own. Himself living as ever in his Great Taskmaster's eye, no man was less disposed than he to sit in judgment on the frailty or the failings of others.

"In placing and maintaining such a man in the highest offices for nearly thirty years, our state, while it honored him, honored itself yet more. His life was a daily teaching of every public and private virtue. He has left to the profession and the public a shining example of great merit crowned by the unsolicited bestowal of great civic rewards; and to his family and his intimates the blessed memory of the just, and, in their deep affliction, the solace of those celestial hopes that spring from the grave of the upright man."

Hon. Thomas Wilson then addressed the court as follows:

"It was my good fortune to become acquainted with Judge McMillan when we were both young men. Our acquaintance soon ripened intimate, confidential friendship that lasted unclouded until his death. That friendship has been one of the great pleasures of my life, for he was a true friend and no ordinary man.

"He came to Minnesota while it was a territory, and he practiced until he took his place on the bench, when the state admitted into the Union. The business of the lawyer at that was neither abundant nor important. After his first election he remained continuously on the bench of either the District or the Supreme Court until he was elected to the United States Senate, in 1875. After leaving the Senate he never was very actively engaged in practice.

"I shall not say aught of him beyond the plain, simple truth. If he hears what we say to-day, that would please him best. There have been and are in our profession many who would outrank him, either as a jurist or as an advocate. But he was an able lawyer. In natural ability, learning and sound judgment, he deservedly stood very high. He was, if I may be permitted the expression, healthy,—without isms, or hobbies, or any deforming idiosyncrasies. As a judge he was not the equal of some of the great jurists of our country – few attain to their stature—but he was in every respect far mediocrity. He was not only an able, learned and sagacious lawyer, but he had in a notable degree those other attributes and qualities that are equally essential to a good judge. Every party, before him, had a courteous, attentive, patient hearing. No matter how trifling the sum involved, he never consented to a decision without careful investigation and consideration of every question of fact that could affect the result. Every case, to him, was important. While his sympathies were always with the poor, the needy and the defenseless, he was too good and too just a judge to be a respecter of persons, well knowing that justice, irrespective of class or condition, is the only safeguard of the rights and liberties of the citizen.

He had a feeling of contempt for either the parasite or the demagogue, and for all those 'miserable aims that end in self.' I verily believe—and no one had a better opportunity to observe than I—that on the bench the question never occurred to him whether any act or decision of his would please or displease any person or class or how it might affect himself. To my mind man is not endowed with a nobler attribute than courage. The Romans, not inappropriately styled it virtue. That virtue Judge McMillan possessed in a marked degree. While he was gentle, mild-mannered and devoid of demagogism, he was absolutely fearless in the performance of his duties. He did no act to be seen of men. Whatever he deemed it his duty to do he did unostentatiously, but unhesitatingly and fearlessly. He was always willing to be shown his error and took pleasure in admitting and correcting it, which is a degree of magnanimity that no essentially little mind possesses.

"He was a Republican without qualification or mental reservation, accepting the most extreme doctrines of the party, but he was not in any sense a politician. He did not know how, nor had he any inclination, to resort even to those arts and methods that are allowable to a man who seeks popular favor. His success in obtaining judicial preferment was due solely to his admitted fitness and his high character. Until the session of the legislature at which he was chosen United States Senator was convened, I do not remember that he was spoken of as a candidate, and I think I know that he had neither hope nor thought of his election, until it appeared probable that neither of the candidates who were actively seeking the place could be elected. He owed his election at that time to two influences—the confidence of the members of the legislature in his integrity, and the confidence of the politicians that he did not understand, and, even if he did, would not resort to, the methods and practices which are often found to be necessary for political success, and that, therefore, he would be the more easily displaced. As the sequel showed, both judged correctly, for he left the Senate with a well earned reputation of having been a conscientious, industrious and able senator, and without any knowledge of practical politics.

"He was in no sense a man of the world or a money-getter. He was in all his doings conscientious, single-minded and artless, and as pure as a girl in thought, word and act with his friends and intimate acquaintances he was a genial, frank, jovial companion. A Presbyterian from his youth up, he accepted the creed and doctrine of that church and, with an unfaltering faith, such as in these times of agnosticism is very rare, he every day modestly and unassumingly did that which was right as God gave him to see the right.

"I never knew a man of whom it could be said more truthfully that he lived up to the admonition of those beautiful lines of Thanatopsis:

" 'So live, that when thy summons comes to join
The innumerable caravan which moves
To that mysterious realm, where each shall take
His chamber in the silent halls of death,
Thou go not, like the quarry-slave at night,
Scourged to his dungeon, but, sustained and soothed
By an unfaltering trust, approach thy grave
Like one who wraps the drapery of his couch
About him, and lies down to pleasant dreams.'

"The influence of our departed brother is not inurned with his body, for 'example acquires

authority when it speaks from the grave.' Until the last record is made up, none can tell how many have been made better and braver and truer men by his example,"

Godfrey Siegenthaler, Esq., then addressed the court as follows:

"May it please the Court:

"In the death of our lamented friend and brother, Judge McMillan, one of the highest, noblest, purest, most useful, and at the same time most unpretentious, careers has been closed. That the praise I have bestowed and shall bestow upon him here may not seem at random, or unadvised, I will state that mine has been the honor and privilege to know him as a friend for more than thirty-two years, and that, during this period, I have had ample opportunity to form a fair basis for my estimate of his life and character.

"To have seen him in his daily walk of life was to respect him. To have known him more or less intimately was to love him. To have observed with what fidelity, integrity, and signal ability he discharged the duties of high official stations was to admire him. And to have heard him while Supreme Court Judge, Chief Justice, United States Senator or Lawyer, in the House of God, offer up to the Almighty a simple fervent prayer, of thanks for blessings received and for the welfare of mankind, was to arouse, in the infidel as well as the Christian, a feeling of reverence, not only for him individually, but also for the religion of which he was generally admitted to have been a devout, consistent and exemplary follower.

"To show what was thought of his exemplary Christian conduct, even among the irreligious, I will relate an incident which came to my notice. While he was yet an Associate Justice of the Supreme Court in the later sixties, I happened one day to meet several non-Christians engaged in discussing the doings of a certain church member who had not lived up to his religious professions. One of them, after having denounced this man as a hypocrite and a disgrace to his church, said: 'But there's Judge McMillan. If every church member were like him,' I'd like to become one myself. He is an honor, to any church.' To this compliment the rest of the party assented.

"Like all mortals, he was sometimes criticized; but the critics soon discovered that, while they had been looking at the matter in question in the light of the moon, he had gazed at and acted upon it in the light of the sun.

"To those who, like myself, were admitted to the bar of the Supreme Court while he was one of its able and honored justices, to young practitioners at the bar and to young men generally with whom he came in contact, he was especially endeared, because of the wise counsel and kindly encouragement which he had given them, and the continuous interest he took in their welfare. Indeed one of the principal reasons for his great and surprising popularity during his long official career was his kindly and sympathetic treatment of all persons, high or low, rich or poor, whom he met, so that when they left him, it was with the conviction that he was their friend.

"Doubtless you have all seen and admired last summer at our beautiful Como Park, the majestic yet humble Victoria Regina, its sturdy stem, its large circular leaves, and a blossom—a lovely blossom—resting upon the water as if, in sheer modesty, it sought to hide itself beneath the surface. This gem of the floral creation is, in some respects, symbolical of the life of our departed brother. In its harmonious structure, we behold his moral grandeur and Christian meekness; in, its sturdy stem, his tried ability; in the huge circular leaves, his great and general

usefulness; in the all-permeating sap, his integrity, and in the blossom, his rare and exemplary piety. In the poetic language (slightly altered by me) of an old English author, I say of our departed brother: He was a judge—•

"A man so learned,
So full of equity, so noble, so notable;
In the process of his life so innocent;
In the manage of his office so incorrupt;
In the passages of state so wise; in
Affection of his country so religious.
In all his services to the state so
Fortunate and exploring, as envy
Itself cannot accuse, or malice vitiate.

"He is gone to his long home! But, as the waters of the mighty Mississippi, flowing by this city toward the Gulf of Mexico, are recalled by the voice of nature to bedew, to besprinkle, and to nourish the famished soil, so memory will bring back to us the kindly features of our lamented friend to influence our hearts for higher and nobler aims and for simple, blameless lives"

Hon. Henry J. Horn then addressed the court as follows:

"My acquaintance with the late Judge and Senator McMillan began in 1855,—the time of my first residence in Minnesota. I was intimate with him down to the time of his death.

"I unreservedly concur in the memorial and expressions of the bar as to his worth and ability as a lawyer, judge and senator, and in the approbation and esteem entertained for him by the citizens of the State of Minnesota.

"I found him in 1855 a hard-working, conscientious and indefatigable member of our profession. He soon acquired a position at the bar which won him judicial honors, first as Judge of the District Court, and at last as Chief Justice of the Supreme Court,—the highest judicial position in this state,—leaving his judicial office only to accept the exalted position, tendered to him without solicitation, of United States Senator.

His long official career has ever been characterized by an honorable, able, exacting and successful discharge of his public duties without blemish, or even suspicion. He was a modest and unpretending man throughout, though always firm and decided in the performance of duty. In his elevation to high judicial and civic positions he never abated the observance of those duties, private or public, which he owed as a citizen, or as a friend, neighbor or Christian.

"His career begins prior to the commencement of our statehood, and he belongs to that class whose characters, acts and examples are intimately connected with the upbuilding of the state, and have become part of its history.

"The Bar of Minnesota is also privileged to claim such men as Judge McMillan as examples of what a true lawyer should be, and the honor that may await him in the end.

"While we, his professional brethren, deplore his loss, and sympathize with his family and friends in their sad bereavement, it is a source of satisfaction that his illustrious name and character have conferred signal honor on our profession."

Remarks were made also by Hon. John B. Sanborn, at the conclusion of which the following responses to the addresses of the bar were made in behalf of the court.

ASSOCIATE JUSTICE COLLINS then said:

"I deem it a privilege to join in the tributes of love and respect paid on this occasion to the memory of one who, for many years, held high judicial position in this state, first as a District Judge, then as an Associate Justice, and finally as Chief Justice of the Supreme Court; and who later, and for two terms of six years each, filled the responsible position of United States Senator. It is well known that, for a long time in our early history, Judge McMillan was a very prominent and distinguished citizen holding these high judicial and political positions, which he filled with great credit to himself and to the perfect satisfaction of the people who honored him, and to whose service he gave the best years of his life. So zealous was he in the proper discharge of his official duties that he paid little or no attention to private business, and, while others of his profession availed themselves of the many opportunities in the early days to accumulate wealth, he lived and died in very moderate circumstances. I first knew him in the spring of 1862 when he, as Judge of the First District, held court at Hastings. My acquaintance was limited, and I am not qualified to speak of his career in that position. I can only say that he had the reputation of being an exceedingly careful and painstaking officer. His work while sitting as a member of this court is found in 13 volumes of our reports and fairly illustrates the character and ability of the man. Every decision tells of his loyalty to the work in hand, of his determination to be thorough in his investigation, and of his fidelity to well settled principles of our jurisprudence.

"As a member of the legislature of the 1881 session, I had the pleasure of voting for him when he was re-elected to the Senate. It was a place which was never so satisfactory to him as a position on the bench. While we cannot say that he was a leader at Washington, all know that he was held in great esteem by his associates and occupied an enviable place in their councils.

"Judge McMillan was an excellent example of noble manhood. He was unassuming upon all occasions, and perhaps too much so for his own welfare. He was upright in every sense of the word. His faithfulness in public life was never questioned, and as a private citizen he was most loving and lovable. His career was not one to attract widespread attention, but it commends itself to us as a striking example of what may be accomplished by a man of dignified modesty and true worth. His was the life of a Christian gentleman, and when the hand of death, after nearly forty years of active life in this state, was laid upon his worn-out body, not one man within our borders could say aught against him."

ASSOCIATE JUSTICE MITCHELL then said:

"Having been intimately acquainted with Judge McMillan for nearly thirty-five years, I not only entertained the highest respect and admiration for him as a man and a citizen, but had also formed a very warm attachment for him as a personal friend. I should therefore be derelict in the performance of duty, if I should permit this occasion to pass without paying tribute to his memory.

"I am gratified, both as a member of this court and as his friend, to hear such high and evidently heartfelt commendations of his noble character from those who knew him best, in all of which I heartily and fully join.

"In emphasizing the nobility of his character we may perhaps seem to have partially lost

sight of its strength. There was nothing weak in Judge McMillan's character.

"Modest in the estimate of his own ability and charitable toward the opinions of others, he was never obtrusive in asserting himself; but he was a man of decided and positive convictions, and he had the courage to assert them when duty required; and he always lived up to them. Unless a man displays an inordinate degree of egotism, the world is very apt to accept his own estimate of himself as correct. If Judge McMillan had been dogmatic and aggressive in the assertion of his views, people generally might have placed a higher estimate-on his talents. Only those who knew him well were in position, fully and correctly to appreciate his ability and strength of character. By his death this city and state have lost one of their best and most eminent citizens, whose memory will always be honored and revered by all who knew him."

CHIEF JUSTICE START then said:

"Gentlemen of the Bar:

"Your Memorial happily expresses the sentiments of the court, with reference to the life, character and public services of Chief Justice McMillan. As Judge, Chief Justice, and Senator in the Congress of the United States, he rendered distinguished services, which entitle him to grateful remembrance by the whole people of the state. He quietly discharged the duties and responsibilities of private and public life with rare ability, fidelity, courage and manly vigor. He was a just, gentle, sincere, wise man, 'Who revered his conscience as his king.'

"It is proper as a tribute to his memory that your memorial be spread upon the records of the court for the day, and that the court now adjourn. So ordered,"