

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICE CLARK.

On the afternoon of May 26, 1905, in the court room at the State Capitol, Hon. Edward C. Stringer, in behalf of the Minnesota State Bar Association, addressed the Supreme Court, then in session, and said:

Your Honors:

The Angel of Death has, with unwonted frequency, invaded the ranks of our profession during the past year, and has chosen many shining lights. Not the last, but among the last of these, is Greenleaf Clark,¹ a former member of this court, and one who was respected, honored and loved by every one whose good fortune it was to be within the circle of his acquaintance. The bar of the state desires to perpetuate his memory and to record a memorial in the records of this court appreciative of the sterling qualities of mind and heart which this jurist possessed, and in compliance with the request of the court and the appointment of its committee that memorial will now be presented and read by Hon. H. W. Childs.

MEMORIAL

The bar of this state as a testimonial of its profound regard for the integrity, learning and ability displayed in the life of the late Greenleaf Clark, respectfully present for preservation in the records of the court, this memorial:

Greenleaf Clark was born at Plaistow, New Hampshire, August 23, 1835, of the marriage of Nathaniel and Betsy Clark. His American ancestry of nearly two hundred years was promise of the man. It was thoroughly New England and reflected the best of New England traditions. His paternal grandfather was a soldier of the Revolution on the patriot side and was wounded in one of its engagements. He prepared for college at Atkinson Academy, New Hampshire, entered Dartmouth College in 1851, and was graduated therefrom with the degree of A. B. in June, 1855. For a few months immediately following his graduation, he was a law student in the office of Hatch & Webster at Portsmouth, New Hampshire, after which he entered the Harvard Law School, from which he was graduated in 1857, with the degree of L.L. B. He was admitted the same year to the Suffolk Bar. In the fall of the following year he removed to St. Paul, Minnesota, where he continued to reside until the close of life.

His labors in the new field began when in the same year he became a clerk in the law office of Michael E. Ames. This clerical service was of short duration, for within a few months he had entered into a law partnership with Mr. Ames and ex-Judge Moses Sherburne, under the name of Ames, Sherburne & Clark. This firm continued until its dissolution in 1860. He then associated himself with Samuel R. Bond, as the law firm of Bond & Clark, which was terminated in 1862 by the senior member's removal to Washington, D. C. For about three years thereafter, the subject of this memorial was engaged in an individual law practice and until 1865, when he

¹ Who died December 7, 1904.

entered into partnership with Horace R. Bigelow. The firm of Bigelow & Clark was enlarged in 1870 by the accession of Charles E. Flandrau, who was already distinguished at the bar and in the public service of the state. The firm of Bigelow, Flandrau & Clark continued until in March, 1881, when the junior member retired therefrom to accept an appointment as a member of this court.

A life long Democrat, his elevation to the bench by Governor Pillsbury, a Republican, not only evidences the praiseworthy efforts of the latter to advance the cause of a nonpartisan judiciary, but it testifies moreover to the high place which the appointee had reached in public esteem both as a lawyer and a citizen. The commendable action of Governor Pillsbury was, however, of little avail as the convention of his party which met in the same year failed to endorse it, and, accordingly, the appointee's judicial office terminated January 13, 1882. Brief as was the judicial tenure, it was of sufficient length to demonstrate the eminent fitness of the incumbent for the office. It embraced a period in which many important causes were adjudged, among which is the case of *State v. Young*, which will long remain conspicuous in the judicial history of the state. The opinions written by Judge Clark are, with the exception of three, contained in Volume 28 of the official reports of this court. They display throughout careful statement of the facts involved and admirable clearness and simplicity in the application of legal principles. Nowhere is there discovered any attempt at striking phrase or exhibition of personal feeling. Few as are his opinions, they constitute a body of excellent judicial writing which cannot fail to excite the admiration of the thoughtful student.

Upon his retirement from the bench, Judge Clark at once resumed the practice of the law and during the four years immediately following he remained alone in professional work only law firm with which he was ever subsequently identified was that of Clark, Eller & How, formed in 1885 by the association with himself of Homer C. Eller and Jared How, the junior member being his nephew. His retirement from this firm, January 1, 1888, necessitated by impaired health, marks the close of his active pursuit of the legal profession.

The professional career of Judge Clark covered a wide field of practice. Two of the firms with which he was associated prior to his elevation to the bench had been extensively employed in the legal work incident to the organization and development of certain companies now component parts of the present great railway system known as the Chicago, Milwaukee and St. Paul Railway Company. After his retirement from the bench, he was frequently retained "in matters connected with the organization and construction of extensions and proprietary lines and properties, the preparation of trust deeds and securities connected with the financing of various companies, the preparation of leases and trackage, traffic and other contracts connected with their operation and their relation to other companies and the purchase and consolidation of other properties."

The qualifications which gained him distinction at the bar, made him a useful citizen in other fields.

He served the state as a regent of the University of Minnesota continuously from the date of his first appointment in 1879 until the close of life, and was president of the Board of Regents during the last three years and more of that time, he having been appointed December 10, 1901, to fill the vacancy in the office of president caused by the death of Hon. John S. Pillsbury.

For many years he took an active interest in the welfare of the Minnesota Historical Society, was long a member of its council, and elected to the presidency thereof in 1904 to fill the vacancy caused by the death of Hon. John B. Sanborn, a position which he continued to occupy until death. Dartmouth College conferred upon him in 1904 the degree of LL.D.

In all his relations in life, Judge Clark was calm and judicious and faithful to the highest and purest conceptions of duty. Great as were his attainments as a lawyer, he reached a higher station in the calm beauty of his everyday life.

Now that the able lawyer and noble man is gone from us, it is fitting that we who walked with him and are witness of his wealth of character, leave for the inspiration of coming generations our testimonial to his virtues.

HON. HENRY W. CHILDS then said:

May it please the Court:

I move the adoption of the Memorial, and in support of the motion desire to contribute a few remarks.

The time of this court is rarely employed to better purpose than when it gives ear to testimonials from the bar in recognition of the character and attainments of those who have shared in the determination of its judgments and closed the period of their lives.

The professional career of Judge Greenleaf Clark, first and last, may be compassed in the remark that he was a calm, diligent, faithful, clear-sighted, thoroughly-read lawyer, who commanded the respect of courts and the confidence of clients. His sterling manhood was never impaired by professional strife nor obscured by professional achievements. Who ever questioned his integrity at the bar? When was not his spoken word as good as the written stipulation? What court ever heard a false note in his speech? On what occasion did he lay aside the grace of the courteous gentleman, save when, perhaps, insolence or the tricks of the shyster had to be exposed and rebuked? There was righteous wrath in him, as in all noble men, and if occasion ever required, he must have displayed it. I cannot conceive a situation in his professional career, whether at the trial or in the office, when he would not have recoiled from the temptation to either employ a false witness or counsel a dishonest advantage.

I have read with some care the opinions of this court which he wrote. From first to last they discover the utmost simplicity of style. He had learned the strength of the simple words of our English speech, and they are plentiful throughout his judicial writings. No lawyer can read his pages and doubt his masterful grasp of legal principles or the keenness of his vision in searching out the real issue in the cause, or the soundness of his judgment in the application of the appropriate rules of law. His thought is never turgid or lost in that interminable verbiage which at once betrays uncertain grasp and painful labor. Great thoughts are ever garbed in plain words, truth shines of its own lustre; and he had learned those lessons before the ermine had touched his shoulders. His retirement from the bench was a great mistake. There were few men then at the bar who were able to take up and bear with equal strength the burden which he laid down.

Judge Clark had acquired a complete mastery over himself. He was remarkably self-poised, rarely, if ever, displaying the agitation of mental weakness. His speech was always clean. No word ever dropped from his lips which was stained with any coloring of vice or that jarred the most sensitive ear. But there was never a parade of his virtues. They had the naturalness of the fragrance of a flower. He wore them in a face brightened at times with a smile of unmingled sweetness—a face which, once seen, left a pleasant memory in the thought, the face of one at peace with himself and the world.

He was eminently a man of peace. His very presence rebuked contention. Strife retired at his coming. This characteristic discovered the grace of a noble soul endowed with a

knowledge, untaught in the schools, that angry strife is hurtful and that the problems of this life are best solved in the calm atmosphere of dispassionate discussion. Why express the obvious truth that one so endowed was possessed of qualities which must needs have made him a valuable member of this court? I do so that I may present on so fitting an occasion the brief yet expressive testimonial of the late justice Mitchell, who was his associate here and whose words were never idly spoken. He once said in reminiscent mood, that Judge Clark exercised a marked influence over his associates in tempering discussion in the deliberations of the court. Such was his influence always and everywhere in the various relations in which he came in contact with his fellowmen. Truth had in him one of its most faithful champions.

The deference always shown him by those who knew him best, argues strongly the power of his influence and the worth of his opinions. Such men move mountains, not by brilliant flashes of genius, too often erratic, nor by sudden exhibitions of unbridled power, too often the expression of ill-timed zeal, but by a calm, steady and intelligent pressure, which rarely fails to win its way.

He was a gentleman in the best sense of the word. He was every day the same. No cares were so pressing, no trials so severe, no infirmity of body so distressing, that he forgot, as most men sometimes do, the obligations of a gentleman. He had no stilted and conventional phrase with which to greet either a cherished friend or a passing acquaintance. His handshake was something to be remembered. He took you by the hand and drew you to him. Who will ever forget his smile that ever felt its warmth? Few conversed like him. His was a low, sweet voice that went straight to the heart. You had not to be told, for you knew, that you were in the presence of one of the choicest of men—a veritable God's nobleman. So he impressed me in those all too few but priceless moments which tied my life to his.

He was a cultured man. In early life he had received the benefit of a liberal education, enlarged and corrected by the studious habits of after years. Not only had he taken a full academic course at his Alma Mater but he had fitted himself for professional work at the greatest of American law-schools. Dartmouth and Harvard had helped him greatly. Not only so; but his whole subsequent life was passed in the best society of his adopted state and in intimate association with the strongest and best-trained lawyers who have practiced in our courts. A student by nature, thus trained by the schools, improved by years of thoughtful reading, broadened and strengthened by professional association, he was fitted as few men are to speak the wise word, or lead discussion, or direct and enliven conversation on any occasion in which he participated.

His mind was not a miser's box filled with unused treasure. He gave of his wealth of thought wisely. The author of "The Simple Life" expresses in few words a great truth. "All the strength of the world," he says, "and all its beauty, all true joy, everything that consoles, that feeds hope, or throws a ray of light along our dark paths, everything that makes us see across our poor lives a splendid goal or a boundless future, come to us from people of simplicity, those who have made another object of their desires than the passing satisfaction of selfishness and vanity and have understood that the art of living is to know how to give one's life."

This art he had learned. I dare not say fully, for so great a measure of virtue is the portion of the faultless only. And who are they? Where shall we seek them? He gave his life in generous counsel to those who were wise enough to seek it. He gave it in the calm beauty of his daily walk which shed a wholesome radiance upon the society in which he moved. He gave it in the discharge of his duties as a regent of the State University, which grew greatly during the incumbency of his office. He gave it in his relations with the State Historical Society and the St.

Paul Public Library, with both of which he was long and closely identified, and whose value to the moral and intellectual life he was too wise to undervalue. He gave it finally in those multiform associations which long years gather and cluster about strong and useful characters.

His last public appearance was when, a few weeks before his death, he presided at the meeting of the Minnesota Historical Society appointed to memorialize his life-long friend, the late John B. Sanborn. He signalized that occasion by a brief but noble tribute in which the sentiments of an admiring friend were clothed in beautiful diction, thus demonstrating that the ravages of disease had not yet weakened the powers of his mind.

Vainly have my lips sought to pay the tribute which my heart would offer to the memory of a friend. I loved him because he sought me out and drew me to him and held me fast by the most sacred bond which can be found in life's treasure-house.

Dr. WILLIAM S. PATTEE, Dean of the College of Law of the University of Minnesota, then said:

Whether Athens should bestow a crown upon Demosthenes was the question which gave us the two greatest orations of antiquity. Aeschies reminded the Athenians that "the character of a city was determined by the character of the men it crowned." For, he went on to say, "If you take one whose life has no high purpose, one who mocks at morals, and crown him in the theatre, every boy who sees it is corrupted." And the opposite of this is equally true. For, if we crown the man of high aims, of upright conduct, and of noble character, the lives of the young and old alike are made better. By recounting the virtues of Judge Clark, by recalling his fidelity to every trust, his conscientious discharge of every duty at the bar, upon the bench, in social life, by recalling his admiration for the noble and his contempt for the mean, the bench and the bar are themselves made better. In honoring Judge Clark, if recounting his virtues is to honor him, we honor ourselves. It requires something of character and goodness to appreciate character and goodness in others. The bench and the bar of Minnesota appreciate this great lawyer and genuine man. One of the best gifts Providence ever bestows upon a state is a man of that life and character which challenges the admiration and compels the respect of his fellow citizens. Such a gift was bestowed upon Minnesota in her early days in the person of our departed friend. He reflected honor upon the bar, the bench was dignified by his presence upon it, and the average quality of our citizenship is higher because he was a citizen among us.

Upon an occasion like this we naturally consider the character and deeds of him whose memory we cherish, and there is but one way for us to learn what the character of any person is, and that is by the revelations he has made of himself. This is a universal law. We know something of that Eternal Energy which has posited this universe in space by the revelations it has made of Itself. We find life revealed in the universe, hence the Revealer must have had life. We find intelligence revealed in the universe, hence the Revealer must have had intelligence. We find personality revealed in the creature, hence we are compelled to conclude that the Creator Himself was personal. And just so we learn what our friends and fellowmen are by the revelations which they make of themselves in human life. In other words, we know what our friend was by what he did. We know he was thoughtful by the thoughts he expressed; we know he was kind by the expressions of kindness which he uttered and the deeds of kindness which he performed; we know he was wise in counsel by the soundness and results of his expressed judgments; we know he was learned in the law by the disclosures he made of his legal knowledge; we know he was an impartial and a faithful judge by the impartiality and fidelity

which he revealed in his judgments; we know he was a successful and a great lawyer by his achievements at the bar; we know he was a true friend by his uniform and unmistakable words and deeds of friendship; and we know he was a refined and courteous gentleman and worthy of the most studious emulation, by the purity of his words and the dignity and urbanity of his manners. Eminent at the bar, honored as a judge, whose term of service was unfortunately too short, and recognized as a true and noble man, he has left a name behind him which will ever reflect honor upon this North Star State, whose adopted son he was and of whom she may ever be proud.

While associated with him to some extent in professional life, I knew him best as a regent of the University, in which institution he is held in universal esteem and honor. As a regent in the spring of 1888 he was active in the establishment and organization of the College of Law. He was present at the meeting of the executive committee the first time I had the honor of meeting the regents with reference to the organization of the Department of Jurisprudence. From that day, until his death he was a true and pronounced friend of the department, and a most highly esteemed friend and counsellor of the Faculty of Law. Not once, in nearly seventeen years, did I ever go to him in vain for assistance or advice. Anxious to learn its needs, jealous of its efficiency and reputation, ambitious for its usefulness to the bench and bar of the state, patient in listening to all suggestions for its growth and improvement, helpful in his criticism and equally so in his practical provisions for its financial assistance, he was a tower of strength to the management of the department, and an appreciative listener and loyal supporter all our efforts looking to the improvement, enlargement and efficiency of the school.

At the first session of the legislature after the school's organization in 1888, Judge Clark prepared a bill providing for annual and permanent aid to the law library. This bill was the result of his forethought, written out in detail by his own hand, passed by legislature as prepared by him, and has ever since been operative in bringing most valuable books and documents into the library of the department. He also urged an appropriation for a law building which was generously provided by the state, and when the time came for locating the new building Judge Clark was chairman of the committee for selecting a site; and in connection with this occurred an incident illustrative of his decision of mind. While walking through the oak grove he proceeded to one of the most attractive spots on the campus, as it then existed. When he asked the committee why that spot was not the proper one, it was suggested by another that the building better not be placed there, because it would necessitate cutting down so many of those large and venerable oaks; but, looking around over the campus and assuming a thoughtful air, he said, "Gentlemen, this College of Law is to be one of the most important departments of the University; it deserves a good location," and, holding a stick in his hand, he stepped to a certain spot and thrusting the stick into the ground he continued "The southeasterly corner of the building shall be right there, not one foot to the right or the left, but just there; this campus is not a place for raising trees chiefly, but a place on which to put buildings." The committee all acquiesced in the Judge's decision. Judge Clark was chairman of the committee of the regents who considered all matters pertaining to the College of Law, and we are all indebted to him for the thought and careful consideration he gave to every item of business that came before him for action. Prompt, intelligent and thoughtful attention was given to every matter submitted to him, and the element of his character, which, in all these years, most deeply impressed me, and awakened in my heart the most lasting gratitude and a feeling of undying friendship was his thorough and sympathetic appreciation of every effort made by us for the establishment of such a Department of Jurisprudence as his ideal required. The Judge held his profession in high esteem.

His professional ideals were high. His educational ideals were equally so; but at the same time, a man of the world and of affairs, he appreciated the difficulties encountered in making the real conform to the ideal.

In recounting thus the details of a great man's life, it may seem at first as though they are trifles and belittle rather than exalt his importance to the world; but such is, in no sense, the fact. All great things in this universe are composed of elements atomic in their proportions. The universe itself consists of spheres of comparative insignificance when compared with the universal whole, and each sphere in its turn is composed of microscopic elements. All greatness is made up of an aggregation of things in themselves small. And so a great and brilliant career at the bar, like that of our friend, when analyzed is found to be composed of small duties, so-called, faithfully performed. It is the manner of their performance, the spirit of fidelity that is breathed into them, the conscience that is put into every action, however unimportant apparently, that welds the whole aggregation of life's actions together, and gives to the whole life a form, at once attractive and beautiful. Such was the manner in which the noble character of our departed friend was made. Fidelity in all the details of his professional, judicial and social life was his distinguishing characteristic. And we may easily imagine that, in rendering his final account to his Great Judge, it was said to him as to the servant with five talents who had made other five, "Well done, thou good and faithful servant; thou hast been faithful over a few things; I will make thee ruler over many things, enter thou into the joy of thy Lord."

The Chief Justice then said:

Mr. Thayer, let us hear from you.

HON. SAMUEL R. THAYER then said:

May it please the Court:

I hesitate to occupy a moment even of the time which I feel properly belongs to those members of the bar who were more intimately associated with Judge Clark than myself. My knowledge of Judge Clark covers a period of thirty and more years, but it was not until he had relinquished his more important duties that I was brought into such a relationship with him that I was able to form a definite judgment of the motives and purposes which governed his conduct throughout the varied activities of his life.

That sturdiness of character which has been referred to both here and elsewhere as a distinguishing attribute of his nature, I think was largely due to his New England training, perhaps more especially to his New England Congregational parentage and to the influence of the wooden church and the wooden schoolhouse, all of which influences bred in him those habits of industry, economy and method which resulted in accumulations which he dealt out in no stinted charities.

He was a civilian, a lawyer and a jurist, eminent in every department of usefulness that engaged his attention. His conception of his legal duties in the early formative period of the state led him outside the narrow range of his professional life into the more important work of laying the foundations of those institutions that ultimately became the glory of the commonwealth. Hence his continuous activity in upholding and enlarging the sphere of our State University—which, I think, after all, was his chief pride.

There was something about his career which reminds one continually of what has been aptly termed the quality of high citizenship—the disposition to subordinate self and selfish ends

to the public good—of which his life furnishes very many ample illustrations.

I think his mind was essentially judicial. His voice was frequently heard in this temple of justice, not only as an advocate but as an expounder of the law, and his judicial experience was such as to justify the hope and belief that had the will of the people given him greater opportunities he would have made very many valuable contributions to our legal lore, and doubtless augmented his own fame.

It is no small compliment to the memory of Judge Clark to say that he was a worthy associate of the late Horace Bigelow—a name illustrious in our legal annals—and I think it will be generally conceded that the firm of Bigelow & Clark, and, later, the firm of Bigelow, Flandrau & Clark, were governed by as high professional ideals as those of any legal firm in this or any other state in the Union, and that Mr. Clark contributed his due share to their professional preeminence.

He was not eloquent in speech, but he possessed the more enduring eloquence of a virtuous and noble life, and though "the places which once knew him know him no more," the world will remember him as a man who made the best use of the gifts which God had bestowed upon him.

Chief Justice Start then said:

Mr. Richardson?

HARRIS RICHARDSON, Esq., then said:

May it please your Honors:

More than twenty years ago Judge Clark honored the people of this state by serving as a member of this court. While here he gave to them daily the benefits of his great industry and ability. The early training which Dartmouth College gave him, the later training which his leadership at the bar of this state gave him, the business training that his active life among men gave him, fitted him for the work. When we examine the opinions that he rendered here we find them clear, logical, forceful, business-like. They are beyond criticism. They bristle with precedents, yet are they also alive with the personality of the just judge.

We are met here today to assist in perpetuating the facts as to his ability, his scholarship, his manhood. When he left this court he was in his prime; when he left us—so recently—his age was ripe. We must all draw the same conclusion as to his ability, his learning, his success in life. He occupied so prominent a position from early manhood to old age that there can be no difference of opinion.

To the older members of the bar, to the younger members, to those of us who by chance now occupy the middle path, he must ever serve as a model. We are not here to mourn him, we are here to honor him. By recounting the facts of his life, by hearing its story, we can gain great profit. May it make us all more manly, more just, more helpful one to another.

Chief Justice Start then said:

The Court would be glad to hear from other members of the bar.

Former CHIEF JUSTICE THOMAS WILSON then said:

May it please the Court:

I did not come here intending to say anything—I very seldom speak on such occasions. I will now say but a few words.

From the time Mr. Clark came to Minnesota until his death I knew him well, though we were never intimate, as they who know what real intimacy is understand by that expression. We looked at many problems from different standpoints, on some we were very far apart. I often met him at the bar, sometimes with him, oftener opposed to him. As actions at times speak louder than words, I wish to refer to one incident showing my estimate of him as a man of integrity.

A good many years ago a suit was brought by the city in which I lived against a corporation whose stockholders and officers were very prominent men in the financial world. It was alleged in that suit that the defendant had illegally obtained and misappropriated the bonds of the plaintiff. The law firm of Bigelow, Flandrau & Clark represented the defendant, I the plaintiff. After the litigation in its different ramifications had been carried to both the Supreme Court of the United States and of the state, the plaintiff obtained a judgment in the state court for the full amount of its claim, which, on appeal, was affirmed in the Supreme Court. The defendant thereupon moved the latter court for a re-argument of the case, alleging that a material fact not set up or at issue in the pleadings had, without objection, been litigated and established by the evidence in the court below. The granting of that motion would probably have been decisive of the case in favor of the defendant, and in support of the motion numerous affidavits were offered. The feeling engendered was much more than commensurate to the amount involved, which was then considered large, about two hundred thousand dollars. Each of the attorneys for the defendant was present in court and had been present at every step in the litigation. After offering some affidavits in opposition to the motion, I said to the court, (I believe I remember nearly the very words used, for I never felt more personal interest in a suit,) "In addition to these affidavits, I wish to offer another item of evidence. There is present a gentleman who was present at every step taken, who heard every word of evidence offered or received in the suit— Mr. Clark, one of the attorneys of the defendant,—and I now consent that he state, without being sworn, whether any such question was suggested in the court below or any such evidence offered."

It goes without saying that had I not been perfectly certain that neither personal interest nor personal feeling could influence him to in the least swerve from the truth, no such offer would have been made. He spoke not, of course well knowing the consequence — the defeat of the motion and of his client.

CHIEF JUSTICE START then said:

Gentlemen of the Bar:

The court receives with great appreciation your memorial. It is a just estimate of the character and services of a true man, a great lawyer and a public-spirited citizen.

Justice Clark was a man of interesting personality, of rugged manly sense, unquestioned integrity and great intellectual force. His opinions in this court show that he possessed a practical and accurate sense of justice and a comprehensive grasp of legal principles, with the rare gift of illustrating and applying them.

The court concurs without reservation in all that has been here said in his praise, and as a tribute to his memory directs that your memorial and addresses be entered in the record of the court of today and that the court now adjourn.