

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICES ATWATER AND YOUNG

On the afternoon of April 3, 1907, in the court room at the State Capitol, HON. DANIEL FISH, in behalf of the Minnesota State Bar Association, addressed the Supreme Court, then in session, and said:

May it please the Court:

The thirteenth day of October next will be the fiftieth anniversary of the election whereby the people of Minnesota Territory adopted constitution preparatory to admission into the Union. On the same day they chose from their number three eminent citizens to constitute the first supreme court of the new commonwealth. Today, near the close of a half century of statehood, the bar of that court presents, for incorporation in its records, a brief commemorative notice of one of those pioneer justices, the last to pass from earth of a distinguished triumvirate. But three and a half years have elapsed since a like service was performed for the first of them, Judge Flandrau, when an eloquent tribute to his memory was read at this bar from the pen of the last survivor, whose death we now deplore. In the meantime Lafayette Emmett, the first chief justice, departed this life and he, with Justices Clark and Buck, of later times, and Judge Nelson, the first occupant of our federal bench, have all been commemorated here. And now George B. Young, once a member of this court and but yesterday the peerless leader of our bar, has passed away. Of the six former, chief justices but one survives, Thomas Wilson, still in full practice. Of fourteen associate justices (not counting Judge Wilson who served in both capacities) but four remain and they of the more recent. All the territorial justices are gone and nearly all of the earlier practitioners.

Fifty years are but few in the life of a state, yet already the age of tradition is upon us; the story of our bench and bar begins to take on the soft haze of antiquity.

GEORGE BROOKS YOUNG

July 25, 1840—December 30, 1906

HON. WILLIAM E. HALE, in behalf of the Minnesota State Bar Association, then addressed the court and presented the following

MEMORIAL.

George Brooks Young was born July 25, 1840, in the city of Boston, Massachusetts. Both of his parents were descendants from early settlers in the Plymouth and Massachusetts Bay colonies, and represented families of consequence in the annals of New England. His father was

a Unitarian, clergyman, and an overseer of Harvard College.

Judge Young was graduated from Harvard in 1860, and in the fall of the same year as a law student he entered the law office of Henry A. Scudder in Boston, where he remained for about a year, when he entered the Harvard Law School, from which he was graduated two years later with the degree A. M. In 1864 he went to New York City, and for some time engaged in post-graduate study in the office of William Curtiss Noyes, and in November of that year he was admitted to the bar. He then entered the office of David Dudley Field and for a time occupied the position of managing clerk. After leaving that office he engaged in an independent practice in the East until his removal to the West.

In 1870 he came to Minneapolis, and was admitted to the bar in this state, and continued in the practice of law until 1874, when he was appointed by Governor Davis an associate justice of this court, to fill the vacancy occurring through the resignation of Chief Justice Ripley. His term of office expired in 1875, and he then moved to St. Paul, where he remained in active practice until the time of his death. He became associated with Stanford Newel under the firm name of Young & Newel, and in 1883 entered into a partnership with William H. Lightner under the name of Young & Lightner, which continued until his death.

From 1875 to 1892 he was the reporter of this court and compiled twenty-seven volumes of the court's reports, volumes 21 to 47, inclusive. For a number of years he lectured in the law department of the University of Minnesota on the subject of "Conflict of Laws."

The first case of great importance in which he was engaged was the proceeding by which the St. Paul, Minneapolis & Manitoba Railway Company first acquired its railroad; in this case he was the chief counsel, representing the railway company and others specially interested. His work attracted a great deal of attention and at once brought him to the front as one of the foremost lawyers at this bar; and from that time until his death, his services were constantly sought for by those interested in large and important enterprises.

He was one of the counsel for the Northern Securities Company in all the merger litigation, prepared the main brief and made an argument in the case both in the circuit court and on appeal in the supreme court. For many years he represented the Great Northern Railway Company and its interests in much important litigation.

He was indeed a great lawyer, and his reputation was not confined to his own state, but he was well known among other great lawyers, railroad capitalists and officials, and men engaged and interested in large enterprises throughout the Eastern and Western states.

He was a ripe scholar and a profound thinker. His reading covered a wide range, both in the law and general literature, so that his mind was stored with valuable knowledge, systematically arranged and classified, to be used, when need required, with great force and effect upon any question of law presented to him for consideration. His study of the history of the law had been particularly confined to noting and analyzing its changes and growth as it adapted itself to advancing civilization. He took a connected view of the past and the present,—the old and the new,—never confused or losing his way, but traveling in his orbit symmetrically, with no meteoric flashes, onward, until he reached that point in his planetary system attained only by a few of his profession.

His love of his books and his chosen profession so occupied his time and attention that the circle of his personal acquaintance was not large, but those who had the good fortune to come within it will remember his charming conversation and his kind and genial ways. Great men have but few real friends, and his case was no exception; but to these friends he bound himself with bands of steel to be severed only at death.

In the death of Judge Young the state and the bar have met with a loss that cannot be supplied, and we ask this court to have spread upon its records this brief expression of our regard for his memory.

W.E. Hale.
C. W. Bunn.
C. E. Otis.

CHARLES W. BUNN, Esq., then said:

May it please the Court:

Judge Young was a man of books, scholarship, culture. While he was also a man of friendships and human sympathies, his prevailing passion, as I esteem Judge Young, was for knowledge, and learning. Combined with this passion was a wonderful memory. He had a memory equal to that of any whom we have ever known, and an infinite capacity for labor. No task was too great for Judge Young to undertake. The result of this was that at his ripe age he was full of learning. He had accumulated a wonderful knowledge of the law. He not only knew the principles and the principal cases of the law, but his mind was full of collateral learning. A man could not fail to be a man of great ability when such qualities are combined, as they were in Judge Young, with a logical and remarkably lucid and clear mind.

His habits of work were such that, I think without exception, he wrote out all of his papers, including his elaborate briefs, with his own lead pencil, I never saw a piece of dictation come from Judge Young with respect to anything of any consequence.

All this contributed to make Judge Young a man of commanding ability, a most formidable antagonist. Associated, as I was, with Judge Young in some litigation and against him in other, I can testify—that the briefs of no man gave more food for thought to his adversary than the briefs of Judge Young. He was a fine example to hold up to young men, an example of what may be achieved—and his was a great success, a great eminence—without one of the arts of the politician and without one of the graces of oratory.

WADE HAMPTON YARDLEY, Esq., then said:

May it please the Court:

I esteem it an honor to join in this last tribute to the memory of George B. Young. For more than twenty years, though much his junior, I was privileged to enjoy his intimate acquaintance and learned to know his character as a man and his ability and attainments in the profession which he so adorned. And like all who knew him best early acquired and ever held for him a deep affection and profound respect. He was sincere, unaffected, without sham or pretence. His wide reading and wonderful memory, his genial humor and a most winning manner made conversation with him delightful, and I look back upon the many hours spent at his charming home with mingled feelings of keen pleasure and of sadness that they can never be again.

As a lawyer Judge Young was an inspiration. With knowledge and wisdom he combined a remarkable power of concentration. His energy and application were untiring, and he carried

into his cases an enthusiasm which was infectious. I rejoiced in his victories and sorrowed in his defeats as though they were my own. It has been said that genius consists in the capacity for taking infinite pains. By this standard he was truly a genius. He was always prepared. He conducted much important litigation, in all of which he demonstrated his eminent fitness. In success he was modest; in defeat, philosophically resigned.

He was a great lawyer, an honorable kindly gentleman, and a friend whose memory I shall ever cherish with affection and with pride.

HENRY BURLEIGH WENZELL, Esq., then said:

May it please the Court:

Twenty-four years ago an oral examination of candidates for admission to the bar was held in the presence of this court. In accordance with the practice then the court made its order on the first day of the term fixing the time of examination, and naming the members of the bar who were to conduct it. Of the three examiners appointed at that term one was Judge Young. Of the three candidates admitted one was the speaker.

He was not only one of my examiners, but it was due to his friendly word in my behalf ten years later that the opportunity came to me to take charge of the work of arranging and completing the compilation of our laws since known as *General Statutes, 1894*. And after he had ceased to be the reporter of your decisions, I think it was in large measure due to his opinion of my fitness for the work that led Your Honor and the justices then sitting on this court to appoint me to the position he had so long filled.

There are diverse opinions as to the proper method of reporting. Actual experience may give to the reporter a point of view which is not always shared by members of the profession unacquainted with the details of the work. In cases of doubt, I have always found Judge Young's volumes models to follow. If at times changes have been introduced, the change has been due to the search after a form which would make it possible for busy lawyers to use the volumes most conveniently.

At the time of my arrival in Minnesota there was a rapid growth in the population of our capital city. Many college-bred young attorneys were arriving from other sections of the country. We found a small group of very able lawyer leaders of the Ramsey County Bar. Among these leaders none stood higher, especially in court cases, than; Judge Young. He was regarded by us as a model of the able, thoroughly-trained and high-minded lawyer. Being a native of the same state, a graduate of the same college and of the same law school, it was natural we should soon meet. From the acquaintance thus formed sprang in time a friendship that steadily grew warmer until his death.

In the earlier years of our practice we younger attorneys stood somewhat in awe of his reputation as a master in the profession. But whenever an especially knotty question in our practice arose and we ventured to ask advice we found that he manifested a kindly interest in our problems, gave us his undivided attention and placed at our disposal freely all his mental keenness and his wide experience. Early in our practice my partner and myself had occasion to bring a suit which involved points of unusual difficulty. The amount involved was far less than that in the cases to which Judge Young gave his personal attention. Yet he came to our aid, and on the trial his handling of the case showed he had made himself familiar with the smallest detail. And so powerful was his summing up of the evidence that men gathered in the court

room to listen to him. The case was won and by him, yet his fee was as modest as that of a novice at the bar. But my real relation to Judge Young was not so much professional as personal.

To strangers he was reserved in manner, but those whom he admitted to his friendship forgot that fact. To his friends it was a delight to meet him. Even a casual meeting lighted up his face, seemed to kindle in him the fire of friendship and diffuse warmth and good cheer. He was a man singularly averse to any verbal expression of feeling. But whenever any person in whom he was interested could benefit by his word or act he was tireless in his effort to help him. No one who reads his appreciative memorial of Chief Justice McMillan in Volume 67 of our Reports can doubt that he possessed great warmth of feeling.

But it was in his home that one learned to know Judge Young best. Given to hospitality, his house was always open to friends and acquaintances and his welcome was always cordial. Fond of books he was able to gather them in fine editions. In spite of a busy professional career he read much. And he read widely. He was exceptionally well informed on many subjects. He cared little for the new, but enjoyed thoroughly that which was well-seasoned and classic. Nor was his reading limited to our mother tongue. And it seemed as if he never forgot anything he had read. His memory rarely failed him for a word even in quoting some ephemeral rhyme of his college days. His talk was delightful. It took a wide range. It might be a vivid account of some lawsuit of the past, a keen comment on current events, or critical comment on some book. Only a little while before his death he brought out a Year Book he had been reading and read to me extracts from it to show that human nature in the fourteenth century was the same as it is in the twentieth.

In recalling his home life, one cannot forget his wife. A leader in charitable and social activities, she was his inseparable companion and support until her death. And that event hastened his end.

Our profession has lost a most conspicuous member, whose reputation was not limited to our own state or to the Northwest, and his friends have lost one whose place cannot be filled.

CHIEF JUSTICE START then said:

Associate Justice Jaggard will reply in behalf of the court.

ASSOCIATE JUSTICE JAGGARD then said:

Gentlemen of the Bar:

You have paid a just tribute to a great lawyer. The records of this court fully evidence his versatility, his learning and his intellectual pre-eminence. As a member of this court, he delivered its opinion in twenty-four cases marked by lucidity of style, painstaking research and progressive certainty of reason. In connection with the history of this court it is interesting to note that this is less than one-third of the average number of cases written by each member of the court at present within the same time.

Of Judge Young's decisions, *Keffe v. Milwaukee & St. Paul Railway Company*, 21 Minn. 207, decided on January 11, 1875, was given prominence by Judge Cooley's book on Torts (see page 356). A considerable part of the opinion was quoted with approval by Mr. Justice Harlan in *Union Pacific Railway Company v. McDonald*, 153 U. S. 262, 14 Sup. Ct. 619, 624. It remains the most meritorious of the so-called Turntable cases. While there has been much controversy

on the subject and considerable conflict of opinion, the doctrine therein laid down that reasonable care must have reference to the natural instincts of children remains unshaken. The case of *Paine v. Sherwood*, 21 Minn. 225, finally established in this state the rule for damages in case of breach of contract laid down in *Hadley against Baxendale*. While not the first case on the subject by this court it has become the leading one, and has been frequently cited in other jurisdictions with approval. In *Ames v. Lake Superior & Mississippi Railroad Company*, 21 Minn. 241, Judge Young was of the opinion that an act amending a territorial charter so as to constitute a charter under the name of the Lake Superior & Mississippi Railroad Company was unconstitutional. Of its own motion the court added a memorandum suggesting an application for further hearing. Upon re-argument the court held that the act was constitutional. The case was probably the most conspicuous one decided while he was on the bench. Mr. Richard L. Ashhurst and Mr. John C. Bullitt of Philadelphia appeared as counsel.

Largely as a labor of love he served as official reporter from the twenty-first volume of the reports to the forty-seventh volume, that is, from 1875 to January, 1892. He established the standard of good reporting in the West. His work has become at once the model and the despair of his professional brethren engaged in the same important labor.

The work of Judge Young in preparation of the General Statutes of 1878 was great; its merits corresponded. As an illustration of the microscopical care with which he labored, it is interesting to note that he included in that compilation the section of the laws of 1877 which required that, before the right to redeem from tax, certificates could be eliminated, the so-called Williston notice must have been given. It was supposed by the Bar that chapter 1 of the Laws of 1878 impliedly repealed that requirement. Judge Young, however, inserted the section as a part of the General Statutes of 1878. The matter came before the Supreme Court; it held that the requirement of the notice had not been repealed by implication. See *Merrill v. Deering*, 32 Minn. 480.

His mental operations were judicial by nature. His argument was invariably enlightened and unprejudiced. His comprehensive vision saw all sides of a controversy fully and fairly. Even as an advocate, intense in conviction and indignant at wrong, he relied solely upon the temperate presentation of legitimate considerations. He stood in eloquent antithesis to the lay conception of the small lawyer. Astuteness he had in a large degree; but of sharpness he had none. His dexterity in handling facts was sometimes startling, but their distortion was as impossible to him as their misrepresentation. Of the art of drilling a witness, he was as guileless as a child. He knew no cunning, absolute honesty was the basis of his shrewdness. "Perfect candor was his sword and shield." His scorn of technical subterfuge was too instinctive to be called lofty. With emphasis he pointed out to his scholars that not in a score of years had a case been reversed in an English appellate court on mere error in evidence or practice.

His great ability, learning and industry were at the disposal of his clients but never was his conscience controlled to subserve any interest for which he was however ardent a protagonist. This was entirely unconscious. Cant was precluded by the inherent logic of his mind. None the less he ridiculed the logic of the schoolmen. Even the study of John Stuart Mill he used to condemn as futile. He often said to me, "You can no more learn from logic how to think than you can learn from grammar how to talk." His general distrust of metaphysics was characteristic of a mind eminently practical alike in both analysis and synthesis.

He was, I believe, the most erudite man at the bar of this state in its history. His knowledge was wisdom; his learning a philosopher's and not a pedant's. One was at a loss which to admire most, the variety, the readiness or the aptness of his quotations from ancients and

moderns. His memory was photographic; his perception instantaneous, his observation exact. However extensive the details of law or fact presented, his powers of reflection were employed without the subtraction because of any effort of reproduction.

A genial spirit illuminated all his labor, and he worked night and day with a swiftness excelled only by his precision. He was happy in his work; pleased with some quaint turn of expression; delighted by the discovery of unexpected confirmation by authority, or of unanticipated and favorable evidence. The brilliancy of his mental processes depended upon hard practical good sense. A keen and ever alert sense of humor saved him from too fine distinctions, and from following close reasoning into any absurdity. The soundness of his judgment has been demonstrated time and time again by the prescience with which he foresaw and foretold what the famous men of commerce had failed to anticipate.

The world knew little of his emotional life. Unobtrusive, undemonstrative and self-contained he always was. The flower of the kindness of his nature grew in retirement. He came to the easy, generous and open hospitality of the West from the formal conventionalities of a more highly crystallized civilization. The impression made on him was deep. He retained the refinement of the environment of his birth, and added to it the cordiality and breezy optimism of his adopted home. His social life, based upon the worship of qualities, not of accidents, was simple, full of charm and singularly generous. Its elevating influence was widely extended. He loyally followed his early friends in this state through subsequent fortune and misfortune. He did not waste his affection by undertaking to spread it over an impossibly large number of people. Whom he loved he loved well. His inner feelings were occasionally revealed to the public; as when he said at the memorial exercises of his dead friend, James B. Beals, "He wore the white flower of a blameless life."

Judge Young's hand was ever extended to help and guide aright the younger men in the profession. I gratefully bear testimony to his tact, as spontaneous as his sympathy was gracious, and to a friendly, and to me almost paternal thoughtfulness as uniform as it was inspiring. He was to those who saw him oftenest, and he remains, an ideal of intellectual disinterestedness, and an exemplar of the highest conceptions of professional ethics. It seemed natural that the end should have come to him while he was at his work. "Like a peaceful river with green and shaded banks, he flowed without a murmur into the waveless sea where life is rest."

Accordingly with a deep appreciation of the fitness of your testimonials, it is ordered that they be inscribed upon the records of this court.

CHIEF JUSTICE START then said:

As a further tribute to the memory of justices Atwater and Young, it is ordered, that this court do now adjourn.