

IN MEMORIAM.

BENJAMIN R. SHELDON—JOHN M. SCOTT.

PROCEEDINGS IN THE SUPREME COURT OF ILLINOIS, AT SPRINGFIELD, ON WEDNESDAY, APRIL 20, 1898, BEING OF THE APRIL TERM OF THAT YEAR.

The Hon. BENJAMIN R. SHELDON, formerly one of the Justices of the Supreme Court, died at Rockford, Illinois, April 13, 1897. The Hon. JOHN M. SCOTT, also a former member of the court, died at Bloomington, Illinois, January 21, 1898. At the April term, 1898, of the court, on the 20th day of April the following proceedings were had:

Hon. ALFRED ORENDORFF, of Springfield, on behalf of a committee appointed by the bar of Winnebago county, presented the following memorial on the death of Judge SHELDON:

Judge SHELDON, from his early manhood to his death, was a resident of northern Illinois. He was chosen a judge of the circuit court in 1848, and continuously served as such until 1870, when he was elected a judge of the Supreme Court of the State, and there served until 1888, when of his own choice he retired from further judicial service. From 1851, until his election as a judge of the Supreme Court, he presided over the circuit embracing this county.

By constitution and education Judge SHELDON was peculiarly fitted for the discharge of judicial duties. During all his long service upon the circuit bench, his learning, staunch integrity and sense of fairness secured for him the absolute confidence of the

bar, suitors and people. As a judge of the Supreme Court he stood in the front rank with the learned and really great men who have from time to time adorned that bench. His high standing as a member of that court is best attested by his many clear and forceful opinions found in the published volumes of its Reports.

High as may be justly esteemed the public services of Judge SHELDON, the example of modesty, simplicity and honesty shown in his private life is not less worthy of admiration, nor less valuable to the community of which he so long has been an honored member.

Mr. THOMAS DENT, of Chicago, speaking of the death of Judge SHELDON, addressed the court:

May it please your honors—To those who were acquainted with the subject of this memorial the expressions used will seem to be moderate. The language is not over-drawn. It is well, however, that no excess of eulogy has entered into it.

The suitability of distinct recognition in this place of Judge SHELDON'S long and faithful service in high judicial stations need not be urged. He labored "with usefulness and distinction" in "the temple of justice." If nothing in the way of plaudit would be desired by him, yet a temperate expression of our sense of his worth is but the recognition of a debt; a token of regard for persevering exertion, which resulted in much achievement; a recognition of duty to the living and to those to follow after us.

Chief Justice Shaw, in sketching the life of one of his predecessors, well said: "The character and virtues, the just sentiments and useful actions, of distinguished men, preserved in the annals and cherished in the recollections of a grateful people, constitute their richest treasures. They speak to their successors in the language of encouragement, of hope, of confidence. They excite the ardent aspirations of the young, whilst they sustain and invigorate the efforts of those who are devoting the full strength of their mature years to the service of their country."

For such reasons it is deemed proper to supplement the memorial offered with brief biographical words.

BENJAMIN ROBBINS SHELDON was a son of Benjamin and Sarah (Robbins) Sheldon, and was born in Sandisfield, Massachusetts, April 18, 1811. His home in youth and in college days was in Berkshire county, Massachusetts. His father was a member of the

Massachusetts bar and an honored man in the community, and was esteemed for generous hospitality and kindness of heart. H. A. Sheldon, the younger son in a family of four children, and now of Binghamton, New York, survives at the age of about eighty-five years. A sister died at the age of seventeen years. The other sister became the wife of Rev. Chester Fitch, late of Rockford, Illinois, and died in 1895. Judge SHELDON, having remained single, made his home in the family of this sister from about 1870, and after her death with her daughters, his nieces, until his own death, which occurred at Rockford, April 13, 1897, near the close of his eighty-sixth year.

Evidently he was studious in youth, for he graduated from Williams College in 1830, when but nineteen years of age. He prosecuted legal studies in the law school at New Haven, Connecticut, and entered upon professional work in Pittsfield, Massachusetts. Removing from "the far-famed hills of Berkshire" to Illinois, his name was enrolled as a member of the bar of this State on the 12th of January, 1835. He took up his residence at Hennepin, Putnam county. In a few years' residence there he deservedly secured the esteem of the community, whose good wishes followed him after his choice of a larger field of labor, which he found in Galena, in JoDaviess county, about 1843, being then well equipped to enter into the activities which characterized the business men of that city, many of whom, as time has gone, might, for just distinction in business lines and with reference to labors for the public, be placed upon a special roll of honor.

How small was the enrollment of lawyers in Illinois prior to the coming of Judge SHELDON! The number seems to be but 127, but the list contains the names of many who attained great distinction in the profession and in our State history. While the number was small, yet it is to be noted that the population of the State in 1834 was probably less than 240,000. There is a lasting gain to future comers when the first or early settlers have been of elevated attainments and character, of capacity and integrity, of bravery and general worth. The bar and judiciary of Illinois have in the greater development of the State profited by the transplanting here from other fields; by the incoming here, in early and primitive times, of lawyers who bore so well the burden and heat of the day. Deep roots sustain the well-grown tree, and it speaks its own lesson of blessings enjoyed and of favoring protection shown.

It has been spared for a purpose. If it had been gnarled and unshapely when first budding, but little note would be taken of it if overthrown or cut down. With quietness and composure of manner, methodical persistence in effort, manliness and dignity of bearing, and kindly affability, appreciation of Judge SHELDON'S attainments was likely to come. But, of course, environment, and readiness or promptitude to meet demands for any public service for which he would choose to offer himself, were important factors in securing to him the honors which were accorded to him.

In length as well as in character of service his is a marked case. For more than thirty-nine years, consecutively, he filled the highest judicial places in our State. During upwards of twenty-one years of that period he performed the duties of circuit judge in important circuits, and for two full terms of nine years each he presided in this court, a part of the time as chief justice. He became the judge of the Sixth Circuit at the first judicial election held under the constitution of 1848, his commission dating from December 4 of that year. During his first term, which would have been six years, in that circuit, the legislature, by act of February 12, 1851, created the Fourteenth Judicial Circuit. This was to comprise the county of JoDaviess, in which he resided, and also the counties of Stephenson and Winnebago. The act assumed a right on the part of the legislature to set off a circuit judge into a new circuit, leaving him to serve in a circuit bearing the old number but so changed as not to include the county in which he resided. This was not satisfactory to Judge SHELDON. He therefore resigned the office of circuit judge in the Sixth Circuit and offered himself as a candidate for that position in the Fourteenth Circuit, briefly stating in a public card his reasons for doing so. His election, which followed, was a tribute to him as a man and as an officer in whom the electors had great confidence. Thus elected judge of the Fourteenth Circuit, his service as such began June 4, 1851, and he was constantly continued in that position, by elections in 1855, 1861 and 1867, respectively, until he resigned the office to take his seat as a member of the Supreme Court, elected from the Sixth District under our present constitution, adopted in 1870. Here, as is so well known, he continued to sit for the first two full terms, intended to represent nine years each. At the close of his second term, having attained the age of seventy-seven years, though still in full vigor, he voluntarily retired. Soon after his retirement

from this place he traveled in Europe, accompanied by family relatives, thus taking the first recreation which he had given himself for years. Subsequently he visited Europe again. He passed two or three winters in California. Notwithstanding advanced years he was favored with mental vigor, so that he was able to keep abreast with the times and attend to the details of his business interests almost to the last.

The Reports of decisions in this court, especially in volumes 54 to 125, inclusive, contain full evidences of a large work on his part. Although anything like an extended review of his opinions would be out of place from this side of the bar on this occasion, yet it may be said that he performed extensive and highly valuable labor. He thoroughly sought to comprehend the facts and the state of each record, with an unswerving desire to reach and adopt right conclusions, and, in brief, was a careful and conscientious, capable and impartial judge.

Nor should the philanthropic provisions of his will be overlooked. Prudent management of his business affairs enabled him, in providing for a final disposition of his estate, to make a large bequest to his *alma mater*, Williams College, expressive of lasting gratitude for the advantages which the college training had afforded him, and showing a desire to secure similar advantages to students coming from classes worthily exemplifying the highest civilization. By a legacy of a like amount to Hampton (Virginia) Institute he manifested his wish to render the best aid possible to races less favored, subject to be viewed almost as wards of the nation. He also made generous legacies to institutions of charity and education in Freeport and Rockford. As a magistrate he was a lover of even-handed justice, and noble philanthropy had a lodgment in his breast as a man.

Mr. Justice CRAIG, on behalf of the court, responded as follows:

The court fully approves the sentiment expressed by counsel in regard to the character and services of Judge SHELDON. When I was elected to the bench, in June, 1873, the Supreme Court was then composed of Justices Breese, Walker, McAllister, SHELDON, Scott and Scholfield. No one of these distinguished jurists is now living. They have each and all discharged the duties imposed

upon them by the people and have passed away. I shall speak of but one of them.

The greater portion of Judge SHELDON'S life after he arrived at the age of manhood was spent on the bench. For many years he was circuit judge in what was known as the Galena Circuit,—a circuit in which the bar was composed of eminent lawyers, among whom may be mentioned Jewett, Campbell, Drummond and Baker; and the well-known rule that a learned bar makes an able court was not an exception in that circuit. Upon the adoption of the constitution, in July, 1870, Judge SHELDON was elected to the Supreme bench. He remained on the bench for eighteen years, when he declined an election for a third term. His opinions while a member of this court will be found in the volumes of the Illinois Reports from 54 to 125, inclusive. In clearness of statement, logic and legal learning his opinions are surpassed by none. Upon examination they will be found to be in harmony with the standard authors and based upon principles of justice and right. He was well grounded in the elementary principles of the law, and but few judges hewed closer to the legal line than he.

In the discharge of his duties on the bench he was a man of but few words, but after a careful examination of a case he was firm in his convictions, and would not deviate from what he regarded as the law and justice of a case. Where a contract had been fairly entered into between contracting parties he would not tolerate a departure from the terms of the agreement, although its enforcement might in the end prove detrimental to one of the parties. He had a keen sense of justice, and was firm in the belief that the laws were made to compel persons to do right and refrain from doing wrong, and that the proper mode of administering justice was to require a strict observance and enforcement of the laws. Judge SHELDON, in connection with his legal learning, was a man of superior business talent, and but few judges could unravel a complicated business transaction involved in a case and reach as correct a result as he.

I need not, however, speak further of the ability of the eminent jurist. His work which he has left speaks for itself. He lived to a ripe age. His life was one of industry and usefulness. He stood high with the people and the bar of the State, and died without a blot on his character as a man or a judge.

A memorial sketch of the life and character of Judge JOHN M. SCOTT was unanimously adopted by the McLean county bar, of which Judge SCOTT for a period of fifty years, was an honored member, and the Hon. Owen T. Reeves, Mr. Ezra M. Prince, and Mr. Charles L. Capen were chosen to present the same to the Supreme Court of the State. Mr. Charles L. Capen read the memorial and asked that the same be spread upon the records of the court. It is as follows:

JOHN MILTON SCOTT was born in August, 1824, in St. Clair county, Illinois. He was reared and educated in that locality. He was descended from an honorable ancestry, and schooled in religion, virtue and all the elements of high character. His mother was also a native of Illinois, and his ancestors were among the earliest English settlers in the Illinois country. Having completed both a general and professional education and been admitted to the Illinois bar, Judge SCOTT settled at Bloomington, McLean county, where he resided until the time of his death. He was in 1852 elected county judge, which office he held for a brief period, when he resigned to devote himself wholly to the practice of his profession. In his practice he was pitted, outside of the McLean bar, against such men as Abraham Lincoln, John T. Stuart and many others of the leading lawyers of the State.

Judge SCOTT so impressed the people of his circuit as to his knowledge of the law, his sound judgment, integrity and never-failing courtesy, that in 1862 he was elected circuit judge, and so satisfactorily and efficiently did he discharge the duties of the circuit judgeship, that on the re-organization of the Supreme Court, in 1870, he was elected one of its members, which office he held by re-election until 1888, when he voluntarily retired to private life. In his judicial career he exemplified the things which Socrates said belong to a judge: "To hear courteously, to answer wisely, to consider soberly and to decide impartially." No man ever more carefully or with more painstaking labor performed all the duties of judge. To the full extent of his ability, during all the many years he wore the ermine, with unwavering and unswerving fidelity he discharged all his judicial functions. His convictions of right and justice, tempered by the sweet quality of

mercy, were the pole star that guided him as a judge and as a man. Judge SCOTT in his judicial investigations and decisions, while adhering to precedents that became rules of property, was not inclined to be controlled by any of the technicalities of the law. He strove to get at the right and justice of the case, and so make the decision comport with the very right of the matter.

Judge SCOTT in his private character was on a high level. The measure of value of a human life to the race is the value of its achievements. Man's activities have a reflex action upon others. It is the outward manifestations of inherent qualities that touch, and bless or blight, others. Concealed or hidden goodness, however perfect, is powerless in its influence upon others. Great thoughts, noble aspirations, lofty conceptions, unexpressed, however elevating to the individual, exert no uplifting power over others. What are the achievements that have value for the race? Certainly not alone, or chiefly, great and brilliant deeds. The manifold elements that go to make up character are all achievements that have high value for the mass of mankind. Duty in small and humble matters, as well as in the graver and more important affairs of life, well and faithfully and conscientiously done, is, in its example, of marked value to all those who are cognizant of the performance. A calm, dispassionate and benignant demeanor, touched by that tender sympathy that makes all mankind akin, is of immeasurable value to all who behold it. A fearless and conscientious devotion to and defense of what the individual honestly believes to be right is of priceless benefit to all who come under its influence. A constant, unbroken current of sympathy for that large class of unfortunate and suffering people to be found in any community bears upon its bosom an uplifting influence upon all who witness it. If we measure the value of the life of our friend by these standards, we may truthfully say that his achievements were of no small value to the community in which he spent all the years of his manhood.

Judge SCOTT, at the time of his death, was probably the best informed man in relation to the early history of Illinois. He was brought up in the section where most of the early history of the State was made. Since his retirement from the bench he devoted much time to gathering together the facts and traditions connected with the early history of the Illinois country. These he embodied in a number of volumes, only one of which was completed at the time of his death, but the others were in a good state of

forwardness, and it is hoped that all the volumes may yet reach the public.

A noble life has ended its earthly career, leaving to family and friends the rich legacy of a high character, a spotless reputation and of eminent public service.

Mr. JAMES H. MATHENY, of Springfield, in seconding the motion to spread the memorial upon the records, said:

May it please the court—It had been contemplated that the memorial just presented to your Honors should be followed by an address from Judge Reeves, of Bloomington,—a life-long friend and fellow-citizen of the distinguished man whose memory we have to-day met to honor; but as Judge Reeves is unable to be present, it has been requested that I represent him. Most willingly do I add my tribute to the virtues of Judge SCOTT, though what I may say must be brief and fragmentary.

As a student of the long line of learned judgments delivered by him as a member of this court, I, in company with the bar of the State, learned to know him and to revere him as an ornament to our jurisprudence and as a power therein. But after his retirement from the bench of this court it was my fortune to see him and know him in another and somewhat different field. It became my duty to publish an address upon Magna Charta, which he delivered before the Illinois State Bar Association, and in connection with that work, and the conversations and correspondence that grew out of it, I saw that though he had received all that he had wished for of professional reward and judicial honors, yet in the evening of his life his energies were still active in tracing the principles of modern jurisprudence back to their historic foundations.

As has been said in the memorial presented by Mr. Capen, the fame and memory of Judge SCOTT must chiefly rest upon his work as a member of this court. But his character and ability were subjected to another and almost as severe a test. As judge of the circuit of which McLean county was part, he followed the illustrious lawyer and statesman whose portrait adorns the walls of this room*, and was deemed no unworthy successor to that great jurist.

But his earthly career is closed. The end has crowned his work, and the members of the bar join in asking that the memorial may be preserved on the records of this court.

*David Davis.

Mr. JUSTICE WILKIN, on behalf of the court, responded as follows:

In responding to this memorial of the McLean county bar little need be said. We can give expression to our admiration for the ability and fidelity with which Judge SCOTT performed his official duties during the long term of his judicial career in no better way than by announcing our hearty concurrence in the memorial which has just been read and the remarks accompanying the presentation of the same.

The labors of Judge SCOTT in this court began at the September term, 1870, held at Ottawa, and closed with the June term, 1888, in this city. As has been remarked in regard to Judge Sheldon, Judge SCOTT'S opinions are to be found in seventy-one volumes of the Illinois Reports, beginning with the 54th and ending with the 125th. During the period of his service many questions of more than ordinary importance, arising from the recent adoption of the constitution of 1870 and springing from the phenomenal growth and development of all the material resources of the State, came before the Supreme Court for consideration and final decision. His earnest and painstaking efforts in the solution of these questions are evidenced by many of the opinions which he wrote.

At the close of his second term he voluntarily quit the court and retired to private life, bearing with him the love and esteem of his brethren and the full confidence and admiration of the bench and bar throughout the State. He did not, with his retirement, lose interest in the judiciary of the State, which he had so long and faithfully served as a judge and in the courts of which he had practiced with distinction. This interest was manifested by his regular attendance upon the annual meetings of the State Bar Association, which he aided and encouraged by his wise counsel and favored with at least one instructive paper read before it, to which Mr. Matheny has just referred, entitled "Magna Charta." His chief pleasure, however, after leaving the bench, was found in the quiet of his own home and in the companionship of the books in his well-selected private library. There death found him, and as he passed away the universal judgment of those who knew him well was, that in life he followed the great precept, "love mercy, deal justly and walk humbly before thy God."

REPORTS
OF
CASES AT LAW AND IN CHANCERY

ARGUED AND DETERMINED IN THE

SUPREME COURT OF ILLINOIS.

VOLUME 173.

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN APRIL AND
JUNE, 1898, AND CASES IN WHICH REHEARINGS WERE
DENIED AT THE JUNE TERM, 1898,

WITH PROCEEDINGS HAD IN THE SUPREME COURT IN MEMORY OF
BENJAMIN R. SHELDON AND JOHN M. SCOTT.

ISAAC NEWTON PHILLIPS,

REPORTER.

SPRINGFIELD:
1898.