

MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS AT THE OCTOBER TERM, 1924, ON THE LIFE, CHARACTER AND PUBLIC SERVICES OF HON. JAMES H. CARTWRIGHT, DECEASED

At the hour of half-past two o'clock P. M., October 16, 1924, other business having been suspended, the following proceedings were had :

Mr. CHIEF JUSTICE DUNCAN :

The hour set apart for the presentation of memorials to the late Justice James H. Cartwright, for many years a very distinguished member of this court, has now arrived. The court is advised that a committee consisting of former Governors of Illinois, Frank O. Lowden, Joseph W. Fifer, Richard Yates, Charles S. Deneen and Edward F. Dunne, has been appointed by the Illinois State Bar Association to present the memorials. The court will hear from those members of this committee who are present.

Hon. FRANK O. LOWDEN :

May it please the court—James Henry Cartwright was born in Iowa territory on December 1, 1842. He was the oldest of three sons in a family of six children. His forebears were among the early English settlers in this country. Barton Hall Cartwright, the father of James, married Jane Chloe Benedict, who was also a descendant from an old English family which had settled in New England. Barton Hall Cartwright was a Methodist preacher, and as such he had gone as a pioneer to the Iowa territory. When the family moved to Illinois, the year after James' birth, the elder Cartwright "rode the circuit" for the Methodist church throughout the northern part of this State. No one familiar with the history of

Illinois can over-estimate the influence nor the hardships of the pioneer preachers of those early days. They were a rugged band. The frontier is always peopled by the young and hardy and adventurous. Without the restraint which an older civilization imposes, the pioneer preacher was often the single force which held the young community within bounds until it rightly found itself. He it was who established the early schools and who stood sponsor for all civilizing things. It was in the environment of the home of such a pioneer that James H. Cartwright spent his youth. With his father and family he lived first in LaFayette Grove, in Ogle county, and then in Prophetstown, Monmouth, Macomb and Centerville. About the year 1850 the family returned to Ogle county and Barton Hall Cartwright built a home at Mt. Morris. Here for the first time the log cabin gave way to the more modern board house.

At Mt. Morris Judge Cartwright was able to obtain something of a grammar school education, which enabled him to enter the Rock River Seminary, at that place. This seminary played an important part in the early history of Illinois. Many men who afterward became eminent in our public life were educated here. I recall an interesting incident in connection with this institution. Some years ago Shelby M. Cullom, then senator of the United States from Illinois and chairman of the important committee on Foreign Relations in the United States senate, was a guest at my home. One day we drove over to Mt. Morris, a distance of about twelve miles, to visit Robert Reynolds Hitt, who lived at Mt. Morris and who then represented that congressional district in the house of representatives and was chairman of the house committee on Foreign Affairs. Mr. Hitt, it will be remembered, began his public career by reporting stenographically the famous Lincoln-Douglas debate. These two men, already well advanced in years, visited together the old Rock River Seminary and indulged in reminiscences of their early years, for both had received their education at this institution. It was an impressive scene, for though there were numberless more famous educational institutions in the land, I cannot learn that any of them ever furnished at the same time both chairmen of the committees of the senate and the house which largely determine our relations with all the world.

Judge Cartwright was unable to finish his course at the Rock River Seminary but must have made satisfactory progress, for he

was the first to be recommended by the faculty of that institution for a position as teacher in a nearby country school. He was obliged to accept because of shortage of funds.

When the Civil War broke out Judge Cartwright, then a boy of nineteen years, volunteered his services in behalf of the Union cause. His first regiment was the Sixty-ninth Illinois, in which he enlisted in April, 1862. His enlistment expired at the end of three months. Meanwhile his father had become a chaplain under Gen. Sherman, and the younger Cartwright, finding that his services were more urgently needed at home than in the army, did not re-enlist in the Sixty-ninth but returned to Mt. Morris to assume the responsibility of caring for his mother and younger brothers and sisters. However, he could not long remain out of the army, and in June, 1864, he enlisted again, this time in the One Hundred and Fortieth Illinois Infantry. Young Cartwright, twenty-two years of age, was elected captain of the company. His selection, however, though highly pleasing to the company, seemed to have been against the wishes of his superior officers, who would have preferred some more experienced man in his stead. Accordingly the matter was taken up with Gov. Yates, and young Cartwright was summoned to Springfield and asked to resign in order that someone of larger experience might be selected by the company in his stead. Promptly young Cartwright tendered his resignation. When, however, it came to the election of a successor by the company the vote was unanimous in favor of his retention. In view of the unusual confidence thus manifested by the company in their young captain he was allowed this time to retain his place.

Judge Cartwright maintained the keenest interest in his comrades of the Civil War until the very end of his life. When the Oregon Post of the Grand Army of the Republic was called out, as on Memorial Day and other patriotic occasions, his erect, soldierly figure was always noted among his comrades of the post. Many of the members of his regiment were recruited from the vicinity of Oregon, and to them he was always known as "Cap." Their confidence, doubly shown in their young leader as narrated above, continued until the end of their lives. When they wanted advice on any subject they were wont to apply to him.

When he returned to civil life young Cartwright found that his savings were sufficient to make further attendance at school pos-

sible. He decided to take up the study of law and in the fall of 1865 entered the law school of the University of Michigan. He graduated in the spring of 1867, received his law degree and returned to his home in Illinois. The early years of his practice were at Oregon. A little later he became general attorney of the Chicago and Iowa Railroad Company,—a new corporation which had planned to build a railroad from Aurora, through Oregon, to Forreston and west. He remained in this position until 1876, when the company went into the hands of a receiver. He then resumed the practice of law in Oregon, and from that time until 1888 was a master in chancery of the circuit court of Ogle county. In 1888 he was elected to a circuit judgeship, succeeding Judge Eustace. He was re-elected in 1891 and assigned to Appellate Court duty in the Second District, at Ottawa. In 1895 he was elected to the Supreme bench to fill the vacancy caused by the death of Mr. Justice Bailey, of Freeport, and was re-elected in 1897, 1906 and 1915. Last spring he was re-nominated by his party for the ensuing term without opposition, no nomination being made by the opposition party. If he had lived he therefore would have been elected by a practically unanimous vote.

On November 26, 1873, Judge Cartwright was married to Hattie L. Holmes, of Oregon, Illinois. Six children were born of this marriage, five of whom survive him,—two sons and three daughters.

Something should be said, I think, of Judge Cartwright's recreations. He had purchased a very attractive farm just north of Oregon, where he lived and spent his vacations in breeding and developing trotting and pacing horses. He was recognized as one of the leading authorities of America on the pedigrees of trotting horses. He developed many of great merit. One, particularly, should be mentioned, if for no other reason than its name,—Citation,—which for one year was an undefeated champion on the Grand Circuit. He loved his horses and enjoyed nothing more than being with them. During one of my last visits to him, but a few days before his death, I asked him how his horses were coming on. His face lighted up with pleasure, though he knew that the shadows were fast gathering, and he replied, "Jim [his son and namesake] tells me that we have some of the most promising youngsters we have had in years."

Judge Cartwright, perhaps, came as near being offered an appointment upon the Supreme bench of the United States without actually receiving the tender as any other man in the history of that great court. The late Hon. James R. Mann is my authority for this statement. He had received the story from former Justice Moody, then of the Supreme Court. Upon the resignation of Justice Brown, in 1906, President Roosevelt sent for Mr. Moody, who was then Attorney General of the United States, and asked him to find out for him who the best man in the middle west was to fill this vacancy. The Attorney General made an extensive investigation, and, according to his own story, went over to the White House one evening to recommend to the President the appointment of Judge Cartwright as in all respects meeting the high requirements the President had laid down. He expected, as he said, that Judge Cartwright's name would be sent to the senate the next day. Upon opening up the subject, however, the President interrupted him, saying that he had changed his mind and had decided to appoint Mr. Moody himself to this high office. And so it has happened since I became a member of this bar, that the Supreme Court of this State has twice almost made a great contribution to the greatest judicial tribunal in all the world. The first time was when President Cleveland was seeking a successor to Chief Justice Waite. It will be recalled that he first offered the chief justiceship to Justice Scholfield, of our Supreme bench, and upon his declination appointed Mr. Melville W. Fuller, of the Chicago bar, to that exalted place. It is a great tribute to our own Supreme Court that it has been at least twice recognized in so signal a manner.

This memorial will be spread upon the records of this court. Nothing that I can say will add to the fame of James H. Cartwright, for his great opinions, running through more than one hundred and fifty volumes of the Reports of this tribunal, will disclose for all time his greatness as a judge. It seems presumptuous, therefore, for me to speak upon the qualities which went to make up his greatness. His own opinions speak more clearly and eloquently than can I. And yet I cannot refrain from saying a word or two of the impressions he always made upon me in my frequent contact with him. The great lawyer, I have always thought, is not he, necessarily, who can answer legal questions accurately, but

rather it is he who knows what the question is. It is seldom that in actual life a clean-cut question presents itself clearly. The facts are usually so complex or voluminous, or both, that the real legal question involved is not at once apparent. The great judge, therefore, is he whose mind goes unerringly to the decisive issue in the case. Judge Cartwright had this faculty in a marked degree, and when he had discovered the controlling issue, no power on earth could divert him from a decision of the issue itself. It mattered not to him what the popular view was, nor even whether in the particular case some hardship might result from a proper decision of the question involved. Courageously he took his stand upon the question and held it against all contenders, braving all criticism. No one knew better than he that a "hard case makes bad law." He had that high sense of the duty of a judge which made him always conscious, in coming to a decision, that he was not only deciding the particular controversy, but that he was announcing a judgment for the future guidance of mankind.

The American judge occupies a position unique in the history of governments. He is something more than a judge. He not only interprets and administers the law, but he is the final guardian of those fundamental rights of the people which they have reserved to themselves and over which they have been unwilling to grant any power even to the government of their own creation. This was a concept wholly new in government when our Federal constitution was adopted. It was seen by the wise framers of that constitution that there is always a tendency on the part of public officials to enlarge their authority and to assume functions that were not granted to them. If the rights and privileges guaranteed in the constitution were to be made secure, the power must be lodged somewhere to determine when the limits set by the constitution were exceeded. This power was conferred upon the courts. The device was found so wise and effective that all the States have followed the Federal constitution in this respect. The judge in America, therefore, not only administers justice as between parties, but he is also, in a sense, the custodian of the constitution itself. Upon the judiciary, therefore, rests the grave responsibility of preserving intact the fundamental law of the land. In meeting this responsibility the judge requires not only ability of a high order but courage as well, for in times of popular excitement legis-

lation is likely to be enacted to meet the popular demand which transcends the authority of the legislative department of government as prescribed in the constitution. The same popular pressure which induced the legislation is likely to be brought to bear upon the court to sustain it. Then it is that the great judge shows the stuff of which he is made. If he resists the demand of the hour in order that he may give effect to the plain provisions of the constitution long ago written in calm, he rises to the stature of a great judge. Judge Cartwright, in his long career upon the bench, never failed to stand that test.

I never knew a judge who entertained so high aspirations, not for himself but for the court of which he was a member. He was jealous, always, of its high repute. He did not care so much what people thought of Judge Cartwright, but he cared everything for the unquestioning faith of our people in the integrity, the impartiality and the wisdom of the Supreme Court of the State. How large a place he fills in the records of this court every lawyer knows. Were his opinions removed, how fragmentary and mutilated would these records be. And I wonder if we realize, as we go on from day to day, how vital a part of our history is enshrined in the records of the court of last resort of our great commonwealth. It may be that our civilization will go the way of the civilizations of the past. Some thousands of years hence the antiquarian may be delving for the evidence of an earlier civilization. If, perchance, that time should come and the antiquarian of that far-off time should discover nothing else upon this portion of the earth's surface we call Illinois than the records of our Supreme Court, he could reconstruct completely our civilization, its life and progress, and, mayhap, the very seeds of its decay, through those records, alone. In building up those records ably, patiently and fearlessly, very few in the history of the court have equaled,—no one has surpassed,—James H. Cartwright.

Though we are told that Judge Cartwright was of frail physique in his boyhood, he grew into sturdy manhood. Indeed, during his long service upon this bench he was never absent from duty, I think, on account of his own illness until at the last October term, when he was stricken with an illness that greatly alarmed his family and friends. Such, however, was his vitality that he rallied from this and resumed his duties. He was in attendance at the

last April term of the court, when he again became seriously ill and returned to his home at Oregon. He lived but a few weeks. I saw him several times during these last weeks and it was evident that he would never resume his duties again. The final summons came on the eighteenth day of May. When the end came it came suddenly and peacefully. He suffered but little and his mind remained perfectly clear to the last. He died as he would have wished, and this is a never-failing comfort to his family and friends. It was a long and noble and useful life serenely coming to a fitting end. He was laid to rest on a beautiful afternoon on a gentle hillside of the farm he loved, and a great judge had gone to his reward.

I respectfully move that this memorial be received and spread upon the records of this court.

HON. JOSEPH W. FIFER:

May it please the court—We have heard from the eloquent lips of our good friend, Gov. Lowden, the true story of a long and useful life. The memorial just read is so complete there seems nothing left for those who would now speak.

The ranks of the legal profession have been filled by men of intelligence and a high sense of justice. On the coming of the lawyer the steel-clad knight was relegated to the limbo of the past and reason and justice took the place of force and violence. Just laws administered through organized courts of justice have always been regarded as the high-water mark in the civilization of any people. From the very beginnings of our free institutions the lawyer has been conspicuous both in the cabinet and on the trampled field. Madison the lawyer is justly regarded as the father of our Federal constitution, and it was the great chief justice Marshall who wrote between the lines of that great instrument the implied powers which enabled Abraham Lincoln, a century later, to save the Federal Union. I am sure no true history of the war between the States could be written with the names of Palmer, Oglesby, Logan and McClernand left out.

With this record before him, it is not strange that our deceased friend, Judge Cartwright, should choose the legal profession as the field of his life's activities. When he made that decision he was a young man in the prime and vigor of his early manhood, full

of hope and confidence, and, I doubt not, like most of us at that period of life he had many beautiful day-dreams. He had no wealthy kindred or influential friends to urge him forward, and so it was necessary for him to depend upon himself,—the best reliance, I have always found, in every emergency of life. He worked, he struggled and he succeeded,—succeeded in becoming a great lawyer and a great judge. For twenty-nine years he adorned a bench distinguished for learning and ability. His opinions are models of good English, and he has enriched the judicial literature of our great State. His mind was broad and comprehensive, and he well understood that the security and happiness of all depend upon just laws justly administered by organized courts of justice. His logic was as pitiless as famine and as merciless as a storm, and consequently he could not be imposed upon with nonsense. He brushed aside all inconsequential matters and came quickly to the hinging point in every case brought before him for consideration. He entertained a high regard for the legal profession and a profound faith in the judicial department of our government.

Judge Cartwright's activities, however, were not confined to the civic affairs of life. In the darkest hour this nation ever saw he early heard the call of duty and went forth to do battle for his country. He stood with his comrades on that calvary of national sacrifice and redemption, baring his bosom to the fury of a storm that so nearly rent a nation. He met and fulfilled all the responsibilities and duties of life with fortitude and courage. Throughout a long official career no stain ever touched his judicial ermine and no breath of suspicion ever rested upon his good name. Full of years and full of honors he finally went to his eternal rest, followed by the gratitude and the affections of his fellow-citizens. I know not what revolutions may sweep over this fair land of ours in the outstretched centuries that lie before us, but should our free institutions decay and fall, I feel assured that the historian of the future will find no seeds of dissolution and decay in the records of that court of which Judge Cartwright was so long an honored member.

The name of our friend calls before us a tall, shapely figure and a commanding personality. We can scarcely realize that he is dead. He seems present with us here to-day, and so we feel

"There is on earth, alone, one great society: the noble living and the noble dead."

HON. CHARLES S. DENEEN:

May it please the court—I rise to join former Gov. Lowden in presenting a memorial to this court on the life and services of the late Justice James H. Cartwright. Gov. Lowden has set forth the biographical facts in the memorial which he has presented. It was the privilege of Gov. Lowden to be a neighbor and close friend of Judge Cartwright for many years. Gov. Lowden knew well the character and characteristics of the learned judge and the portrayal of them is clear and inspiring.

My acquaintance with Judge Cartwright was long rather than intimate. I knew him chiefly in his official life. I was associated with him on the commission which erected the Supreme Court building. Judge Cartwright was its leading and directing member. He took a keen interest in every detail of the work. He impressed his ideas of the arrangement of the court rooms, the library, the Attorney General's office, the clerk's office and the living rooms upon the commission and the architect, and insisted that the architect and the artists inform him thoroughly on the materials and the artistic features of the building. The architect, Mr. W. Carby's Zimmerman, told us often that he would build a building which would last for a thousand years, and Judge Cartwright felt that he was assisting in erecting a structure which would stand the criticism of centuries and meet with the approval of the generations which would use or gaze upon this noble building. This building was to symbolize the law in its symmetry, its solidity, its majesty, and its beauty of line and proportion. Judge Cartwright had determined that this court could not work to advantage with a larger number than seven justices, so he insisted that the building be built for a court of that number. The appropriation made by the General Assembly was about \$400,000. Judge Cartwright mastered every detail of material and design and the cost of the building came within the appropriation.

Judge Cartwright's personality was striking. He was a man whom a stranger would notice in any gathering,—tall, dignified, unobtrusive, alert and thoughtful. He impressed everyone as a

man of unusual force of character. He was direct and forceful in conversation. He had clear conceptions of the points in controversy. He was not distracted by words, circumlocutions or evasions. His mind operated smoothly and rapidly. His mental characteristics were clearness of thought, clarity of expression and completeness of statement of facts and law. The strength of his character was reflected in his opinions. He decided issues on their merits and for all time. He had that sense of proportion and obligation to the present and to the future which gave to his opinions an added interest and respect. The bar had profound respect for his integrity, his sincerity, his uprightness, his learning in the law, and for the courage and independence of his mind. His masterful spirit will live in his opinions, which will aid greatly the bar and the courts in applying the law.

The courts perform an important service in the conduct of our affairs. They guard those immunities and rights which were not surrendered to the government. They have won their high respect and confidence through outstanding judges such as Judge Cartwright. The best answer to the criticism of the courts is the character, learning and courage of justices such as he, who decided issues upon their merits, regardless of the standing of those directly concerned therein.

Judge Cartwright was an exemplary citizen. He was outspoken in his views on public affairs. He took sides on debated questions. He was warm in his friendships for those in public life, but his friendships waned if his friends departed from his conception of service to the people. He believed that his duty as a citizen was to serve the public at large, and in discharging that duty he served all. He saw the rugged pioneer life of Illinois. He served in the Civil War as a volunteer soldier. The sterling virtues which were developed in him in his early life and in his service to his country in war were reflected in his life as a citizen and as a jurist.

Judge Cartwright served on the Supreme bench for twenty-nine successive years. He was re-nominated this year without opposition. Thus the people of his district, without division, registered their approval of his eventful career. He had lived to be more than four-score years when he was last nominated. He desired to work to the last, and a kind providence granted his wish. He would have chosen no other way than this to quit the stage of life.

I have a profound respect for the character, courage, ability and learning of Judge Cartwright, and it is a pleasure to join with Gov. Lowden and my distinguished associates of the committee in presenting this memorial.

HON. EDWARD F. DUNNE:

May it please the court—In the framing of the splendid and well-merited memorial to the late Judge Cartwright, Gov. Lowden has paid a deserved tribute to his physical courage as a soldier and his moral courage as a judge. In that memorial it is truthfully stated that a judge "is the final guardian of those fundamental rights of the people which they have reserved to themselves and over which they have been unwilling to grant any power even to the government of their own creation. * * * The judge in America, therefore, not only administers justice as between parties, but he is also, in a sense, the custodian of the constitution itself." No jurist in the State of Illinois recognized more keenly this fact than did Judge Cartwright, and for thirty-six years on the bench he constantly and courageously upheld and maintained the constitutions of his State and of the nation. He held in great esteem the Illinois constitution of 1870, and, in particular, the bill of rights of that instrument, which he had been interpreting and construing for over a third of a century.

In 1922 a proposed new constitution, drafted by the constitutional convention, was submitted to the people for adoption. It proposed several material changes in the constitution of 1870, for which Judge Cartwright had so much admiration. Among other changes, it made it discretionary with a judge to admit an accused to bail. This was a radical departure from the bill of rights in the constitution of 1870, which provided that all defendants, except those charged with capital offenses, should be released on bail pending trial. The proposed constitution also changed the method of the selection of many judges, clerks of court, justices of the peace and constables, making about three hundred of them appointive instead of elective, as provided for in the constitution of 1870. It took from the legislature the initiative in framing the rules of court and placed the power of making rules for all the courts of the State in the Supreme Court. It changed the tax laws of the State and made mandatory income taxes on all married persons having an in-

come of over \$1000 and upon all unmarried persons having an income of over \$500.

The proposed constitution was framed by some of the most distinguished citizens of the State, and among them some of the ablest lawyers at the Illinois bar, and was approved by the convention by almost unanimous vote. It took some courage and devotion to the fundamental rights of man to antagonize the adoption of the proposed constitution under such circumstances. But that courage and devotion were found in the person of Judge Cartwright. In an incisive letter addressed to the public he pointed out what he considered to be the dangerous provisions of the new constitution, and it was largely because of his bold and determined opposition that the proposed constitution was overwhelmingly defeated at the polls.

Gov. Lowden, in his draft of the memorial to Judge Cartwright, has also said: "There is *always* a tendency on the part of public officials to enlarge their authority and to assume functions that were not granted to them." If Gov. Lowden had inserted the word "nearly" before the word "always" in the above quotation he would have been absolutely right. There have been, however, some remarkable instances where public officials have refused to "enlarge their authority" and refused to assume functions that were not originally granted to them. Washington furnished one of these instances; Judge Cartwright furnished another. The proposed constitution would have given him and his colleagues on the Supreme bench the appointment of numerous judges and other public officials now elected by the people. It would have given him and his colleagues on the Supreme bench the power to establish and enforce the rules of court procedure in every court in the State. Notwithstanding the extraordinary tender to him and his colleagues of this tremendous power, which would have enormously enhanced his and their prestige and influence, he displayed on this occasion a remarkable spirit of self-abnegation, because he believed the proposed constitution was contrary to the public welfare and detrimental to the interests of the common people.

In my judgment the memorial to be spread upon the records of this court to the honor of this great jurist and unselfish, patriotic citizen would not be complete without calling attention to this remarkable instance of disinterested patriotism and self-denial on the part of Judge Cartwright in a great public emergency.

Mr. CHIEF JUSTICE DUNCAN :

The Chicago Bar Association has asked leave to present an additional memorial. The court will now hear from the committee from the Chicago Bar Association.

Mr. CHARLES LEROY BROWN :

May it please the court—At a meeting of the board of managers of the Chicago Bar Association, held on the tenth of October, 1924, the following resolution in regard to the death of Mr. Justice James H. Cartwright, of the Supreme Court of Illinois, was moved and adopted:

“With sadness we record the death of James H. Cartwright, one of the justices of the Supreme Court of Illinois.

“Judge Cartwright had a great part in the government of this State, and saying this is equivalent to saying he had a great part in the conduct of the system of government of this country. The notable opinions of a judge of the highest court of an important State have an influence on the administration of the law in every other State, and, in divers ways, on the whole structure of our government. That the great justices of the State courts of the United States have materially contributed to the upbuilding and maintenance of our whole system of government is apparent from the high place universally given on the roll of the men who have made our government what it is, to the names of the famous judges of the State courts, such as Shaw, Gibson, Kent, Sharswood, Black, Bigelow, Hitchcock, Redfield, Cooley, Campbell, Ryan, Blatchford and Beasley. To this roll of illustrious names may appropriately be added the names of several of the great jurists of the Supreme Court of Illinois, and among these belongs the name of the departed Judge Cartwright, for of him it may truthfully be said, as it was said by Justice Jeremiah S. Black in speaking of Chief Justice Gibson: ‘In the various knowledge which forms the perfect scholar he had no superior. Independent, upright and able, he had all the highest qualities of a great judge. In the difficult science of jurisprudence he mastered every department, discussed almost every question, and touched no subject which he did not adorn.’

“The judicial work of Judge Cartwright was never circumscribed by local or sectional considerations. In the Civil War his loyal service was for the Union. The experiences and associations

of his long and active life made him intimately familiar with the history and development of all parts of this State. In his early practice Judge Cartwright did much professional work in Chicago and in close association with its leading lawyers of a half-century ago. It was his good fortune that he had similar contacts with the people of nearly all other portions of Illinois. None understood better than he the diversified conditions of our State, and in the performance of his judicial duties his great abilities were ever directed toward giving the law such a practical and uniform construction as to make it equally applicable and equally acceptable throughout this State.

"Patience, industry, orderliness, calmness, reserve and moderation marked the character of Judge Cartwright. Utterly free from ostentation, he possessed strength and the quiet dignity which accompanies true simplicity of life and manner. From a consideration of these personal qualities may be deduced some of the reasons why his judicial service was so valuable. His fame will not rest on a few learned or outstanding opinions. It will rest rather on the consistently sound disposition of a great mass of litigation concerning private and public rights and requiring the accurate application of the established legal principles. In the clear and accurate statement of legal principles and in the logical demonstration of their application to the case in hand, the work of Judge Cartwright has not been surpassed by that of any American jurist. His opinions have been followed as precedents in all the reviewing courts of this land, and this is because he had a comprehensive understanding of the unchangeable principles of right and wrong which form the basis of the common law.

"Consolation for his loss may be found in the realization that we have with us, and shall always have with us as a vital force, these expositions of the law contributed by him to the opinions of our Supreme Court."

On behalf of the committee of the Chicago Bar Association I present this resolution and pray that it may be entered upon the records of this court.

Mr. JAMES M. SHEEAN:

May it please the court—Supplementing the resolutions adopted by its board of managers, the Chicago Bar Association asks leave to present for inscription upon the records of this court the fol-

lowing memorial, whereby to commemorate our appreciation of the personal character and public service of a great judge, whose contributions have aided so substantially in maintaining the high standard of this court in the development of American jurisprudence.

James Henry Cartwright was born on December 1, 1842, and departed this life on May 18, 1924. In the memorial presented by Gov. Lowden on behalf of the Illinois State Bar Association the events which make up that long career of individual effort and achievement are accurately and admirably narrated, hence they will not be here repeated.

Of his more than four-score years Judge Cartwright devoted almost two score to public service, for he served continuously as judge from 1888 until his death, and behind the twenty years' experience as a lawyer which he brought to the bench in 1888 there was his service as soldier and officer in the Civil War. In those more than four-score years he saw Illinois prairies furrowed into farms, farms subdivided into villages and villages transformed into cities. He began the practice of his profession at the inception of the era of industrial expansion and transportation development which followed the Civil War. The effect upon the labors of this court of the enormous material expansion during the period which measures the professional and judicial career of Judge Cartwright, and of the enactment of legislation brought about by this expansion, can be appreciated by brief reference to the following events in judge Cartwright's life:

The first case to reach this court in the trial of which Judge Cartwright participated in the court below is *Roe v. Taylor*, 45 Ill. 485, decided at the September term, 1867. Forty-five printed volumes contained all the opinions of this court from its organization in 1819 to the September term, 1867. The first case in this court in which the opinion was written by Judge Cartwright appears in 160 Ill. at page 409, decided March 30, 1896. That is to say, in the less than thirty years which elapsed between the time when Judge Cartwright's first case reached this court and the time when he wrote his first opinion as a member of this court, it required one hundred and fifteen volumes to contain the court's opinions as compared with the forty-five volumes which covered almost the first half century of the court's existence. The last cases in which Judge Cartwright wrote opinions appear in 312 Illinois, and those

opinions were filed at the April term, 1924. Thus, in the twenty-eight years during which Judge Cartwright served as a member of this court there was contributed almost one-half of the three hundred and twelve volumes which record, during its existence of more than a century, the labors of this court.

Judge Cartwright devoutly believed that into the administration of our courts there must be carried the constitutional guaranty taken from one of the covenants of Magna Charta, that "to none will we deny or delay right or justice," and that when courts caused delay, justice was denied.

When we recall that at the time Judge Cartwright became a member of this court its opinions were being handed down with several terms intervening between the dates of submission and decision; when we recall the mutterings of dissatisfaction and the suggestions that branch courts or court commissioners be created by legislative enactment; when we appreciate the enormous increase in the burdens and responsibilities of this court during the period from 1896 to 1924; when we know that for several years last past the court is abreast its work so that decisions are rendered at the term following submission; may we not, without detracting from the contributions of other members of the court, assign to Judge Cartwright a place of pre-eminence in bringing back and maintaining, as a characteristic quality of practical and efficient government, the prompt responsiveness by this court to the constitutional guaranty that remedial justice shall be obtainable "without denial, promptly and without delay?" And when we thus assign him that place of pre-eminence, will we not more truly appraise and more justly estimate the permanent contribution of Judge Cartwright to orderly government under law than if we were merely to eulogize his rugged integrity, candor, simplicity, courage and detestation of hypocrisy and evasion? For, after all, these characteristics are but the indispensable attributes of any man who can, and does, within his tenure of judicial office, maintain the judicial branch of government efficiently functioning in its constitutional field.

Judge Cartwright was as impatient with judicial embarkation upon the seas of sociology and economics as he was firm in resisting legislative or executive encroachment upon the powers and responsibilities confided in the courts by the constitution. Speaking

of the duty of the court in case the legislature should exceed its constitutional authority, he said in *Knopf v. People*, 185 Ill. 20, at page 27: "It cannot be that the legislative body on which an absolute limitation is imposed shall finally determine the question of such limitation, but when the question arises in a judicial proceeding the court must compare the law with the fundamental law, and if it is found to be in conflict must enforce the limitation."

Asserting that there has never been encroachment by this court upon the powers granted to the other departments of government, he said in *People v. Dunne*, 258 Ill. 441, at page 453: "No more baseless and defenseless proposition could be put into words than to say that the court has ever arrogated to itself the authority to pass upon the wisdom or propriety of either executive or legislative acts. It has never assumed to declare laws valid or invalid because they were wise or unwise, or because they tended to advance or retard social justice, individual justice, corrective justice, or any other variety of justice. The only law made by the people is the constitution, enacted by them under their original and sovereign power as the fundamental law, wherein they have granted powers to and prescribed limits for each one of the several departments. It was deemed essential to the existence of the government that there should be some department authorized to construe that law, and determine, when called upon in some form known to the law, whether its limits have been disregarded. That duty rests upon the courts, and to the exercise of that function this court has always strictly limited itself. When the validity of an act of the legislative department has been in question, the constant rule has been to construe it so as to uphold its validity if it could reasonably be done, and if its construction was doubtful the doubt was resolved in favor of the law. (*People v. Thompson*, 155 Ill. 451; *People v. Hutchinson*, 172 id. 486; *City of Chicago v. Manhattan Cement Co.* 178 id. 372; *Arms v. Ayer*, 192 id. 601; *People v. McBride*, 234 id. 146.) The issue in such a case is between the people and their agents, and the question is whether the agents have exceeded the letter of their authority."

In *People v. Czarnecki*, 266 Ill. 372, he said, at page 374: "The General Assembly, chosen by the people at frequent intervals and directly responsive to their will, is the sole judge of such provisions of the law as will advance the interest of the people, and

it is the sole guardian of the public interest and welfare. When it has acted upon a subject upon which it has power to legislate, the courts have neither the power nor disposition to annul or set aside the law if they should conceive it to be contrary to the public interest, and their power in passing upon an act is limited to the question whether it is within the legislative power."

These excerpts from opinions by Judge Cartwright simply illustrate the dominating motive through all his years of devoted service in this court. Never had he ambition or desire that from his judicial utterances there might be compiled a code expressive of his views on social or economic questions. Rather was it his ideal that by the administration of his office as a sacred trust would be demonstrated the adequate and efficient adaptability of constitutional government to preserve, in changed and ever-changing conditions, the fundamental principles on which has been built and rests the structure of American government, in whose permanency he had implicit faith.

And so, if ever there shall come a time when the citation of opinions depends on the question whether such opinions are devoted to expositions of the author's views in the realm of sociology or of economics, then the fifteen hundred opinions contributed by Judge Cartwright to the work of this court will cease to have persuasive value. But so long as we believe that "the rule of justice which solves the controversy of to-day becomes the rule of conduct preventing the arising of contention in the years to come," may we not confidently assert that the opinions of Judge Cartwright, by their clarity and simple directness, will become in the Illinois Reports what the opinions of Mr. Justice Sharswood are in the Pennsylvania Reports or the opinions of Mr. Justice Shaw in the Massachusetts Reports,—an inspiration to the court of which he was so long a member and a guide to the courts of other States? And may we not likewise confidently assert that amid the changed conditions and complicated problems which the intervening centuries have brought, Judge Cartwright exemplified the ideal judge defined by Socrates when he said: "Four things belong to a judge: To hear courteously, to answer wisely, to consider soberly, and to decide impartially." And may we not sincerely express our estimate of Judge Cartwright's judicial work by quoting the language of Mr. Justice McKenna, who, when speaking of the late Chief

Justice White, said: "Anticipating the future, I see no shadow on his fame or service. I venture to make comparisons. I make full concession of the recognized and distinguished merit of those who preceded him. I make full admission in assured prophesy of the ability of those who will succeed him. Yet, considering his qualities, their variety and degree, and estimating them, I dare to say that he will forever keep a distinct eminence among the great justices of the United States."

Mr. CHIEF JUSTICE DUNCAN:

The court has listened with appreciation to the presentation of these memorials. Mr. Justice Dunn, who served on the bench with Justice Cartwright for seventeen years, will respond on behalf of the court.

Mr. JUSTICE DUNN:

Judge Cartwright served the people of the State in a judicial capacity thirty-six years,—twenty-eight and a half years on the Supreme Court and the remainder of the time as a judge of the circuit and Appellate Courts. Few judges have equaled his judicial career in length of service and only two have had so long a period of service on this court. The opportunity of public service first came to him at the threshold of his manhood, with the beginning of the Civil War. The story of his enlistment and service has already been told to-day. From the stock from which he came it would naturally be expected that he would derive independence, self-reliance and courage. Such military experience as he had at an impressionable period of his life tended to the more complete development of these qualities. Most of the young men of his age at that time had a like experience of military service and training, with the result, at the end of the war, of an eager, restless, daring generation of young men, dauntless and ready, with high courage, to undertake any enterprise. To the resourcefulness, resolution and boldness of this generation was due much of the development and progress of this country in the half-century succeeding the war. Judge Cartwright after the close of the war attended the law school of the University of Michigan and after two years was admitted to the bar. Twenty years later he was elected judge of the circuit court and in 1895 judge of the Supreme Court. More

than half of his mature life was spent in judicial service, and it is of Cartwright the judge that I shall speak. It was as the judge that we knew him,—we, his associates, who have sat with him during these twenty-eight years. During this time he had twenty associates on the court, more than half of whom have gone before him. All the judges who were on the court when he came on it have died, and all who came on the court during the first eleven years of his service have also passed away. Besides those still on the bench, those remaining who served with him are Judge Carter, Judge Cooke, Judge Craig and Judge Watson.

The record contained in more than one hundred and fifty volumes of reports of the decisions of the Supreme Court of Illinois bears witness to the industry of Judge Cartwright, his legal knowledge and intellectual grasp, the logical operation of his mind and the character and quantity of his work. No judge of that court has more profoundly influenced the jurisprudence of the State. So far as the mere volume of work is concerned, except Judge Walker, and possibly Judge Breese, no one has written opinions in so many cases as Judge Cartwright. These opinions concern every sort of question, every kind of litigation, which has come before the court. Every case is of interest to the parties concerned, though sometimes to no one else. Many cases between private parties, involving only private interests, are also of general interest because of the questions of general law involved and the principles announced, which become precedents for future decisions. The highest and most solemn and important function of the court, however, is the decision of questions of constitutional construction, of constitutional power. These questions concern not only the rights, the liberty and the property of individuals, but the powers and functions of the government itself. The characteristic feature of our government, which was first adopted in our Federal constitution and distinguished the government established by that constitution from all others before known, was the separation of the powers of government and the restriction of those powers by certain definite limitations. It is necessary to the operation of a government so constituted that in cases of controversy in regard to the attempted exercise of power under the constitution, authority should be vested somewhere to determine whether the attempt has gone beyond the limitations imposed. That authority belongs to the judicial depart-

ment, and the duty rests upon the courts to support the constitution and enforce its guaranties for the protection of citizens in their constitutional rights. Thus an independent court is the real guardian of the constitution and of the liberties of the people, for it, alone, has the power to restrain the government within the limitations which the people have imposed upon themselves and upon the exercise of power by the government which they have themselves established. The exercise of this power by the judicial department has from time to time given rise to bitter criticism of the courts and the charge of usurpation by the judiciary of legislative functions. In regard to the power and duty of the court where an act of the General Assembly has violated a limitation imposed by the fundamental law, Judge Cartwright said in the case of *People v. Dunne*, 258 Ill. 441: "No more baseless and defenseless proposition could be put into words than to say that the court has ever arrogated to itself the authority to pass upon the wisdom or propriety of either executive or legislative acts. It has never assumed to declare laws valid or invalid because they were wise or unwise, or because they tended to advance or retard social justice, individual justice, corrective justice, or any other variety of justice. The only law made by the people is the constitution, enacted by them, under their original and sovereign power, as the fundamental law, wherein they have granted powers to and prescribed limits for each one of the several departments. * * *

When the validity of an act of the legislative department has been in question, the constant rule has been to construe it so as to uphold its validity if it could reasonably be done, and if its construction was doubtful the doubt was resolved in favor of the law." Again, in *Sutter v. People's Gas Light and Coke Co.* 284 Ill. 634, he said: "Neither the motive nor the wisdom of the General Assembly is ever questioned, but where it is clear that a limitation or restriction imposed by the people in the fundamental law has been violated or disregarded by the General Assembly or any other authority whatever, it is the plain duty of the court to so declare, and that duty can neither be evaded nor neglected in the case of an act of the General Assembly, no matter how desirable or beneficial the attempted legislation may be. The constitution is supreme, and whatever the purpose of the people may have been in imposing a restriction upon legislation it must be obeyed." These

expressions show the attitude of Judge Cartwright in the consideration of constitutional questions, and it is that which every upholder of the constitution and believer in our present American form of government must maintain. Any other view involves a fundamental change in the form and theory of our government.

While Judge Cartwright's many opinions deal with every variety of legal questions and almost every phase of litigation and of legal rights and duties, and while his learning, his keen analysis and wise judgment appear with unfailing luster in every field which he entered, it is doubtless upon his opinions in cases involving questions of constitutional construction that his reputation as a great judge will finally rest. There are said to be about one hundred and fifty of them, the first being *Harding v. People*, 160 Ill. 459, adopted at the next term of the court after his first election and appearing in the first volume of Reports containing his opinions, and the last being *International Lumber Co. v. Emmerson*, 311 Ill. 564, at the April term, 1924. They deal with the police power, due process of law, class legislation, taxation, elections, eminent domain, municipal government, courts, and all the great variety of questions which in more than a quarter of a century have been presented to the court as to the construction of the constitution of 1870. In them are revealed the intellectual power of the writer, his strong reasoning and his comprehensive grasp of constitutional questions, and they constitute an enduring monument to his fame as a great judge.

Judge Cartwright was a really great judge. He was learned in the law, but that was not all his learning. His was a vigorous, comprehensive, disciplined mind, which grasped and understood the great underlying principles of government and of human action as well as of law. He had wisdom,—not mere knowledge, erudition or learning, but also ability to judge soundly and deal sagaciously with facts; knowledge with the capacity to make use of it; perception of the best ends and the best means. His knowledge of the law was profound and his acquaintance with precedents was wide, though his memory for the names of parties, titles of cases or volume and page where they were to be found was not remarkable. His memory concerned itself with principles, and he had a rather tenacious memory of rules of law considered and announced by the court during his term, though he could not always locate

promptly the places where the decisions were to be found. His opinions are models of judicial excellence. His statements of facts are succinct, omitting the unnecessary and immaterial; the arrangement of his argument is orderly, avoiding all that is irrelevant; the language is concise and accurate, and the opinions are as short as the character of the case will permit. He had remarkable facility in grasping the facts and the law of a case as well as in stating them, and his opinions were usually written promptly after the cases were submitted.

Judge Cartwright was the senior justice of the court the last seventeen years of his term. After Judge Wilkin's death none of the judges who were members of the court when Judge Cartwright came on it survived. His long service gave him great familiarity with the practice and decisions from personal knowledge and observation through many years, and he was a tower of strength to the court. He was most loyal to the court. When any matter was decided it made no difference to him whether he had approved the action or not. It was the decision of the court; he accepted it and gave his loyal support. His effort was not to build up a great individual reputation for himself but to maintain the high standing and reputation of the court in which he had the greatest pride, so as not to let it fall below its highest level. Character is the first essential to real greatness in men, and Judge Cartwright possessed it in the highest degree. Duty and service were the great motives which controlled his action. He was strong in his convictions and contended vigorously for his views, but when a matter was finally determined adversely to his views no one accepted the result more readily or more completely than Judge Cartwright. He had, justly, the confidence of the bar and the people, who trusted him implicitly, and the respect and affection of his associates, who will ever cherish his name and fame.

MR. CHIEF JUSTICE DUNCAN:

The clerk is directed to spread these memorials at large on the records of the court and the reporter will publish the same in the Illinois Reports, and as a further mark of respect to our deceased member the court will now adjourn.

REPORTS
OF
CASES AT LAW AND IN CHANCERY

ARGUED AND DETERMINED IN THE
SUPREME COURT OF ILLINOIS.

VOLUME 314.

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN OCTOBER
AND DECEMBER, 1924, AND CASES WHEREIN REHEARINGS
WERE DENIED AT THE DECEMBER TERM, 1924.

SAMUEL PASHLEY IRWIN,
REPORTER OF DECISIONS.

BLOOMINGTON, ILL.
1925.