

MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS ON THE DEATH
OF THE HON. BENJAMIN DRAKE MAGRUDER.

On Thursday, October 13, 1910, at three o'clock in the afternoon, in the Supreme Court room at Springfield, the following proceedings were had:

CHIEF JUSTICE VICKERS: The hour has arrived which has been set apart for the presentation of resolutions and memorials touching the life and public service of Mr. Justice Magruder, who died last April. The court has been advised that the State Bar Association has appointed a committee for the purpose of presenting appropriate resolutions and memorials on this occasion, and that Mr. Robert McMurdy is present as a member of that committee for the purpose of presenting these resolutions and this memorial. The court will now be pleased to hear Mr. McMurdy.

By MR. ROBERT MCMURDY:

May it please the court—At the last session of the Illinois State Bar Association a committee of five was appointed to draft a memorial upon the life and public services of the late Justice Benjamin Drake Magruder, that committee consisting of Samuel Alschuler and Nathaniel M. Jones, of Chicago, James H. Matheny, of Springfield, Franklin L. Velde, of Pekin, and myself, all the committee being present here to-day except one, who was called out of the State temporarily. The memorial has been prepared and is in the following words:

"Benjamin Drake Magruder was born near Natchez, Mississippi, in September, 1838. At the age of fourteen he entered

Yale College, at New Haven, Connecticut, where his grandfather's family then resided. He graduated just before his eighteenth birthday, in the class of 1856. Of the ninety-seven members of the class he was the youngest. In 1858 he graduated from the law school of the University of Louisiana, at New Orleans, and practiced in Memphis, Tennessee, until the breaking out of the war, when he moved to Chicago, where he built up a lucrative practice. In 1869 he was appointed master in chancery of the superior court of Cook county by Joseph E. Gary, judge of that court, with whose former partner, George F. Bailey, Judge Magruder was associated under the firm name of Bailey & Magruder.

"While still holding the master's office, in November, 1885, he was nominated by the republican party as the successor of T. Lyle Dickey upon the bench of the Supreme Court of Illinois. The democratic party endorsed the nomination, and he was elected without opposition for an unexpired term of three years, and in 1888 and 1897, respectively, for the full term of nine years. He served, therefore, for twenty-one years upon the Supreme bench and was three times chief justice. His opinions are embraced in 107 volumes of the Reports, beginning with volume 115 and ending with volume 221. In June, 1906, he ran as an independent candidate for the office, but was defeated and re-entered the practice of the law in Chicago.

"Judge Magruder's residence was at No. 7 Washington place. The house was destroyed in the great fire of October, 1871, but re-built in 1873, and there he continued to live throughout his life. For forty years he was a member of the Fourth Presbyterian Church, located near his home, and during the latter part of his life he was an elder of that church. In June, 1906, his *alma mater* conferred upon him the degree of Doctor of Laws.

"He died at his home in Chicago on April 21, 1910, at the age of three score and eleven. Consistently with the simplicity of his character, and in accordance with his expressed wish, the obsequies were of the plainest character. Of his immediate family, only one, his son, Henry Latham Magruder, of the Illinois bar, now residing in Michigan, survives him.

"He was married on June 15, 1864, to Miss Julia M. Latham, of Springfield, Illinois, an accomplished and talented woman. For forty years they enjoyed together the privileges of an ideal union

and the joys of a happy home, unclouded except by the loss of a beautiful daughter a few years before the death of his wife, in 1904. The last five years and more of Judge Magruder's life were lived in the shadows, for long habit had unfitted him for the rough contest of city practice; but the loneliness of the last years was much alleviated by the companionship of a niece, Miss Lizzie Magruder, who occupied the place of a daughter in his heart and home.

"The long public career of this faithful servant makes us appreciate more keenly these words of Lowell:

"The longer on this earth we live
And weigh the various qualities of men, * * *
The more we feel the high, stern-featured beauty
Of plain devotedness to duty."

"In his conduct of the office of attorney and counselor at law, in the position of master in chancery of the superior court of Cook county, and in his long years of service as a judge of the Supreme Court of Illinois, one controlling principle pervaded and dominated his character—devotion to duty. The thoroughness and care displayed in his opinions indicate his unremitting industry. The extent to which rest and vacations were refused passes beyond the line of reason in the performance of duty, and yet there is in his work no sign of fatigue.

"The opinions of this departed judge breathe the pure spirit of love for his fellow-men, of sympathy for the unfortunate, and of righteous indignation at the schemes of fraud and indirection by which some of the great enterprises of modern business life have been accomplished. These sympathies were a vital part of his nature. The times have demanded such men, and especially judges with clearness of vision to look beyond the strifes of the mart and the forum to the broader and more ultimate fundamental principles affecting the well-being and life of our country. One of the greatest tributes that can be paid to the Supreme Court of Illinois is, that during the swift evolution of the commercial life of this State, and amid all the tortuous schemes of our modern mad struggle for wealth, this court has stood unflinchingly for the rights of the individual. And to this result this jurist, in spite of the fact that he came from the great, throbbing, metropolitan center of business activity, in no small degree contributed.

"We lay upon his grave a few flowers in recognition of a sturdy character and a spotless integrity; in remembrance of one who cultivated and maintained a model American home; in admiration for a scholar whose work endures in the structure of this State, and in gratitude for the simple manner in which, through calm and storm, we have been taught the

'stern-featured beauty
Of plain devotedness to duty.'"

On behalf of the committee of the State Bar Association I move that this memorial be spread upon the records of this court.

CHIEF JUSTICE VICKERS: The court will now be pleased to hear Mr. Alschuler, also of the committee.

BY MR. SAMUEL ALSCHULER:

May it please the court—By request of the committee designated by the Illinois State Bar Association to prepare and present to this honorable court a memorial commemorating the life and services of the late Judge Magruder, I beg leave to submit a few remarks in connection with the memorial presented.

To have been for nearly a quarter-century a judge of the highest court of a great State; to have sat in final judgment upon thousands of causes, involving great principles, vast properties, human liberty,—yea, life itself; and to pass from the living, leaving none to point to a single judgment given through conscious bias or prejudice, to a single decree pronounced through fear or favor, to a single judicial act procured or influenced through unworthy motives,—this, alone, is glory enough for one man, fame enough for one name, service enough for one brief span of human existence. Commenting editorially upon his judicial character, it was said after his death: "There have been greater judges, but none of more positive intellectual integrity than Judge Magruder; none who was a greater lover of justice as he saw it, and none more fearless in maintaining a position once deliberately taken."

He did not reach conclusions with the celerity of many others. He was slower, perhaps, in his mental processes, but to the conclusions thus deliberately reached he clung with unusual tenacity. If, as must be with all men, there may be laid to his charge the inevitable human tendency to err, side by side it should have place the divine attribute of good intent.

When men of prominence come to die, too often public interest centers on the inquiry, "How large an estate was left?" Judge Magruder's life was too much filled with public service to give time for monetary acquisition and accumulation, and when, near seventy, he left the bench it was with small provision for his remaining years and with but small knowledge of or adaptability for prevailing business-getting methods not in vogue when he left the practice.

The work-horse, aged and broken-down with long service, is turned out to pasture for his remaining days, but a judge, patiently and ungrudgingly giving his years, his strength and his talents to the service of his country, may at last find himself, not in pastures green, but thrust into the busy activities of life for which he has become quite unfitted, there to struggle for existence as best he may. Surely this great State,—not in charity, not in kindness, not in pity, but in simple justice,—should make reasonable provision for those who, long and faithful in its service, at last through mutations of time and chance find their occupations gone.

The reported adjudications in which Judge Magruder actively participated comprise those found in the Illinois Reports from volume 115 to 221, inclusive; and whether himself formulating the opinion of the court, or dissenting therefrom, or concurring in the one or the other, he was ever a virile factor in the decision.

A hundred volumes of judicial opinions! A hundred volumes of recorded hopes and fears, of woes and heart-aches! A hundred volumes of life's tragedies!—for does not most every lawsuit hold its tragedy? For where there is victory there also is defeat; where victors there also the vanquished. And, indeed, is it not too often true that in the end the victor finds himself as well a victim?

Since legal remedies cannot be meted out by the peck or pound or yard, justice is at best an approximation. The responsibilities of the judicial office are the more exacting as the measure or rule for administering justice is the less exact. While in theory the judicial act is the law speaking through the man, it is in practice more nearly the man speaking through the law. And thus, the kind and quality of justice administered is dependent largely upon the kind and quality of those who administer it.

All government ultimately centers in the means for the orderly and peaceable adjustment of differences between contending per-

sons. The courts are a sort of compulsory board of arbitration, without which each man would be unto himself a law and would in each case redress his own grievances; and there could be no government or social order, unless, indeed, men were so constituted that instinctively they knew always just what was the right thing to be done and inevitably would always do it. But man, alas! has not been cast in such an ideal mould.

The character of the judiciary is of necessity reflected in the people, who will tend towards uprightness and respect for the rights of others, or the reverse, as the judiciary appears to be wise, just, upright and potent, or the opposite. Wisdom, patience, firmness, tact, tolerance, honor, integrity, dignity, self-respect, respect for others, fairness, common sense, industry,—all these, and more, are qualities of head and heart which should be present in the judge. To the honor and glory of this high court be it said, that in all its history few, if any, have sat upon this bench who have been conspicuously wanting many of such qualities. To no man is it given to possess them all in marked degree. Men are only human, and their deficiencies distinguish them from the infinite. To say of the departed judge and lawyer whom to-day we honor that he did not embody every attribute of perfection, is but to say he was "of the earth, earthy." But we may truly and justly say that it has been given to comparatively few men to possess in so large degree so many of those high qualities as did Judge Magruder.

On behalf of the bar of which he was an honorable member for half a century, I commend to the high court in which he held conspicuous place for over two decades, the fitness and propriety of the memorial in commemoration of the upright lawyer, the conscientious judge, the useful citizen.

CHIEF JUSTICE VICKERS: The court will now hear Mr. Thomas M. Hoyne, of the Chicago Bar Association.

BY MR. THOMAS M. HOYNE:

May it please the court—At the annual meeting of the Chicago Bar Association, held in Chicago on the 29th of June last, the association adopted resolutions in regard to the death and memory of the late Justice Benjamin D. Magruder, formerly a justice of this court, and at that meeting and by those resolutions a commit-

tee was authorized to be appointed by the president of the association to present those resolutions to this court. I have, therefore, the honor, on behalf of the committee, which is composed of Edward F. Dunne, Nathaniel M. Jones, Joseph B. Leake, Gwynn Garnett and myself, of presenting these resolutions to the court:

"WHEREAS, Benjamin Drake Magruder was admitted to the bar of Illinois in the early sixties and continued to be a member thereof until his death, on the 21st day of April, 1910,—a period of about fifty years; and whereas, Judge Magruder was one of the charter members of this bar association and from the time of its organization until the termination of his life was one of its most distinguished and highly respected members; and whereas, for sixteen years he filled with ability and fidelity the office of master in chancery of the superior court of Cook county, and for a period of twenty-one years, from 1885 to 1906, was one of the justices of the Supreme Court of this State, having served three terms as chief justice, his opinions appearing in 107 volumes of the Illinois Reports, numbered from 115 to 221; and whereas, for fifty years he was a citizen of Chicago, and both in private and public life contributed largely to the city's honor and good name and created for himself a high reputation as a man, a lawyer and a jurist; therefore

"Be it resolved, That the Chicago Bar Association in this formal manner testifies to its high appreciation of Judge Magruder as an honorable and exemplary citizen in the private walks of life, as a conscientious and able lawyer, and as an upright, fearless and distinguished judge.

"Resolved further, That his decisions, as they appear in over one-third of the published volumes of the Illinois Reports, evidence much legal ability, profound research, keen, analytical judgment and the courage of his convictions, and that they will long reflect luster upon his name and fame.

"Resolved further, That his independence, integrity and uprightness have brought honor to his adopted city and State and to his chosen profession, and that in his death they suffer serious loss.

"Resolved also, That a copy of these resolutions be spread upon the minutes of this association, and that a committee of five be appointed to present them to the Supreme Court at its next October term."

In pursuance of the directions of the association I have the honor, if the court please, to move these resolutions be spread on the records of this court.

CHIEF JUSTICE VICKERS: The court will now hear Mr. N. M. Jones.

BY MR. NATHANIEL M. JONES:

May it please the court—I have been designated by the committee of the Chicago Bar Association to make a few remarks appropriate to the resolutions that have been presented to the court as the memorial of the late Judge Benjamin D. Magruder and by way of seconding their adoption.

For over fifty years Judge Magruder was a member of the legal profession. As an attorney he was able, energetic, persuasive, successful. He was well equipped by education, training and legal acumen to handle business entrusted to his care. He took a high rank among his professional brethren in Chicago. For fifteen years or more he filled the office of master in chancery of Cook county, being at the same time engaged in active practice of the law. For twenty-one years he was a member of this court, having been three times elected by the suffrages of the people, and during those long years performed his high duties with credit to himself, his profession and his State. Such being the case, it is fitting to pay public tribute to his memory, now that his earthly career has come to an end. Therefore we ask this honorable court to pause in the midst of its arduous and important duties for a few moments and give consideration to the life and labors of one who for nearly half a century was enrolled as a member of the Illinois bar.

The life of Judge Magruder is divided, very naturally, into three parts, nearly equal in duration, or possibly into four, if his declining years be counted as a period apart and by itself.

First, the period of youth—his preparation for his life work. This covers his school days, a four years' course at Yale, also his training at the law school of the University of Louisiana, from which he received his diploma two years later. Then came a residence at Memphis, Tennessee, where for a year or more he sought to qualify himself for his chosen profession, and another similar term of probation in Chicago. He had then reached his twenty-

fourth year. His parents were Prof. W. H. N. Magruder, who spent most of his life in the States of Mississippi and Louisiana and was prominent in the educational work of both States, and Mary Bangs, daughter of Rev. Heman Bangs, who lived, prior to her marriage, in the States of Connecticut and New York.

The second period is as an active practitioner at the bar. This began in the early sixties and continued until 1885,—practically four-and-twenty years. During the greater portion of this time, besides being in active practice, he filled the office of master in chancery. He succeeded in attracting to himself a good clientage and building up a remunerative and highly respectable business. He was also one of the ablest and most successful masters in Cook county, yet he always regarded his business as a practitioner of far more importance and honor than his office as a master. During these years he counted as his friends the leaders of the Chicago bar. Many of them have "gone on before" and can be mentioned without invidious distinction. I name William C. Goudy, Joseph E. Gary, William A. Porter, John R. and John H. Thompson, Norman Williams, Thomas Hoyne, John N. Jewett, Huntington W. Jackson, George W. Smith, and Melville W. Fuller and Lambert Tree, who have so recently passed from us. Not only did he take advanced rank in his profession and secure a place among the foremost at the bar, but he also gained an established place in what was known as the best of the city's social and intellectual life. Thus he became during those years well and favorably known both in the business and social life of the city of his adoption. He saw the city grow, during the nearly fifty years of residence, from one hundred and twenty thousand inhabitants to over two million, and it was his high privilege to do a man's part in this marvelous development. An able advocate does not always make an efficient and satisfactory judge. Partisanship too often becomes an ingredient in his character and the judicial temperament fails to secure a foothold. In the case, however, of Mr. Magruder, not only did his training and his characteristics give him a judicial turn of mind, but his long and varied experience as master helped to qualify him for the more exalted office of judge.

The third period covers his judicial career, from 1885 to 1906. He was first nominated by the republican party to succeed the Hon. T. Lyle Dickey, whose term of office had been made vacant

in June, 1885, by death. His nomination was endorsed by the democratic party, doubtless through the influence of his lawyer friends in that party. His election followed inevitably, there being no opposition. He was twice re-elected for full terms, also practically without opposition. His opinions run through 107 volumes of the Illinois Reports, and are the rich fruitage of twenty-one laborious, faithful years of service.

The fourth and last period, if it may be dignified as such, lasted about four years, from 1906 to 1910,—the period of retirement, so to speak. During these years he opened an office in Chicago and resumed the practice of the law in a modest way as near as might be where he laid it down twenty-one long years before.

While he was still on the bench death had removed his wife, who for over forty years had lovingly and faithfully walked with him life's pathway, and also his only daughter, who had attained years of womanhood. During this period occurred the fiftieth anniversary of his graduation from Yale College. He attended the class reunion at New Haven in 1906 and renewed old friendships and enlivened the closing years of his life by pleasant associations with his classmates, among whom were Justices Brewer and Brown, of the United States Supreme Court, and Senator Depew, of New York. He was particularly pleased to receive at the hands of his *alma mater* a distinguished compliment in the shape of the degree of LL.D.,—an honor conferred upon his father by another college many years before.

Having thus hastily outlined his career, may I refer also, briefly, to what can justly be considered his crowning life work,—the service rendered by him to the State and to the public while a member of this court?

He was an upright judge. No one, so far as known, ever questioned his integrity while on the bench. To those who knew him well it is inconceivable that anyone would ever have attempted to unduly influence him by direct or indirect methods. He was fearless in the discharge of duty. He had an exalted idea of the dignity and sacredness of the high office he held. Indeed, it might be said he carried this ideal to the extreme, and a certain aloofness from his professional brethren was the result. At times he appeared to hold men at arm's length, fearing lest they might trespass.

His opinions rank with the best of our judicial decisions. They are clear, strong, vigorous,—inclined, perhaps, to diffusiveness but exhaustive of the subject matter. They show a thorough study of the questions involved, and his conclusions are couched in clear, forcible language. Dissenting opinions appear with some frequency, indicating that he did not spare himself labor or thought when he could not agree with his brethren on the bench. I shall not attempt any detailed analysis of the leading cases in which opinions were written by him. It may not be amiss to name a few.

In the 121st Illinois, at page 530, is found what is known as the *Gas case*, entitled *Chicago Gas Light and Coke Co. v. People's Gas Light and Coke Co.* These two gas companies at Chicago had entered into a written contract to divide up the city's territory between them and not to trespass on each other. The court, through Judge Magruder as its mouthpiece, held that this created a monopoly, tended to stifle competition and was illegal.

The same subject matter was again before the court two years later, in 1889, and in the case of *People v. Chicago Gas Trust Co.* (130 Ill. 268,) the attempt of four Chicago gas companies to combine and form a trust was held unlawful. The court said, in effect, that one corporation could not purchase and hold shares of stock in other companies without express legislative authority and had no legal right to create a monopoly of the gas business. "Manifestly the constitution of 1870 reversed the old policy of granting privileges to gas companies. * * * But of what avail is it that any number of gas companies may be formed under the general Incorporation law if a giant trust company can be clothed with the power of buying up and holding the stock and property of such companies, and, through the control thereby attained, can direct all their operations and weld them into one huge combination? The several privileges or franchises intended to be exercised by a number of companies are thus vested exclusively in a single corporation. To create one corporation for the express purpose of enabling it to control all the corporations engaged in a certain kind of business, and particularly a business of a public character, is not only opposed to the public policy of the State, but is in contravention of the spirit, if not the letter, of the constitution."

In the opinion delivered by Judge Magruder in 155th Illinois, at page 98, (*Ritchie v. People*,) the act of 1893, prohibiting females from contracting to work more than eight hours a day, was held to be unconstitutional as an infringement upon the liberty of women, and it was also announced that the sex of the worker does not, of itself, justify the exercise of the police power to limit her right to make contracts. A somewhat similar opinion, which cites the *Ritchie case*, is found in 202 Illinois, at page 389, (*Mathews v. People*.) There the Free Employment Agency act of 1899 was also held to be unconstitutional because it restricted the right to employ and to be employed and failed to guarantee to all persons the equal protection of the law.

In passing, it may be interesting to note that in a very recent case which attracted wide attention, entitled *Ritchie v. Wayman*, this court decided that the act of 1909, limiting the hours of labor for females in factories and laundries to ten hours a day, was constitutional. Reference is there made to the *Ritchie case* in the 155th Illinois without overruling it. One of the main distinctions between the act of 1893, which was held unconstitutional, and the act of 1909, which was upheld, was the increase allowed in the hours of labor from eight to ten hours a day. (244 Ill. 509.)

The *Glucose case*, in 182 Illinois, 551, (*Harding v. American Glucose Co.*) was also notable. It is a ringing decision against trusts and combinations and the creation of monopolies. The effect was to set aside the attempted consolidation of practically all the glucose plants within a radius of fifteen hundred miles of Chicago, covering a district known as the "corn belt." One principle therein announced is quoted with approbation in numerous subsequent books: "The public policy of a State is to be found in its statutes, and when they have not directly spoken, then in the decisions of the courts and in the constant practice of government officials. When the legislature speaks upon a subject upon which it has the constitutional power to legislate, public policy is what the statute passed by it indicates. (*United States v. Freight Ass'n*, 166 U. S. 290.) The public policy of the State of Illinois has always been against trusts and combinations organized for the purpose of suppressing competition and creating monopoly." Both the *Ritchie* and the *Glucose cases* are cited again and again in the volumes of the Reports that have appeared since their publication.

The case of *People v. Kipley*, found in 171 Illinois, at page 44, popularly known as the *Civil Service case*, is also one of great importance. In this case the constitutionality of the Civil Service act was attacked. Two of the judges dissented, and we understand it was a very close case before the court. The court held finally, however, that the foundation principles of the Civil Service act are, that appointments to municipal offices must be made according to merit and fitness, to be ascertained by competitive examinations free to all, and that promotions in public service must be according to merit. Under this decision the civil service system became firmly established in our State.

Another case which was of great interest to the public in the city of Chicago is *Union Traction Co. v. City of Chicago*, 199 Ill. 484. This case held that a corporation operating street railways must submit to reasonable regulations as to rates of fare, and also required the giving of transfers with connecting lines.

In conclusion may I refer to one other decision which is most widely known, and which gave Judge Magruder the greatest reputation both in his own State and throughout the Union? I mean the famous *Anarchist case*, found in the front of the 122d volume of Reports, which established in this State the doctrine that persons associating and conspiring together to aid and abet the killing of others are co-conspirators and are guilty of the crime of murder of the persons killed. The setting of the case is dramatic—tragic in the extreme. In May, 1886, at the hay market, on Randolph street, in Chicago, seven policemen were killed as the result of the throwing of a bomb, by night, and sixty other policemen were seriously wounded. August Spies and six of his co-conspirators, after a long and hotly contested trial, presided over by Hon. Joseph E. Gary, the life-long friend of Judge Magruder, had been sentenced to death as the instigators of this terrible tragedy. The case brought to this court the serious, solemn question, Shall this extreme and severe sentence be upheld? It was answered by Judge Magruder for the court in this decision.

Conspiracy is defined on page 251 thus: "If the defendants, as a means of bringing about the social revolution and as a part of the larger conspiracy to effect such revolution, also conspired to excite classes of workingmen in Chicago into sedition, tumult and riot and to the use of deadly weapons and the taking of human

life, and for the purpose of producing such tumult, riot, use of weapons and taking of life advised and encouraged such classes, by newspaper articles and speeches, to murder the authorities of the city, and a murder of a policeman resulted from such advice and encouragement, then defendants are responsible therefor."

On page 253 we find anarchy also defined: "The defendants also complain that the court refused to give an instruction for them which contained the following statement: 'It cannot be material in this case that defendants, or some of them, are or may be socialists, communists or anarchists.' If there was a conspiracy it was material to show its purposes and objects, with a view of determining whether, and in what respects, it was unlawful. Anarchy is the absence of government, and it is a state of society where there is no law or supreme power. If the conspiracy had for its object the destruction of the law and the government, and of the police and militia as the representatives of law and government, it had for its object the bringing about of practical anarchy. Whether or not the defendants were anarchists may have been a proper circumstance to be considered in connection with all the other circumstances in the case, with a view of showing what connection, if any, they had with the conspiracy and what were their purposes in joining it. Therefore we cannot say that it was error to refuse an instruction containing such a broad declaration as that announced in the above quotation."

The statement of this case, including extracts from speeches, periodicals, etc., covers about 80 pages. The opinion covers 167 pages. It is a masterly marshaling of facts and circumstances to prove the guilt of the defendants. The aim evidently was to convince the readers of the opinion that the extraordinary case of hanging, or the condemning, of six men for murder was fully justified by the evidence and according to the law. It shows marvelous research, patient, laborious effort, and a fearless exposition of the judge's conviction as to the justness of the extreme sentence. It will well repay perusal by any thoughtful lawyer.

The above and numerous other decisions covering various subjects touching the interests and welfare, the rights and wrongs, the life and property, of the citizens of our great commonwealth show the wide scope of his labors as a judge. They manifest deep research, untiring labor and love of the right and the rights of

men, condemnation of wrong in high as well as in low places, the courage of his convictions and a fearless discharge of his duty, even in most trying and difficult surroundings. They are his monument, and will no doubt speak for him and perpetuate his memory and his fame among the legal profession for years to come.

CHIEF JUSTICE VICKERS: I did not have an intimate personal acquaintance with Mr. Justice Magruder. I only know him through his work on this court. I feel sure I express the consensus of opinion of all who have any familiarity with his work on this court, when I say Judge Magruder was a forceful character, a painstaking and conscientious judge, and that he left an enduring impression on the jurisprudence of this State.

Mr. Justice Carter will make a further response to these resolutions and these memorial addresses on behalf of the court.

BY MR. JUSTICE CARTER:

The pages of judicial records can perform no greater service for the cause of justice than to preserve the "memory of a learned, just and upright judge." It is peculiarly appropriate that we should commemorate the services of Judge Magruder, who gave nearly a third of his long life to the work of this court. Only seven in its history have served longer: Judges Browne, Wilson and Lockwood under the constitution of 1818; Judge Breese under all three constitutions; Judge Caton under those of 1818 and 1848; Judge Walker under that of 1848 and our present constitution of 1870, and Judge Craig under the present constitution. Only three of these seven have written more opinions,—have taken a larger part in the work of this court,—than Judge Magruder, and the opinions of only one (Judge Craig) are found in a greater number of Reports. Judge Magruder's opinions, as has already been said, commence in the 115th volume of Illinois Reports and end in the 221st. They are found in each of the intervening volumes, making 107 in all. The court, during the time he was on the bench, was composed of seven members. In his years of service, under the methods of work of the court, he wrote opinions in substantially one-seventh of the cases, so that his written opinions, if printed together, would fill more than fifteen volumes of our Supreme Court Reports. Who of our citizens will have a more lasting memorial?

It has been said that the life and work of a judge of a court of review is not such as to excite the admiration or applause of the multitude. While this, in a sense, may be true, what work can leave a more lasting impress? This thought was forcibly and aptly expressed by Judge Magruder himself at memorial services held for his associate, Judge Scholfield. He said: "It is impossible to estimate the far-reaching influence of a judge who writes an opinion so well supported by logic and sound reason and so deeply rooted in the principles of right and justice that those who follow him quote it and refer to it as a precedent. It becomes the basis for determining the rights of other men than those who are parties. Followed by court after court, it permeates the judicial learning of successive eras, giving character to the utterances of the bench and aiding in the settlement of angry controversies among men. Long after inferior and more noisy men are forgotten, the sentences of the quiet and gentle Scholfield will be quoted as authority." It is well that this is so. Far better results will be reached if the courts labor to establish truth and justice rather than to win popular applause. The atmosphere of the court, the quiet of the conference room and study, are the proper surroundings for a judge in a court of last resort. He needs no popular applause to spur him on to his best efforts.

"The noblest service comes from nameless hands,
And the best servant does his work unseen."

Judge Magruder was fitted in many ways, by education and experience, for his work on the bench. A graduate of Yale, he had studied law and practiced it for a few years in the south and then located in Chicago. He thus had an intimate knowledge of the east, south and middle west, which he could draw upon as occasion demanded. He was not perfect, otherwise he would not have been human, but his virtues far outweighed his faults. As a youth, in one of my first visits to a court room, I heard Judge Lawrence, formerly of this court, in a speech to a jury, say: "The mistakes that men make should be written on the sands of the seashore, where the waves of time will sweep over and wash them out forever, but their good deeds should be moulded in columns of brass, to serve as an inspiration to all that come after." It was said long ago of the fathers of another republic, that their private

estates were small but the property of the State in their lives was great. So might it be said of Judge Magruder.

He appreciated the importance of courts in our system of government. He was not one of those who believe that the best results can be obtained by ignoring the experience and learning of our fathers, but was ever anxious to obtain information from the precious storehouses of the past. His intellectual attainments were solid rather than brilliant. He may not have been a genius, as that term is sometimes used, but he possessed the genius for work. No judge ever sat here who was more desirous of learning what the court had previously decided. He was ever seeking with unwearied diligence the wisdom of the law. He knew that it was the theory of the common law that while its fundamental principles always remain the same, they can ever be adapted to the conditions, needs and changes of society, so as to continue "in harmony with the genius, spirit and objects of our institutions." He recognized, as he said of another, "the value in a well ordered judicial system of the doctrine that what has been decided should stand." In becoming familiar with the facts of a case,—in searching out the principles of law applicable thereto,—no labor was too great for him. His zeal and industry in the work of the court was indefatigable and unflagging. It could truly be said of him that "next to his faith in God was his faith in labor." There is no position under our government where painstaking, long-continued, untiring labor is more needed than in courts of review. The legislature can easily make and unmake the law. That department is not required to construct a symmetrical building, and the result of its labors is often mere patchwork. The judiciary, however, must take this raw material and make it into one harmonious and workable whole. This is often, indeed, a herculean task.

Judge Magruder's opinions are usually of considerable length. His methods of work caused him to exhaust every topic that came before him. His opinions dealing with questions where the history of the law is involved always cover the entire subject under discussion. In writing opinions he may have had in mind and taken as his guide Lord Kenyon's suggestion, that "it is the duty of every court to satisfy the parties that the whole case has been examined and considered." His judicial work shows clearly that he believed liberty could only be obtained under the law, and that

laws, without courts to expound and define their true meaning and operation, are necessarily of little force. In speaking of the late Judge Mulkey he said: "He recognized to the fullest extent the doctrine that in a republic like ours liberty is best regulated when it is restrained within the limits prescribed by a written constitution. Only thus can the rights of the people be protected from the encroachments of partial laws and the invasion of mob violence." Judge Magruder, too, endeavored to carry out these principles in his written opinions.

He was ever and always a student. His days and nights were given to judicial labor. He never took a regular vacation, usually spending all of the summer between June and October working on his cases. Society and social amusements seemed to have little attraction for him. His books were his companions. His judicial ideals might well be summed up in the words of another: "If it shall be found that I have contributed in some measure to maintain and strengthen the authority of the law; to make it the refuge of innocence and distress, from oppression and wrong; to reconcile men to a willing submission to its authority as the legitimate arbiter of all controversies, the full measure of my ambition will be accomplished."

His character and his life were above reproach. His judicial ermine was ever unspotted. He bore with stainless hands "the unstained sword of justice." For twenty-one years, on the bench and in the conference room, with great lawyers and judges, he considered and settled questions involving the rights of citizenship and the welfare of the State. He has been called to that other bourne "where beyond these voices there is peace." That which he has written into the jurisprudence of this State will stand as a monument of wisdom, learning and justice, which neither the changes of society nor the "flight of seasons shall demolish."

CHIEF JUSTICE VICKERS: In accordance with the motions presented by the committees from these bar associations the clerk will enter these resolutions and memorials in the records of this court and the reporter will publish them in the regular volumes of our Supreme Court Reports, and as a further mark of respect and memory of the deceased judge this court will now adjourn until nine o'clock to-morrow morning.

REPORTS
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SAMUEL PASHLEY IRWIN,
REPORTER OF DECISIONS.

BLOOMINGTON, ILL.
1911.