

IN MEMORIAM.

DAVID J. BAKER—J. C. CONKLING—H. S. GREENE.

PROCEEDINGS IN THE SUPREME COURT OF ILLINOIS, AT SPRINGFIELD, AT THE OCTOBER TERM, 1899,
OF THAT COURT.

The Hon. DAVID J. BAKER, formerly one of the Justices of this court, died at Chicago, Illinois, March 13, 1899. The Hon. J. C. CONKLING and the Hon. H. S. GREENE, of the Sangamon county bar, died at Springfield, Illinois, in the same year. At the October Term, 1899, of the court the following proceedings were had:

A committee, consisting of Messrs. S. S. Gregory, S. P. Shope, George W. Wall, John M. Lansden and James M. Taylor, was appointed by the Illinois State Bar Association to present a memorial on the death of Judge BAKER. On behalf of that committee Mr. S. S. Gregory presented the following, with appropriate remarks:

DAVID JEWETT BAKER was born at Kaskaskia, Randolph county, Illinois, on the 20th day of November, 1834, his parents being David J. Baker of Alton, who settled in Kaskaskia in 1819, and Sarah Fairchild Baker. His father was for eight years District Attorney of the United States for the District of Illinois, and for one session a Senator of the United States from Illinois by appointment of the executive, Governor Edwards.

Judge BAKER was descended upon his father's side from revolutionary stock, one of his father's ancestors having been a private soldier in the ranks of the continental army, dying at Valley Forge from the hardships of that memorable winter, and another having been captain of an American privateer during the war.

Judge BAKER was educated at Shurtleff College, Upper Alton, graduating in 1854, and in 1888 he received the degree of Doctor of Laws from the same institution. Upon his graduation he entered upon the study of law in his father's office in Alton and was admitted to practice in November, 1856. He then moved to Cairo, where he resided until July, 1897, when he came to Chicago, where he resided up to the time of his death in that city, March 13, 1899. He served several terms as an alderman of the city of Cairo, was for one term city attorney, and was mayor of the city in 1864 and 1865. He entered upon his long and useful judicial career in March, 1869, when he was chosen circuit judge for the nineteenth circuit, consisting of Alexander, Pulaski, Massac and Pope counties, to fill a vacancy. He was re-elected in June, 1873, and again in 1879 and 1885. He first became a member of this court on the 9th of July, 1878, when he was appointed by the Governor to fill the vacancy created by the death of Mr. Justice Breese, occurring June 27, 1878.

It is a striking reminder of the swift and silent flight of time, with its inevitable changes, that of this court as it stood when Judge BAKER became a member there remains but one among the living. Mr. Justice Craig, still in active and useful service, was at the time of Judge BAKER'S accession chief justice of this court. The unexpired term for which Judge BAKER was appointed ended in June, 1879, and Judge John H. Mulkey was then elected as his successor. On the 4th of June, 1888, Judge BAKER was elected to succeed Judge Mulkey and served out his full term. While he was circuit judge the Appellate Courts of this State were established, and he became, by assignment of this court, one of the judges of the Appellate Court for the Fourth District, where he served continuously, except during the time that he was a member of this court, until June, 1885, when he was transferred to the Appellate Court for the Second District, of which he was a member until the May term, 1888. Judge BAKER'S judicial career thus extended over twenty-eight years, and during twenty years of that period he was a member of this or of the Appellate Court.

Judge BAKER was a man of exalted personal character. He possessed a clear, discriminating and well-trained mind, and was capable of prolonged mental effort. He was thoroughly impartial, and was anxious to reach only the correct conclusion. He would patiently and fully examine before deciding, and was never willing to decide until he felt that he thoroughly understood the case. He was fearless and independent, and ready to take the responsibility of doing whatever he believed to be right. He was profoundly versed in and wholly devoted to the law. While he kept well up with current affairs in literature and of a public nature, yet the law was the constant object of his thoughts and labors; hence his legal attainments were exceptionally great, as was his judgment exceptionally accurate. Whether in the circuit, the Appellate or this court he ever enjoyed the entire confidence and respect of the bench and bar. Moreover, he was held in rare esteem by the people at large, who realized and appreciated his ability and integrity.

Judge BAKER was married in 1864 to Miss Sarah Elizabeth White, the daughter of Capt. John C. White, of Cairo, Illinois, who survives him with five children: Capt. David J. Baker, of the 12th United States Infantry, now with his regiment in the Philippines; John W. Baker, Esq., a lawyer of Chicago; Mrs. A. S. Galigher, of Cairo; and Miss Margaret and Miss Genevieve Baker, who reside with their mother in Chicago.

In politics Judge BAKER was a republican. He was a member of the Episcopal church, and served as a vestryman of the parish of which he was a member for upwards of twenty years. He lived an honorable, useful, upright life. Called, from time to time, to the discharge of important public duties, he was never found wanting. He possessed in a marked degree the essential qualities for judicial office: candor and integrity of mind, impartiality, intelligence and diligence. His numerous and important contributions to the literature of the law, when, speaking for this court, he has pronounced its judgments upon questions of public or of private right, are familiar to the profession, and will long be studied for guidance and instruction both by court and counsel. While at the time of his death his friends and all near and dear to him doubtless felt he "should have died hereafter," yet this was but the inevitable termination of a well-spent life, filled with long, useful and valuable public service, in which much had been accomplished, of which much will remain to us.

Mr. Chief-Justice CARTWRIGHT, on behalf of the court, responded as follows:

The members of the court concur fully in the sentiments expressed in the memorial presented and in what has been so well said in its presentation. My term of service on this bench with Judge BAKER was not long, but it was long enough to make a deep and lasting impression of his learning, ability and character as a judge. He was a judge, and nothing else. Devoid of any other ambition in life than to serve the ends of the law and justice, his mind and energies were wholly centered on the discharge of his judicial duties. His entire purpose was to ascertain the law and apply it to the facts of each case, and in the pursuit of that purpose he made the most careful and thorough investigation of both. How well his work was done the opinions written by him will testify with greater force than anything I could say.

Mr. JUSTICE BOGGS also spoke, as follows:

I appreciate very highly the opportunity afforded me to add my testimonial to the name and memory of the eminent jurist in whose honor the gentlemen of the committee representing the bar have spoken. The pleasure of daily association with him in the intimate relations of the conference room, enjoyed by other members of this court, has not been accorded to me. I cannot describe, as can the other members of this court, his traits and character, his faithfulness and ability, in that position. My observation of his life and character has been from the standpoint of a member of the bar whose cases came before him for review, and later that of a judge upon the circuit bench whose work and rulings in the trial court would fall under his supervision in the Appellate and Supreme Courts.

When Judge BAKER came to Mt. Vernon at the first term at which he presided as a member of the Appellate Court for that district, I was in attendance as a member of the bar and was accorded an introduction to him. His manner was frank, his disposition amiable and wholly without any assumption of superiority, and his conduct and bearing such as to leave a favorable impression, which was confirmed by more extended personal acquaintance in the future. The bar speedily came to recognize him to be a careful, painstaking, upright, learned and impartial judge. They submitted their cases to him for decision with the assurance every

material point of law and fact would receive intelligent and thorough consideration at his hands. His services on the Appellate bench soon gave him high rank in the estimation of the members of the bar throughout the southern portion of the State. Later I came to the circuit bench, and from that point of observation obtained a broader and more comprehensive view of his ability and judicial attainments. He was soon after advanced to the Supreme bench, and became known and esteemed by the bar throughout the entire State. His legal attainments were of high rank. The opinions prepared by him evince he was possessed of a vigorous and logical mind of essentially legal cast, was well equipped for patient and impartial investigation of points of law and fact, and capable of grasping and comprehending intricate and complicated legal doctrines and principles, and could bring to the aid of their solution practical and sound common-sense views of the affairs of human life. He was favored with the power of expressing his views with clearness, and his opinions will long be regarded as valuable contributions to the legal literature of the State.

There is little in the labor of a judge of a court of review which attracts the notice and admiration of the public. Not that the people are indifferent to the work of the courts or in the least unwilling to accord proper meed of praise whenever deserved, but the work of the judge of a court of last resort is among records, briefs and books in some quiet room, where he is withdrawn from the association of all others except that of his fellow-judges, and, save in exceptional instances, that which demands his time and toil of body and brain affects only the parties to the suit he decides and their attorneys, and does not arrest the attention of the general public. To desire the approval of his fellow-men is instinctive in the human heart, and a judge would be less than human if wholly exempt from such generous emotion. The reward of a judge is not the applause of the populace, but the consciousness of duty well and faithfully performed. Judicial labor is, however, sweetened and enlivened by the assurance it will be fairly and faithfully watched and judged by an able, enlightened and honorable bar, who will note with unfailing accuracy his acts and deeds, and render to his name that degree of honor and praise to which he may prove, in their impartial judgment, to be entitled, and that they stand ready to make public declaration of their appreciation, respect and esteem.

In your generous declaration of respect and honor to the name of Judge BAKER this court most cordially concurs.

I have occupied still another relation to him whom you have assembled to-day to honor, of which I venture to speak. We were rival candidates for a seat on the bench of this court. It is a delicate subject to refer to, and except for what I am about to say would be wholly inappropriate. In that relation, exciting as it was at times, Judge BAKER bore himself as a manly man and with all the dignity of a judge. It is now of the greatest pleasure and satisfaction to me that I can say no act of mine during that time lessened in the slightest degree, as I have reason to know and feel, the friendship that existed between us prior thereto. He recognized we were each moved by an ambition that was proper and laudable; and it is in the highest degree a matter of gratification to me that I was able to so conduct myself during the contest as to retain his good will and esteem. On the occasion of his last visit to the capital city he honored me, as was his wont, with a visit and extended to me his best wishes when we parted. But a few days later death came to him without a moment's warning.

His life was devoted to the study of the law as a science, and to the just administration of its principles to the actual affairs of men. The stroke of death found him busily engaged in the work of his life. Many years of the allotted "three score and ten" were denied to him. His part in the mysterious drama of earthly life is over, but in the faith that "though a man die yet shall he live again," we find the assurance that he is neither dead nor sleeping, but hath conscious existence somewhere in the boundless universe of the maker of all things, with all the powers of his mind at his command and in nowise impaired by that which we call death, and with the highway which leads to greater and still greater knowledge, wisdom and truth open before him, wherein he may freely walk, and guide his footsteps to that realm where abide "the spirits of just men" who have been made perfect.

"The stars may fade away, the sun himself
Grow dim with age and nature sink in years;
But the soul shall flourish in immortal youth,
Unhurt amidst the war of elements,
The wrecks of matter and the crush of worlds."

Mr. JUSTICE CARTWRIGHT: Let the memorial be spread upon the records of this court.

At a meeting of the bar of Sangamon county a memorial on the death of Hon. JAMES C. CONKLING was adopted. The Hon. S. P. Wheeler read the same before the Supreme Court, and moved that it be spread upon the records of the court. It is as follows:

The bar of Sangamon county, hearing with profound regret of the death, on the 1st inst., of its oldest member, the Hon. JAMES COOK CONKLING, adopts this memorial and desires that it may be spread upon the records of the court which he strengthened and adorned:

JAMES COOK CONKLING was born in New York City October 13, 1816. He was enabled to enter upon the struggles and trials of his most arduous profession in the fall of 1838, with advantages that were possessed by few young men of that time, because he had passed through all the courses at the academy of Morristown, N. J., the college at Princeton, N. J., and a three years' course of legal study in the office of Henry A. Ford, at Morristown, N. J.

Before Horace Greeley had started that celebrated aphorism, "Go west, young man; go west," he felt that impulse and decided to come to Illinois to practice his profession. After some doubts as to the proper locality he decided upon Springfield, which was then a most boisterous child among cities, having been designated as the coming State capital. Here he found a society that was for that day a cultured one; a bar that was then marked for strength and ability; a community that was young, vigorous and growing. S. T. Logan, E. D. Baker, J. T. Stuart, Ninian Edwards and others were already well established. Stephen A. Douglas was there. Abraham Lincoln, although seven years his senior, had just begun the practice. B. S. Edwards was just beginning his career. Mr. CONKLING'S first law partner was Cyrus Walker. There were no railroads in operation in this State at the time, and it was the custom to ride from county seat to county seat and accept retainers in any cases offered. It was a vigorous outdoor life; a life full of action and of surprises; a life requiring a good knowledge of the basic principles of the common law, with a ready application of those principles to the case in point. It was an ever-present rubbing together of the brightest minds, without time for elaborate preparation. The case lawyer was then almost unknown. The 325 cases in Breese's small volume of decisions were published in 1831

and Scammon's first volume appeared in 1841. In these contests of ready wit and almost intuitive graspings of points Mr. CONKLING easily held his own, and soon built up a reputation for industry, ability and high moral character. Mr. CONKLING'S name appears on the roll of attorneys in the United States Court in December, 1841, and at the time of his death he was the oldest living signer of that illustrious list.

Mr. CONKLING was a Whig in politics, by training and by natural inclination. He was one of the original founders of the Republican party, and attended its first State convention in 1856, helping to mark out its course by framing the platform of that year. With his fellow-citizen, and at his death his fellow-townsmen, John M. Palmer, he was chosen elector from the State of Illinois in 1860, and cast his electoral vote for Abraham Lincoln.

Mr. CONKLING has been greatly honored by the people who lived with him and knew him best. Of public offices he has held that of alderman, mayor and legislator. Of appointments of honor the list is too long to be entered here. It would not do justice to his memory to omit the unchanging love and affection he has displayed toward the people of this community. His voice was always powerful in defense of their rights and in mitigating their surroundings. In church work, in charitable effort, in holding up the hands of the teacher, in adorning the city, in fostering its industrial progress, in building up its manufactures, he was always active and helpful. In the critical times, when the removal of the capital to other places seemed certain, he gave of his time and money,—and, what was more important, his thought,—to help his own people. Persons of the present generation cannot, of course, understand the great power of his eloquence illuminated by learning. It is the undisputed testimony of men of his day that he was a winning and captivating orator. The oration delivered upon the occasion of the dedication of Oak Ridge cemetery was one of his best efforts, and the noble sentiments he then voiced gave to us an abiding confidence in his faith and trust,—that death had no terrors for him.

The lawyer writes his name upon the sands today, tomorrow's tide will wash it away. The citizens and bar of this county may forget the services of JAMES COOK CONKLING as they have forgotten those of others; but those who have known him, whatever their creed, party or profession, will agree that he was one of the builders of a State and that he builded well.

The bar of Sangamon county, at a meeting held for the purpose, adopted resolutions prepared by its committee, relating to the death of Hon. HENRY S. GREENE. The Hon. Alfred Orendorff presented the resolutions to the Supreme Court and moved that they be spread upon the records of the court. They are as follows:

To the Sangamon County Bar:

GENTLEMEN—Your committee appointed at a meeting of this bar to formulate an expression of their sentiments in relation to the death of Hon. HENRY S. GREENE, respectfully reports the following resolutions and moves their adoption:

Resolved, That by the death of Hon. HENRY S. GREENE we are called upon to lament the decease of one of the most eminent lawyers of the American bar. For thirty years he was a resident of Springfield, in the active practice of his profession, but his labors were not limited by the borders of this county nor of the State of Illinois. To his professional care has been entrusted litigation affecting some of the most valuable and important interests of the country, in the successful conduct of which he has won a wide reputation as an able and distinguished attorney and counselor. To the discharge of his duties he brought great natural talent, a broad comprehension, ripe learning and untiring zeal. His career as a lawyer has been marked by an ardent love of his profession, a sincere devotion to the interests of those so fortunate as to secure his able service, and by unswerving integrity. In his intercourse with his associates he was courteous and honorable, and as a citizen he enjoyed universal respect and esteem.

Resolved, That we, his professional brethren, desire to place upon record this testimonial of our appreciation of his distinguished talents as a lawyer and his personal worth as an associate and citizen.

Resolved, That we tender to the family of the deceased our sincere sympathy and condolence.

Resolved, That a copy of these resolutions be transmitted to the family by the chairman of this meeting and that they be printed in the daily papers of this city.

Resolved, That the chairman of this meeting appoint committees of three each, to present these resolutions to the following

courts: The circuit court of Sangamon county; the Supreme Court of Illinois; the United States Circuit and District Courts for the Southern District of Illinois.

Mr. JUSTICE CARTWRIGHT: The motions to spread at large upon the records of this court the above memorial and resolutions will be allowed, and as a further mark of respect to the memory of the deceased this court will now adjourn.

REPORTS
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CONTAINING CASES IN WHICH OPINIONS WERE FILED IN DECEMBER,
1899, AND FEBRUARY, 1900, AND CASES IN WHICH REHEAR-
INGS WERE DENIED AT THE DECEMBER TERM,
1899, AND FEBRUARY TERM, 1900,

WITH PROCEEDINGS HAD IN THE SUPREME COURT IN MEMORY OF
DAVID J. BAKER, J. C. CONKLING AND H. S. GREENE.

ISAAC NEWTON PHILLIPS,
REPORTER.

SPRINGFIELD:
1900.