

## IN MEMORIAM.

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JESSE J. PHILLIPS—WILLIAM J. ALLEN.

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PROCEEDINGS IN THE SUPREME COURT OF ILLINOIS, AT SPRINGFIELD, ON WEDNESDAY, JUNE 5, 1901, BEING OF THE JUNE TERM OF THAT YEAR.

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The Hon. JESSE J. PHILLIPS, one of the Justices of the Supreme Court, died at Hillsboro, Illinois, on February 16, 1901. The Hon. WILLIAM J. ALLEN, Judge of the District Court of the United States for the Southern District of Illinois, died at Hot Springs, Ark., on January 26, 1901. At the June term, 1901, of the Supreme Court, on the 5th day of June the following proceedings were had:

Judge S. P. Shope, addressing the court, said:

*May it please the court*—By direction of the Chicago Bar Association I present to this court the following brief memorial upon the life and services of the late Justice JESSE J. PHILLIPS, as prepared by the committee of that association appointed for that purpose, and I move that the same be spread upon the records of this court:

"On Saturday, the 16th day of February, 1901, JESSE J. PHILLIPS, one of the justices of this court, died at his home in Hillsboro, Illinois, and two days later, amid a great concourse of sorrowing neighbors and friends, was committed to his last earthly resting place. At the time of his death he was sixty-four years of age. He was admitted to practice as an attorney of this court on the 11th day of January, 1861, and at once entered into the active practice of his profession. Upon the breaking out of the late civil war he enlisted, and upon the organization of the Ninth regiment of Illinois volunteers was elected its major. Upon the expiration of the term of enlistment the Ninth regiment was re-organized, to

serve for three years or during the war. He was again elected major, and soon after promoted to the lieutenant-colonelcy of the regiment, and subsequently breveted for gallant and meritorious conduct. His promotion to the lieutenant-colonelcy bears date December 2, 1861. He remained in active service in the field three years and five months, retiring September 1, 1864.

"A narration of the military record of this gallant Illinois soldier would involve a practical recital of the history of the great battles within the border States. To re-count those in which he was engaged would render necessary a repetition of the incidents of sixty-eight battles and minor engagements, in all of which, with a single exception, he was with and frequently in command of his regiment. This exception is the second battle of Corinth. His absence from that battle was due to a wound received at Shiloh. It is not the purpose of this paper to do more than express, in passing, the profound admiration of the bar of Chicago for the heroic deeds and sacrifices of this, one of the foremost of the Union soldiers, who received encomiums in the field and from his superiors as one of the bravest and most tactful commanders. He was a fearless, skillful and masterly leader, and the history of the civil war has rendered his name imperishable.

"Upon his retirement from the army he returned to his home in Illinois and resumed the practice of his chosen profession, meeting with marked success. As a lawyer he prepared his cases with painstaking care and ability. He extended, and always received, the utmost courtesy from the courts and opposing counsel. His word, once given, was never forfeited or retracted. His professional career was marked everywhere by the highest sense of professional ethics and honor. It is said of him that he never sought for a client that which he did not himself sincerely believe to be the client's just due; that his first aim was to learn with accuracy the facts of his case, and then present them to the court and to apply thereto the law as he understood it. He early won the confidence of the bench and the bar and the people, not only as an upright and just man, but as an able, honest and fearless lawyer and advocate.

"When called upon to preside as judge of the circuit court of this circuit he served with distinguished ability. He gave to the hearing and decision of the cases before him always a patient and thorough consideration. His quick perception enabled him to discover the shams too often resorted to, and his mature and ripened

judgment enabled him to reach just conclusions. His popularity with the bar and the people of his circuit was perhaps unequalled, and certainly never surpassed, by one holding that exalted position.

"He was appointed by this court to the Appellate bench of the Fourth District, and served with marked ability until his elevation to this bench. Upon the demise of the late Judge John Scholfield, Judge PHILLIPS logically, and practically by unanimous consent, became his successor. He entered into the discharge of the duties of justice of the Supreme Court of Illinois at its June term, 1893. He came to this bench well equipped for the discharge of his duties. His discipline as a lawyer, his experiences upon the circuit and Appellate bench, and his broad training in the affairs of life, well fitted him for the work. However, it may, perhaps, be said that no one came to this bench under more trying circumstances. Notwithstanding his many years of experience as judge of the circuit and Appellate courts, he knew, as a successor of Judge Scholfield, his opinions would be criticised and compared with those of that distinguished jurist. To take up the work and follow in the footsteps of one who was considered pre-eminently a great jurist,—to take up the great work that his great predecessor had laid down,—while stimulating to his ambition was a task requiring bravery and self-reliance.

"He entered upon this work with that energy and honesty of purpose which had characterized him in every phase of life and in the discharge of every public and private duty. He was always courteous, tolerant of the views and opinions of his brethren of the bench and of the bar, and yielded readily to authority, or whenever convinced, by argument, of the rightfulness of any position. The bar of the State recalls with pleasure his attentive listening to the arguments of counsel and his ready comprehension of the points urged upon the consideration of the court. The conception of the bar was, and is, that he regarded his duty as a member of this court and of the inferior courts over which he presided, to be, to investigate the law and the facts, and to apply the law, as he understood it, to the facts of the particular case under consideration. No one knowing him ever doubted that he had the courage of his convictions,—that he was never swerved by matters of policy, but was governed solely by his conception of what was justice and the law, as he understood it, in the particular case. He was an earnest, industrious and painstaking judge, a generous and incor-

ruptible man and a brave and conscientious lawyer. As a member of the Appellate Court, and again of this court, the clearness of his statements and the irresistible logic of his opinions have elicited, and will elicit, the admiration of the bar and bench of the country.

"The members of the Chicago Bar Association recognize that in the death of Justice JESSE J. PHILLIPS the State has lost one of its most faithful and useful servants, the bench one of its brightest members, they a true and valued friend. Everywhere, whether amidst the strife of battle, or as a lawyer, or discharging judicial functions, or in his intercourse with his fellow-men, he met the just expectation of the people. His courtesy and uniformly loving kindness endeared him to the people, and his learning, ability and integrity commanded the admiration of the bar and of the bench, and his work as a jurist will be a monument to his memory more lasting than enduring bronze or marble."

Judge Shope, continuing, said:

*May it please your honors*—It has been truly said that there is nothing in the duties of a judge to excite the enthusiastic admiration of the populace; that a judge, toiling among books and records,—a martyr to his sense of duty,—is not a spectacle to elicit the applause of the multitude. Such a life is too barren of tragic incidents and too unromantic to be embalmed in story or in song, and yet to those able to appreciate the beneficence of such a life it is most grand and heroic. In our complex system of laws, embodying principles derived from the civil, common, ecclesiastic and statute laws, and forming under the hand of the wise judge a harmonious whole, the people are unable to perceive the force that guides and secures protection, peace and happiness to mankind,—far more valuable in their results than a life, however brilliant, which is devoted to the perpetuation of individual fame, whether it be amidst wars or in the executive or administrative guidance of the State.

Legislatures, composed mainly of those who are unfitted by study and experience to ascend those heights where they may view the growth of the law as it has kept pace with the advancing civilization of the race, can only be expected to legislate in view of the new conditions or emergencies that may arise. Such legislation is valuable only to the great structure of the law in so far as it

tends to crystallize into law the better and more advanced thought of the people. Laws thus passed are necessarily incongruous, and form a system of patch-work incapable of complete administration without construction and interpretation. So it is that material thus brought into existence must be "labored into shape," that the beauty and solidity of the structure of the law in its entirety may not be destroyed. This labor falls to the courts of last resort, and he who achieves distinction because of his skill, ability and devotion to this great work has a right to claim the gratitude of his countrymen.

To this class of benefactors of his race the distinguished judge whose life we commemorate to-day justly belongs. That he was a many-sided man is unquestionably true; and it is equally true that in every walk of life wherein he trod he impressed upon the generation that he was a leader of men. As a lawyer he early won distinction as a fearless and able advocate, a studious and painstaking jurist; and it is this phase of his life that we are more particularly called to consider to-day. In the great civil war his achievements were marvelous, and won the encomiums, not only of the people, but of those best qualified to judge of his merits. His wonderful endurance and personal courage, his unsurpassed gallantry as a soldier, his ability as a commander and his ready acquisition of the arts of war, together with his brilliant achievements, have gone into the history of his country, and he will be remembered as a distinguished military chieftain while the history of that war is read.

It is, however, as a lawyer, judge and man that I would speak of him. I doubt if any man ever came to this bench with a stronger determination to perform every duty, to fulfill every obligation of the station, more resolutely than did Judge PHILLIPS. His long experience as a lawyer, both in the practice and in the circuit and Appellate Courts, gave him strength and confidence in his ability to perform the duties of this high office. How he performed these duties his work upon this bench and the volumes of its Reports more eloquently tell than any words of encomium that I might utter in this presence.

It will undoubtedly always be a pleasure to the members of this court who were his associates upon the bench, to recall his affability and courteousness toward his brethren, in the conference room and elsewhere. However taxing and arduous the duty, however

great the mental or physical strain, he rarely, if ever, lost that courteous bearing toward his fellows, and cordial manners, which marked him in private life. Yet he will be remembered as one who always had the courage of his convictions; while yielding readily to authority if he believed the authority to be applicable to the particular case under consideration and promotive of justice, yet always standing up unflinchingly for what he believed to be right. I have sometimes thought he had less reverence for precedents than some of the judges that I know, but I also thought that this want of reverence grew out of the strong purpose of Judge PHILLIPS to establish the right and to do justice in the particular case he had under consideration.

He truly had the elements of a great judge. His ability to master the facts of a case was perhaps not excelled, while his perception of the principles governing and controlling was in a marked degree clear and distinct. He analyzed with great care and patience, and the cogency and force of his reasoning usually carried conviction. Although at times suffering from ill-health and from the wounds he had received in defense of the country, he yet performed each duty, and his opinions, even at such times, were clear, strong and concise, showing that he was capable at all times of close and deep investigation and clear and logical reasoning. He was best known to the people and State, undoubtedly, through his military and political record, but he was far better known to the bar and bench of the State and of the country by his long, faithful and successful career as a judge.

Judge PHILLIPS was pre-eminently a man of the people. His love for the common people was one of the controlling elements of his character and found expression upon all fitting occasions. This, with an intense love of justice and his generosity, formed strong, and sometimes controlling, elements of his character; and especially so in all matters of mere individual action. It is not, however, true, that in any sense it controlled him as a lawyer or a judge. He might be misled by those whom he loved, but never consciously; nor could he be knowingly swerved from what he believed to be the right by any considerations, however much they appealed to his heart.

Not only was he pre-eminently learned in the law and possessed of a judicial capacity of the highest order, but he was equipped with broad learning in all those departments of art, science and

literature which make up the sum of human knowledge. He was a man of broad reading and culture, and attained to a very considerable distinction as a literary critic. His reading, aside from the law, not only aided in ripening his judgment, but gave him a fund of knowledge applicable to the affairs of life and a facility of expression far beyond the ordinary lawyer of the day. Some of his opinions furnish not only evidence of his profound legal attainments, his power of statement and logical reasoning, but may well be classed as literary products of a very high order.

As a man he was just and generous. He measured the faults of others with charity, and condemned, if condemn he must, with regret. His own life was an open book, and it has been truly said of him that "neither in peace nor in war did he consciously do any man wrong." It may possibly be said of him that he had too little regard for those rules of society by the observance of which even whitened sepulchers appear well before the public gaze. He hated all shams and pretenses with a religious hatred, was honest in his own purpose, just in his estimate of men and affairs, and had no patience with either hypocrisy or pretense.

He was a loving and lovable man, a true friend, without guile, deceit or hypocrisy. He was a brave and patriotic soldier, equal to every emergency in the dread hour. He was a careful, painstaking and conscientious lawyer, and had, as such, a high appreciation of the dignity of the bench as the representative of the sovereignty of the people in their collective capacity, and of the importance of the maintenance of its purity and independence. When he came to judicial position he carried with him in the discharge of the functions an appreciative sense of the dignity of his office, and of the necessity, if civil government was to endure, of the great work to be accomplished by the judiciary.

As a judge he sought, with all his great ability, to magnify his office. He labored to establish those principles which he believed to be necessary to the preservation and protection, as well as the advancement and upbuilding, of our rising civilization. The principles established by this court while he was a member, and in respect of which he wrote and voiced the opinion of the court, will continue to be respected and cited in the advancing years as landmarks in the progress of the civilization of the American people.

But neither the ripeness of his judicial learning nor the generous impulses of his heart could save him from the common fate of

mortality. His was a strong, unique and picturesque manhood. He was a typical American soldier; a brave, daring and brilliant, but tactful, commander. Upon his return to civil life his State gave him its highest honors, and conferred upon him offices of the highest dignity within its gift. He so filled every office and discharged every duty in public and private life as to receive and retain the respect, confidence and veneration of the bar and love of the people. And so on the 16th day of February, 1901, he died, with honors, unpaled by the sicklied hues of death, thick upon him.

Had he faults? If he had, none will recall them now and I will not remember them, for

"Death's cold, white hand is like the snow  
Laid softly on the furrowed hill.  
It hides the broken seams below  
And leaves the summit brighter still."

I may be permitted to add, that there is a prevalent belief, especially in the minds of those who have met with irretrievable loss and overwhelming sorrow, that emanations from the Almighty beneficence cannot be destroyed. In the physical world about us we see decay and change. To-day we behold the rude clod, and to-morrow we grasp the beautiful lily of the valley. It returns again to the noisome earth, and again is re-produced as the fragrant rose. The form is changed but no particle of matter is lost. And so it is believed in the moral and spiritual world that the good which cometh from the Father alone is indestructible. The seasons will come and go; the winters will cover with their white mantle the rude mound where he lies, only to fructify the soil, that flowers and perpetual verdure may spring upon it.

It may be that the good and evil in men's lives are permitted to grow together until the harvest, and that the good that cometh only from the Father will be gathered by him into his garners and the evil in men's lives destroyed as by fire. If one has clothed the naked, fed the hungry, uplifted the fallen, listened to the cry of distress and relieved the oppressed and the erring, the plaudit of "Well done, good and faithful servant," is promised; and if this be so, may we not believe that all that marred the beauty and symmetry of our brother's life,—if aught there was,—lies hid in the cerements that wrap his mouldering clay, and that he has pushed aside the portiere that divides mortal life from immortality, and stepped forth upon the vantage ground where he may view the limitless eternity of the past and the no less boundless eternity of



God's future? And Oh! if it be that he is there clothed upon with every noble, good and generous deed of his life,—every kindly word and impulse of his soul,—how like a prince was he arrayed as he went forth to receive the welcome of his King and Lord!

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

The court has listened with great pleasure to the kind words the bar of the State, through its honored and eloquent representative, has been pleased to say of our late brother on this bench. Judge JESSE J. PHILLIPS was indeed blessed with rare gifts of both head and heart. It would be but empty, unmeaning and wholly ceremonial laudation to say he was great in all things and at all times, and exempt from every weakness of human kind. The history of the generations of men since the world began bears the record of but one perfect man,—if it be lawful to call Him of Nazareth a man. The test of character and the grace of forgiveness do not rest altogether on the merit of good deeds performed, but in a large measure upon the temptations to error and folly which have been resisted. The wisest and best of earth are not exempt from all the faults and follies of the race. To quarrel with the imperfections of human nature is to criticise the wisdom and justice of the Maker, who is all-seeing where men are blind.

Judge PHILLIPS was a true and loyal friend, an honest man, kind of heart, a lover of the plain, common people, from whose midst he sprang. He cared not for rank or pride of birth. He knew not the love of wealth. His noble heart, full of generous emotions, remained untouched by the blight of the greed of gain and free from the petrification of selfishness. Those who would criticise must admit his faults or shortcomings were without any admixture of harmful intent.

It was his ruling desire that his duty as a judge should be well performed, and that his work, and the work of the court, should merit the approval of the bar and of the people. He realized the judiciary in the State and in the nation constituted, in part, the basis of government, and he recognized to the fullest extent that if public confidence in the courts of last resort should be shaken, the foundations on which the institutions of freedom rest would become insecure. But he well knew it was the matured or second thought of the public that should be considered,—not the excited

emotions of the hour,—and he wrought for what seemed to him to be right, in the faith that justification would follow calm reflection. He realized that in a government of the people and by the people it is the part of wisdom in the public servant to await with confidence the perfect work of deliberation and reason in the public mind. The haste of passion and rashness of the moment he knew would subside and that the conscience and good judgment of the masses would in the end prevail, and he wrought in that view.

Judge PHILLIPS was not moved by public clamor. On the bench he was as brave as on the field of battle, and the cruel wounds which scarred his body bore mute but indisputable evidence that he possessed that courage which unflinchingly faces death and fears not. As a magistrate he had the moral courage to lay the law as by the line and pronounce judgment as by the plummet, treating the parties, their condition in life, the political aspect of the controversy, if any, as but the merest inconsequentialities. He was a lover of justice and mercy, and sought to exemplify those attributes of his nature in every cause in which he sat as judge. He was watchful of every safeguard of liberty and of the rights of man,—loved our country, our State and all our institutions of freedom. In the conference room he was the soul of honor and courtesy. He advanced his views with almost courtly grace; listened with great respect to the views of his brethren of the bench and gave consideration thereto; was tolerant of the opinions of others; firm in his fully matured convictions, but obedient to the will of the court when authoritatively expressed. He was jealous of the good name of the court and of his own official reputation, and during all the years of his life no spot or blemish came upon the ermine of his office.

Though not favored with the habit or disposition of continuous application, Judge PHILLIPS accomplished by the exercise of tremendous labor exerted at irregular intervals, continued almost unceasingly when once begun, that which others reached by the more wholesome and healthy process of steady and regular effort. When so engaged he banished many of the hours of sleep, summoned every energy of brain and nerve, and held them to the task without regard to the demands of nature for rest or opportunity for recuperation. Ills, physical in character, growing out of such exactions upon his store of bodily and nervous vigor, no doubt contributed to the afflictions which culminated in his death. His chair

on this bench was unoccupied for more than a year—so long did his splendid physique and indomitable courage resist the maladies which finally overcame him.

That which men call death and believe to be life hath overtaken him, as it must overtake us, every one. It was the faith of the good poet, Whittier, that the voyage of death leads to the blessed isles of the hereafter, and of it he sang:

"I know not where his islands lift  
Their froned palms in air.  
I only know I cannot drift  
Beyond his love and care."

The members of this court attended his funeral obsequies in a body and gathered about the casket in which lay his lifeless form in order to testify to their esteem and respect for the man and for his memory.

At a meeting of the bar of Sangamon county, held in the city of Springfield, a memorial was adopted upon the death of Hon. WILLIAM JOSHUA ALLEN, late a judge of the United States Court for the Southern District of Illinois. At said meeting a committee was appointed, consisting of George W. Wall, of Chicago, William W. Barr, of Carbondale, and William L. Gross, of Springfield, with instructions to present the said memorial of the Sangamon county bar to the Supreme Court of Illinois. The memorial was adopted, as follows:

WILLIAM JOSHUA ALLEN was admitted to the bar at Mount Vernon on the 28th day of March, 1848. He at once entered upon the practice of law at Metropolis, Massac county. He was enrolling and engrossing clerk of the House of Representatives in the legislative sessions of 1849 and 1851. In November, 1854, he was elected a member of the House of Representatives. He was appointed United States district attorney for the Southern District of Illinois in 1855, and resigned that position in March, 1859. Shortly after, he was elected circuit judge of the Twenty-sixth circuit, to fill the vacancy occasioned by the death of his father, Willis Allen, and served the remainder of the term, when he declined a re-election. In November, 1861, he was elected a member of the constitutional convention which met in January, 1862, where he was a member of

the judiciary committee and chairman of the committee on bill of rights. In the spring of 1862 he was elected a member of Congress, and was re-elected in the fall of that year. He was elected a member of the constitutional convention which met in December, 1869, and which framed the present constitution of Illinois. In that convention, also, he was a member of the judiciary committee and chairman of the committee on bill of rights. In April, 1887, he was appointed judge of the District Court of the United States for the Southern District of Illinois, in which capacity he served till his death, January 26, 1901.

From the time of his admission to the bar he was always prominent in politics,—except, of course, while on the bench. He was extremely popular and influential with his party, and was thoroughly respected by political opponents for his ability and candor. He enjoyed a most unusual share of confidence and esteem from the people at large as well as with party leaders. His personal acquaintance with all classes was phenomenal. While not on the bench he was also actively engaged in his profession. He early attained a position at the very front, and easily maintained it. He was constantly employed in the most important litigation arising in the southern part of the State, and was justly regarded for many years as the leading *nisi prius* practitioner of that section.

As a judge he was learned, dignified, impartial, and always anxious to do exact justice. In all the relations of life he was a model of courtesy and kindness. Having the strongest and deepest convictions on all subjects of general interest, he was tolerant of the opinions of others. His personal qualities endeared him to all who knew him. His mental powers commanded universal admiration, and his memory will be cherished in a degree scarcely ever accorded to men whose lives have been mainly passed in the struggles of the bar and of public affairs.

In presenting the above memorial, Hon. George W. Wall, speaking in behalf of the committee and of the Sangamon County Bar, made the following remarks:

*May it please the court*—In the death of Judge ALLEN Illinois has lost one of her distinguished sons. The greatness of a State is measured by its men. Its cities, its railways, schools, factories, its farms,—these are all the work of men. They are the visible signs of progress. But behind them, and sustaining the whole

fabric, must be a system of government and law, without which material growth is impossible. When a man is engaged in the moulding and administration of political and legal affairs, his work relates to the most vital and important interests of society; and when for more than fifty years he has been so engaged, has done his work well, has won the confidence and esteem of his fellow-men and has gone to the grave in honor, it is fit that some recognition should be made of his life and services.

It was said of old that no man could be counted happy while he lived, because to the most gifted and successful some accident, some error, some untoward circumstance, might bring mortification and distress. A long, bright day may end in storm and cloud. Judge ALLEN was singularly fortunate in this respect. From the beginning to the end his day was clear. If a few floating clouds ever flecked the sky, they did not obscure the sun; and the beauty of the evening befitted the glowing morn and the glorious noon-tide.

Few men have been more in the glare of publicity and few have borne it better. Few men have had clearer views of the fundamental principles which support a popular form of government, and few have had more faith in the inherent strength of popular institutions. He believed that a free and intelligent people can govern themselves, and that such government is the highest product of civilization. As chairman of the committee on the bill of rights in the convention which framed the present constitution he urged and secured the adoption of article 2 of that instrument. Section 3 of that article contains provisions upon which he was especially insistent. While he was always orthodox on religious subjects,—living and dying in the faith of his church,—yet he demanded that those whose opinions might be deemed heterodox should be fully protected by the organic law. The constitution of 1818 declared: "No religious test shall be required as a qualification for any office or public trust under this State." The same provision was placed in the constitution of 1848. It occurred to Judge ALLEN that some honored citizen, cultured and eloquent, who had served his country on the field and in civil station, might be eligible to the highest office in the State and yet might be incompetent as a witness because of his religious belief, and he rewrote the provision as it appears in the present constitution: "No person shall be denied any civil or political right, privilege or capacity on account of his religious opinions." What a step forward

since the day when Savonarola was hanged in Florence by the Pope! And since that other day, a generation or so later, when Servetus was burned at the stake in Geneva by John Calvin!

And so Judge ALLEN conceded to all men the utmost liberty of opinion upon political subjects while steadfastly adhering to his own views. He knew that free thought and free speech are indispensable in a free government, and that the clash and controversy of free discussion will ever point the republic to paths of safety. Yet no man more thoroughly hated anarchy. He constantly appealed to the constitution and the laws for the guidance of the citizen and the State, and on all proper occasions he ardently defended these as the bulwarks of public and private rights. Such a man is patriotic in the broadest and best sense of the term, comprehending fully the sources and conditions and appreciating the blessings of his government and anxious to preserve it for all posterity.

The exercise of political influence is not confined to the officeholder or to the party in power. The system we have was purposely devised with a view to the participation of the whole people in public matters, and while a small majority may from time to time determine what policies shall prevail, yet the active course of the minority will always modify the attitude of the majority, and in the end reasonably fair and conservative results are obtained.

Concurrent with his activity in politics was Judge ALLEN's professional career. There, also, he was pre-eminent. His temperament and gifts fitted him for the contests of the bar. His mind, discriminating, subtle and capable of long and arduous effort, surely grasped and analyzed the facts, and he had rare power in presenting the controlling features of his case in the most effective way. This is absolutely essential to success, just as it is necessary that a painting should be properly adjusted to the light and then viewed from the right standpoint in order to bring out its harmonious effects and to reveal all its beauty. He was a *nisi prius* lawyer of the best type; deferential, courteous, self-controlled, vigilant, resourceful, fully equipped at all points, convincing, magnetic and true to his cause. His judicial career, both earlier and later, was most satisfactory. To great legal acquirements and experience he joined patience, careful consideration, absolute impartiality and sound judgment. His private character was above reproach, and his personal qualities gave him great popularity

with all classes. He liked the people, and they liked, admired and respected him.

His name appears on the roll of attorneys in the Fifth Gilman. This court was then composed of three judges—Caton, Treat and Trumbull. They were the first to sit in that capacity under the constitution of 1848. Judge Caton remained on this bench until 1864, when he resigned. Judge Trumbull resigned in 1853 and in 1855 entered the United States Senate. He was succeeded on the bench by Judge Scates, who resigned in 1857. Judge Breese succeeded him, and continued there until his death, in 1878. Judge Treat resigned in 1855 to accept the position of United States district judge, which he held until his death, in 1887. Judge ALLEN was his successor on the Federal bench. The Fifth Gilman was the tenth volume of the Reports of this court. Since then the number has grown to 189, besides the 93 volumes of the Appellate Court. And the growth of the State has been as great in all other respects. The advance in the last half century has been wonderful, indeed. No pen can describe it, and those who have been a part of it can hardly realize it. Judge ALLEN did his full share in all this.

History delights most in the physical contests of the world. Wars of ambition and conquest, commanders of contending hosts, attract most notice. Military glory and glitter captivate the multitude and obscure all else. For more than forty centuries the earth has been shaken by the tread of armies and reddened by the blood of battles. Alexander, Hannibal, Charlemagne, Marlborough and Napoleon fill the historic page, and overshadow students, philosophers, statesmen and jurists. But, after all, the real, the best, the greatest work is that of the thinker. Of all intellectual fields that of the law is widest, and its ministers are most potent in fixing and directing the destinies of man. After the nation has won its victory at arms, a treaty, according to forms of law, must settle the terms; and, finally, to the judicial department is committed the great task of determining the status of the new possessions, the rights of its people and the limitations to be observed by the government. Such is the triumphant reign of law. The hand of Cæsar must yield to the brain of Plato. Peace hath her victories, no less renowned than war,—immeasurably greater, indeed. The organic law holds in firm check the strong, protects the weak, guards private property, secures freedom of speech and opinion, and so insures "government of the people, by the people and for

the people." This is the work of the student of public affairs,—the lawyer in his highest sphere. A growth of long periods it may be, contrived to meet the needs of the individual and to provide an effective system of government where all are equal before the law.

To the legal profession the world is indebted for the evolution and perfection of civil administration, based upon and limited and controlled by organic law. No member of that profession has shown more devotion to the constitution or felt more pride and satisfaction in its support and enforcement than Judge ALLEN. As a legislator, lawyer, jurist, political thinker and actor, and as a man, he made an indelible impress upon the history of Illinois, and the record of his life is an enduring tribute to the excellence of the institutions he loved so well.

At the conclusion of the above remarks by Hon. George W. Wall, Mr. Chief Justice Wilkin, in behalf of the court, said:

The high esteem in which our deceased brother, Justice PHILLIPS, was always held by the members of the court could not be better expressed than in the memorial which has been presented, together with the timely and eloquent remarks which have been made by Judge Shope in presenting the memorial. The same may be said of the memorial presented by Judge Wall upon the life, character, services and death of Judge ALLEN. I shall not attempt to add anything to what has already been so well and so truthfully expressed. It only remains that I order the memorials to be spread upon the records of the court; and as a further mark of respect to the memory of the deceased the court will now stand adjourned until to-morrow morning at nine o'clock.



# REPORTS

OF

## CASES AT LAW AND IN CHANCERY

ARGUED AND DETERMINED IN THE

SUPREME COURT OF ILLINOIS.

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VOLUME 191.

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN JUNE AND  
OCTOBER, 1901, AND CASES IN WHICH REHEARINGS  
WERE DENIED AT THE OCTOBER TERM, 1901.

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ISAAC NEWTON PHILLIPS,  
REPORTER.

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SPRINGFIELD:  
1902.