

IN MEMORIAM.

THE DEATH OF HON. ULYSSES MERCUR, CHIEF JUSTICE OF THE SUPREME COURT.

At the sitting of the SUPREME COURT at Pittsburgh, on Monday, October 3, 1887, the first day of the October Term, present GORDON, C. J., PAXSON, STERRETT, GREEN and WILLIAMS, JJ., the commissions of Hon. Henry W. Williams, appointed by the Governor to fill the vacancy caused by the death of CHIEF JUSTICE MERCUR, and of Hon. Isaac G. Gordon succeeding as Chief Justice, were read, when at one o'clock, P. M., HON. DANIEL AGNEW, formerly Chief Justice, arose and addressed the Court as follows:

May it please your Honors:

I rise to perform a sad and painful duty. You miss from among you a familiar form, and the air seems freighted with sorrow.

It is my mournful part to announce to you the death of Chief Justice Ulysses MERCUR, your honored head and colleague. He has left the "warm precincts of the cheerful day" for the darkness and gloom of the grave. Though gone from your Bench for many years and living far away from the scenes of his active life, yet it has seemed to my brethren of the Bar most meet that I should break this melancholy news. I accept the duty, only regretting my inability to perform it well.

He died at the house of his son in Wallingford, near Philadelphia, on Monday morning, June 6, 1887, at half past nine o'clock. His attack commenced with a chill a few days before at dinner with a friend, followed by pneumonia. The disease, however, seemed to be checked, and the press of the city contained daily bulletins indicating a recovery. On Sunday he was bright and cheerful, expressing a wish to sit up, and saying he would soon be in his seat. On Monday morning, in a pleasant voice, he bade his physician, Dr. Getchel, good-by. In a short time, however, a change came, observed by his attendant, who immediately sent for the physician; but before the doctor came he died of a heart-clot his circulation

was too weak to overcome. Death came to him in a calm and peaceful frame, his breath passing gently away, as the last low murmur of a dying breeze; and then he lay on his pillow, as a babe rests in sweet slumber on its mother's breast. By sorrowing friends he was borne away to his home in Towanda, the spot where he first drew breath and which he loved so well, and was there buried in Oakhill Cemetery on Thursday, the 9th day of June.

Chief Justice MERCUR was born on the 12th day of August, 1818. His life was one of progress and success, worthy of study and imitation. His father, Henry Mercur, was a man of moderate means, unable to bestow upon his son the higher education his ambition sought. But, as he once told me, after exhausting the more humble sources of his native place, by an arrangement he took in advance a portion of his father's estate. He was thus able to reach Jefferson College, where he improved his time and talents so well, he was able to achieve victories in society contests, and finally was graduated with honor.

While at college he added to his labors a year's study of the law, under the late Thomas M. T. McKennan, one of Washington county's most respected and able lawyers, afterwards a Secretary of the Interior of the United States. On his return to Towanda he continued the study of the law under Edward Overton, Esq., a lawyer of eminence in Bradford county, and was admitted to the bar in the usual time.

In 1850 he married Miss Sarah Davis, a daughter of the late General John Davis, of Bucks county, Pa. His union with her was happy, and to them were born four sons and a daughter, all yet living. His professional life was one of labor and reward, founded upon unflinching principle and great integrity. Learning, industry and perseverance soon brought him clients and his business increased, until he became leader at a Bar where talent and professional distinction largely prevailed. Courage, too, was a distinguishing trait of his character; and for fifteen years he continued an active and successful practitioner.

On the resignation of Judge Wilmot in 1861, to take his seat in Congress, where he became famous as the author of the "Wilmot Proviso," prohibiting slavery in the Territories, ULYSSES MERCUR became his successor as President, in the Thirteenth Judicial District, composed of the counties of Bradford and Susquehanna. His career on that bench closed in 1864; when, to harmonize jarring party interests he accepted an unanimous nomination, and was elected to Congress. There, as in former positions, he labored with unremitting industry, acquiring the reputation of a faithful,

fearless and honorable member. His untiring attention to the interests of his constituents and of his country pointed him out as fitted for a higher place, one especially more congenial to his tastes and studies, and suited to his habits of thought. Owing to a natural defect, his voice was husky and broken, preventing the higher efforts in oratory which his ability would have enabled him to reach. This led him to a habit of investigation and reflection suited to the high position to which he was soon called.

He was nominated by the Republican party and elected to the Supreme Bench of this Commonwealth in 1872, to succeed Chief Justice THOMPSON, whose commission then expired. Here he gave evidence that he was in his proper sphere. At the same time, I became Chief Justice of the Court, and found in Justice MERCUR, a diligent and painstaking judge, an agreeable companion and a pleasant colleague. During my continuance on the Bench many important causes arose, in which he exhibited his fidelity to principle and to the true exposition of the Constitution, both old and new. For the latter he did not vote, often speaking of it to me jocosely as "your Constitution," for I had voted for it; yet uniting in the endeavor to interpret it truly and send it on its way of usefulness. He was rarely absent from his place on the bench or in the consultation room. While I remained to observe his course I can truly say he was honorable, faithful and useful as a judge, and a worthy member of the Court. Since my retirement I cannot speak from a personal knowledge, but I have observed his constantly rising favor with the Bar.

On the expiration of the term of Chief Justice SHARSWOOD in 1882, extended by the new Constitution until January, 1883, Justice MERCUR, as the oldest Judge in commission, became the Chief Justice of this Court, a position he would have held until January next. Your Honors know the rest.

Thus lived and died a useful and honored citizen and an upright and able judge. His life is an example to be studied well and to be followed by the youthful of the profession. It is an instance also of the high character of our grand Republican institutions, and the door they hold open to all citizens, who by merit would win their way to fortune and to fame. Here no tyrant's hand "grasps the whole domain" or "stints the tillage of the smiling plain." Here no lordling crushes out the souls of prostrate poor, strips their humble cottages of the hard earned products of their toil, or robs their homes of comfort and of happiness.

But here, fired by love of learning or prompted by laudable ambition, or yearning for wealth and comfort, or for the elevation

of higher tastes, the poorest and the lowliest, unchecked by rank or privilege, or by "poverty, unconquerable bar," may aspire to slake his thirst for knowledge, seize the objects of his desire, indulge his taste for art, or seek the happiness of an attractive and lovely home. Such a home it was the fortune of the late Chief Justice to enjoy for many happy years. Here, too, a noble Constitution, enduring for a century, and constantly expanding to meet the growth and wants of the nation, protects all beneath the benign influence of its powers, secures to every citizen his just rights, and smiles on his advancement in knowledge, wealth and distinction.

To all these Chief Justice MERCUR attained, under its ever protecting power. He secured the most cherished objects of life, and died respected and lamented. Oh, who would not wish this fortune to be his!

I therefore move that the Court adjourn for the day, out of respect for the memory of the late Chief Justice.

MR. CHIEF JUSTICE GORDON:

We lament the death of our good CHIEF JUSTICE. He was not only an able lawyer and a just judge, but also an excellent gentleman and a kind and agreeable companion. We miss him sadly, as well in the council chamber as in the court room.

But lamentation alone is scarcely a meet tribute to the memory of Chief Justice MERCUR, for we cannot regard his life without admiration.

He was a successful man, a fortunate man—fortunate in his domestic relations, in his wonderful popularity with his fellow citizens and in the important offices which they conferred upon him, in his professional success and in his social life.

Nor can we even say that he was unfortunate in his death. As a mighty man, still vigorous in life's race, he was taken away in the fullness of a strong intellectuality—not in a driveling old age, when man becomes a mere tolerance in the world, but as a chief among men, the loss of whom the Commonwealth deplores, and whose place cannot be filled. His sun has set in a clear sky and in a bright horizon.

Neither has he fallen, but rather risen. He has passed from the highest position in his native state to a still higher position in the heavens; for he was a good man and an honest member of the Church of Christ. He rests from his labors and his works do follow him.

The court was then adjourned.

Immediately upon the adjournment of the court, a large assemblage of the members of the Bar was convened in the Supreme Court room. The meeting was called to order by Hon. Daniel Agnew, on whose motion Mr. Chief Justice GORDON was made Chairman and Mr. J. B. Sweitzer, Secretary. A committee, appointed on motion for the purpose, consisting of Messrs. J. F. Slagle, S. A. McClung, John Dalzell, D. T. Watson and Wm. Scott, after a brief absence reported a fitting memorial, and in support of a motion for its adoption,

HON. EDWIN H. STOWE, P. J. of the Court of Common Pleas, No. 1, of Allegheny County said :

I think it not improper for me to say a few words on this occasion, expressive of my regard for the late CHIEF JUSTICE and my sincere sorrow for his sudden and unexpected death. It is true, my personal acquaintance with him was comparatively slight, but so far as it went, it was of a most pleasant and kindly character. I always found his manner genial, open and manly, and free from anything savoring of assumption or superiority. Intellectually and socially he was a man that might be looked upon as an excellent specimen of the outgrowth of our political institutions. Commencing without any special advantages over hundreds of other young men, whose parents are in fair circumstances in life, he by industry and perseverance, attained the highest position to which his profession can aspire—the Presidency of the Supreme Court of this great Commonwealth. This was not the result of towering genius, of unprecedented ability, or of great family influence. In these respects he had no advantage over a large proportion of the young men who are admitted to the Bar. But he had that which was better than all these ; he had honorable ambition, persevering industry and scrupulous integrity. It was upon these he relied for advancement, and it was to these he owed his success. He was a careful and conscientious judge. While perhaps it may not be claimed that he was of the greatest who have graced the Bench, he was by no means among the least, and I think that none can deny that at all times he came fully up to the requirements of his position. His decisions show research, thought and care. Studious to keep along the well defined paths of settled legal principles, he never seemed ambitious to startle the profession by innovations or eccentric and novel views. He was conservative and cautious, looking to the old landmarks and well content to stand by the principles of government and law which have come down to us from our fathers. Such men in high places in these days of new theories and moral

transitions are to be honored while living and mourned when dead; for they are, in my opinion, the mainstays of our whole social and political system. But, while his untimely taking off is much to be regretted, it has its compensations. It cannot be said that he has lived in vain, for he fell with many years upon his head, "ripe in honors and in virtues," holding the foremost place in the state, having the full confidence of the people, the respect of the Bar and the love of all who knew him. It can be truly said he maintained his high office well, and he laid down the ermine as unsullied as he took it up. He lived honestly before God and man, and he died without a stain upon his name. He leaves behind him to console and instruct us all, that which is better than wealth or great renown—the example of a life well spent.

"Integrity of life is fame's best friend,
Which nobly beyond death shall crown the end."

HON. THOMAS EWING, P. J. of the Court of Common Pleas, No. 2, of Allegheny County, said:

Mr. Chairman: Death has called away the head of the Bench and the Bar of this Commonwealth.

For fourteen years at the accustomed season the Bar of the state has been accustomed to receive the genial greeting of Judge MERCUR. Now the Court comes, but he comes not.

When the telegraph carried the news of the sudden death of the late Chief Justice, there was sadness in many hearts throughout the state.

The first emotion was sorrow over the death of a genial, true friend, even more than for the loss of the great and the good judge.

Though he was cut down while his natural force was unabated, his mental faculties unimpaired, and before he had reached the three score and ten years allotted to man, we meet rather to honor his memory than to lament his death.

It is high commendation for any man, when it can be said of him that he has performed fully and well all the duties arising from his station and opportunities in life.

Of Judge MERCUR it can be said with truth that in ability and performance he rose to the full measure of the exigencies of each and all the high positions in which he was placed. This success was no accident, but was the result of his ability, his learning, his industry and integrity.

My first knowledge of Judge MERCUR was on entering Jefferson College, some ten years after he had graduated. The college traditions of his ability and success were still fresh. The professors said, "Mercur had been good in every department."

He had the unusual fortune when a junior to represent his society in a contest debate, and carried off the honors from his opponent, senior,* and at graduation he took a high class honor.

His friends said he was then a well-read, laborious lawyer, with a fair practice, and surely rising to eminence in his profession.

His short term on the Bench in his district proved him to be well fitted for a *nisi prius* Judge.

During his eight years in Congress, at a very important and critical period of the Nation's history, he was recognized as one of the most useful and influential members of that body.

His influence in his fifteen years on the Supreme Bench has made a permanent impress on the State.

These fifteen years have been an important formative period in the jurisprudence of Pennsylvania.

The year following the adoption of the present Constitution in 1874 necessarily brought up for final adjudication, many fundamental questions.

At no period in the history of the State have greater advances been made in material prosperity. New discoveries in art and in the earth's productions have raised many new questions, requiring new adaptations of old principles of the law, to conform to the new conditions, so as to promote the prosperity and conserve the liberties of the people.

In all this the late Chief Justice has borne an important part.

He was a wonderfully well balanced man. His college reputation of "good in everything," was typical of his after life. Perhaps his ability in some departments might have been more marked by contrast, had he been wanting in others.

He was eminently a pure man, a man of the type of whom it is said, "Blessed are the pure in heart, for they shall see God."

Diligent student, learned lawyer, able legislator, wise and just judge, Christian gentleman,—All honor to his memory!

MR. JAS. S. MOORHEAD, of Westmoreland County, said:

Mr. Chairman and Gentlemen of the Bar: I am not a physician, nor do I know the technical name of the malady which caused the departure of our distinguished friend; but I do know that, in the nomenclature of the common people, it bears the name of *overwork*. In the last quarter of the nineteenth century in this great State and in this greater country of ours, this insidious enemy to the health and longevity of the human race daily counts her victims

* This defeated opponent was C. S. Vallandigham, "of Ohio."—Rep.

by scores. It would hardly be accurate to say that she has entered into partnership with the Fates of the ancient mythology, as she seems rather to have gone into business on her own account; and whilst the cruel Atropos cuts the fabled threads of human life with some appearance of fairness to all classes and conditions of men, this new monster marks, for her special fury, the brightest and the ablest of the land. It matters not whence their origin, whether plebeian or patrician, let them but evince superior power and prowess and they are at once doomed to the same speedy extinction. *Intense* life, with many people, is preferable to *prolonged* life.

The environment of a man is generally superior to his will, which is but another name for wish, or choice, or preference. He who is in the midst of the ambitious, on-moving throng cannot stop, cannot retire; he must go forward, or perish, to fame and to glory, where he stands. Thus the law of life and the love of life alike imperiously demand of the bold, the brave and the ambitious, a continual struggle for existence and for advancement; thus the happiness found in work gradually developes into the intense love of great work, and finally into the exhaustion and paralysis of overwork; and thus whilst the victor is savage and relentless, the victim is at once, both a martyr and a hero.

In this animated arena of activity and of controversy, it would be strange indeed if the legal profession did not bear a most important part. Chaos and disorder would soon reign supreme in business, without the skilful hand of the lawyer to formulate and direct its course. Numerous and gigantic enterprises require clear, active and intelligent brains to launch them safely on their voyages and to enable them to weather adverse financial gales; and so the midnight oil of the lawyer is often burning, either to create or restore order.

And if increased energy and activity are required of the rank and file of the profession, how much more exacting and painstaking must be the positions of the commander-in-chief and his associates of this intellectual army! Brilliant rhetoric may indeed adorn the pages of the opinion, but it would be worse than the worst literary trash, did it utter sentiments or state principles in conflict with the wisdom of past generations or regardless of the probable conditions of the future. Truly the great jurist occupies, and should occupy, a position of eminence, for he must compass the entire legal horizon within the range of his intellectual vision.

He whose death we this day lament cannot be charged with ornament at the expense of strength, with beauty at the sacrifice of durability; and whilst his opinions oftentimes bear the evidences of

a fluent pen and a vigorous vocabulary, they are nearly always on the line of sound reasoning and safe precedent. It was not my good fortune to be intimately acquainted with the illustrious dead; only during these annual sessions of our Supreme Court, which are periods of professional labor and industry instead of occasions for the cultivation of social qualities, was it the privilege of many of us to meet him. But, perhaps in no place, so well as in this Court, can urbanity of temper and gentleness of disposition be exemplified; and though valuable time (extremely valuable when parcelled out in minutes and seconds) was doubtless often consumed in arguments more plausible and earnest than sound and convincing, yet no member of the Bar ever accused Chief Justice MERCUR of rudeness or incivility.

It may be conceded that greater minds have expounded the law from this Bench, but it is doubtful if any other judge ever departed from it, better established in the affections of the gentlemen of the Bar who practice before it.

But the world moves rapidly on and we must all hurry through it, just as did our late CHIEF JUSTICE. May our Thanatopsis be as serene and tranquil as was his; and, although we may not aspire to the distinction which crowned his career, yet aided by the light which he has left burning on the altar, let us adorn our profession in our respective spheres.

MR. A. M. BROWN, of Allegheny County, said:

We are assembled to render just tribute to the memory of ULYSSES MERCUR, late Chief Justice of the Supreme Court of this Commonwealth; to give expression to the emotion of sorrow produced by our great bereavement and to lay some flowers upon his tomb. This large gathering of the Bench and the Bar, and the solemnity which pervades this room speak eloquently of the high estimation in which our departed brother was held alike by Bench and Bar, and of the profound sense of loss which we all feel in his death.

And, first, let me speak of him as a Christian gentleman. We all know a Christian character when we see it, however dim our moral perception may be, and however imperfect our judgment. We all admire a Christian character, though its virtues may reprove or condemn our own infirmities.

His life was, in the highest degree, pure and blameless, and earnestly devoted to honest purposes and ennobling influences. I venture to say in this presence that association with Judge MERCUR in private and social life, and in public affairs, always tended to

produce the highest respect for the man, and confidence in the sincerity of his convictions, the purity of his life, and the moral aspect of his refined Christian character. His general conduct at all times, and everywhere, was a striking and beautiful illustration of the natural outcome of virtuous surroundings, self-control, and dignified but gentle bearing, allied with firm devotion to honorable pursuits.

Throughout his long and busy public life, he worthily employed his profound learning, his clear and comprehensive intellect, his calm yet firm judicial mind, and his spotless integrity, in the thorough discharge of the functions of the various offices of public trust which he held.

By the beauty and simplicity of his life and character, his freedom from pride or prejudice, his unselfish devotion to duty, his unvarying kindness of heart, and his all-embracing Christian philanthropy, he endeared himself not only to his brethren of the Bar, but to all who were privileged to know him; and he has furnished a grand illustration of the power of good of a human life consecrated to the highest and noblest aims. Everything he did, he did well, and his character remains as an example and as a precept to those who come after him in the noble profession of which he was so conspicuous and so honored a member.

But it is in his character as a judge of our highest court that he will be unceasingly remembered. It is perhaps a melancholy truth, that swift oblivion usually overtakes even the greatest of merely professional reputations,—speedy forgetfulness is the lot of the ablest men at the Bar. It is not so, however, of our great Judges, whose enduring memorial is neither sculptured marble nor polished granite, but rather the records of law and justice, faithfully maintained and administered, through the highest and most sacred office which a free people, as the fountain of all power, have conferred upon a chosen few as guardians of the welfare, the happiness and the prosperity of the Commonwealth.

It is certainly true of our own, and of all free and enlightened governments, that the judiciary is the most conservative branch of the government, and the most reliable and powerful protector and preserver of those great and vital principles of right and justice, which in our free republican governments are intended as landmarks of liberty and law.

These great principles have been assailed, and will be assailed in the future, by popular but misguided clamor, by ignorance, prejudice, vice and crime, and by all those whose real purpose, under whatever guise or deception, is the destruction of the state, the

family, religion and all law and order. Against all such assaults the judiciary have ever stood firm and immovable as Mount Atlas,

When storms and tempests beat upon his brow,
And oceans break their billows at his feet.

Thus far this great power has been exercised with wisdom and fidelity, and to the satisfaction of the people. What a noble guard it has proved to be against disorder and despotism!

By the same power we will continue to promote our general welfare, and preserve the blessings of liberty to ourselves and our posterity. To his own great honor, and fortunately for the people of the Commonwealth, Chief Justice MERCUR ministered at that great altar of justice. In his long and distinguished career as lawyer, legislator and judge he never sacrificed any principle or duty to passion, prejudice or ambition, or subordinated integrity and justice to any private or partisan end, but maintained through life a constant loyalty to every commanded duty. He passed away peacefully as we trust to that everlasting rest which divine promise offers to human faith, followed by the regret and remembered with the reverence due to talent usefully employed and to duty faithfully discharged.

Appropriate remarks were made also by *Mr. J. H. Osmer*, of Venango County, *Mr. J. B. Sweitzer*, Prothonotary of the Supreme Court, *Mr. C. Heydrick*, of Franklin County, and by *Mr. Geo. Shiras, Jr.*, of Pittsburgh, whereupon on motion the meeting adopted as reported by the committee, through MR. JOHN DALZELL, the following

MEMORIAL.

Since the Supreme Court last met in this place Death has entered it and removed one of its members, ULYSSES MERCUR. Coming into the world unheralded three score and ten years ago, he left it the CHIEF JUSTICE of the Commonwealth; one of a line of distinguished men who have left their impress upon their time, and whose memories must live so long as respect exists for the majesty of the law. Having interwoven his life into the life of his State, he has become inseparable from its history and a part of all that is worthy of remembrance therein.

Hence it is that with a mighty company, the Commonwealth throughout, we do homage to his memory. His chair as Chief Justice is vacant, he has filed his last opinion, solved his last question, and from judging, has gone to be judged. Not his high

station, his great responsibilities, nor his usefulness could oppose any shield to the insatiate archer whose love is a shining mark. His record has been made up and is now for review at the bar of both God and man. His errors, if any he committed, are beyond correction; his virtues are to be summed up, and naught awaits him but the final judgment, whether for good or ill.

It is impossible that any man should have filled the place that he occupied as the result of mere chance. In a society of political equals such as is ours, none attains to place or power without excellence. At least no man having perchance attained preferment can hold it without merit. He, "who breaks his birth's invidious bar and grasps the skirts of happy chance," must still "breast the blows of circumstance and grapple with his evil star."

And so it is that the lesson of Chief Justice MERCUR's life is not hard to read. No other life more clearly illustrates the divine virtue of labor, or more emphatically teaches that industry and integrity, when wedded to an honorable ambition, command the key which opens the way to distinction. He filled many offices of public trust, and it may truthfully be said of him that in all of them he was faithful to duty.

Born a farmer's boy, his first experience in active life was as clerk in his brother's country store. Anticipating his inheritance, with a kind father's consent, he sold the farm which was to be his after his father's death, and invested the proceeds in his education. Industry and perseverance and a laudable ambition to excel are said to have been his characteristics in his college life, and the result was that at graduation he led his class. By the exercise of the same virtues, his preparation as a lawyer being ended, he became a leader of the Bar of his native county, and was soon rewarded by the choice of his fellow-citizens with its president judgeship. Here again industry and ambition, coupled with a native courtesy, gave him prominence. From this position, at the call of what he conceived to be a public duty, he became a member of the lower House of Congress. Faithfulness to his trust, untiring energy in the pursuit of public interests, and devotion to the right as he understood it, distinguished him in this new field of service. Thence the voice of his fellow-citizens called him from the more stirring arena of national politics to the next to the highest place that a lawyer may fill, a seat on the Supreme Bench of his native State.

In connection with this office nothing can be said of him that is not to his honor. There is no taint on the purity of his ermine, the hot breath of calumny has never touched him, and no question

was ever made of the integrity of his life. His daily walk and conversation were pure and without reproach.

He was distinguished by a saving common sense. His opinions have been accepted by the judgment of the profession as sound. They are clearly expressed, without meretricious ornament or affectation. They are consistent with the character of the man, showing his industry, his uprightness, his straightforwardness, his ambition to do right, and are expressed in clear, simple, pure English. They will remain while the Commonwealth lasts, an enduring monument to his honor.

For four years and more he has presided as Chief Justice with dignity, impartiality and an unfailing courtesy. With his robes around him, in the enjoyment of all his faculties, with seeming years of usefulness yet to add to his honor, he has been stricken down, and now naught remains for us but reverence for his memory.

He has earned his rest; rest from the cares and responsibilities of high place; from the inseparable cares and responsibilities of every life, even the humblest, and rest from the world's inevitable ambitions and eager contests. May he rest in peace!

The meeting of the Bar was then adjourned.