

# IN MEMORIAM,

## HON. HENRY GREEN, LATE CHIEF JUSTICE

OF THE

### SUPREME COURT OF PENNSYLVANIA.

---

On Friday, October 5, the Superior Court, upon adjournment, made the following order :

The Honorable HENRY GREEN, a justice of the Supreme Court of Pennsylvania from September, 1879, and chief justice from January, 1900, died on August 16, last. The Supreme Court is about to meet in this room for the purpose of taking appropriate action upon his death. Therefore, and also because we deem it appropriate to give formal expression to our sincere appreciation of the long, faithful and distinguished service of the late chief justice, and our sense of the loss that the commonwealth has sustained in his death, it is ordered that the court stand adjourned for the day, and that the prothonotary enter this minute on the record of the court. BY THE COURT.

Upon making the above order, President Judge RICE said :

In connection with the formal order that has just been made, I desire to add a word.

Chief Justice GREEN's career, both at the bar and on the bench, was distinguished in the true sense of that term. He not only achieved place and fame, but also the honor which comes from faithful service in a place of power and influence. He brought to the performance of his duties, whether as attorney or as judge, all the vigor and earnestness of a well-trained mind richly endowed by nature, clear apprehension of the fundamental principles of justice as administered under the forms of law, learning of the practical kind, indefatigable industry in searching for the governing principles of law, and fearless and wise judgment in applying them by the particular case in hand. He was, intellectually, courageous and resolute, and from my first acquaintance with him, during all his career, impressed me as a man of the most generous and kindly nature. But it is not my purpose to pronounce an eulogy or to make a review of his career and an analysis of his character and service, but it seems appropriate and according to my inclination to speak this word of affection and respect. In doing so I speak not only for myself but for all the brethren of the Superior Court.

Immediately upon the adjournment of the Superior Court, the Supreme Court assembled, Chief Justice McCOLLUM, Justices MITCHELL, DEAN, FELL, BROWN and MESTREZAT being present. The chair of the chief justice was left vacant. The Hon. W. S. Kirkpatrick then addressed the court, and, on behalf of the Bar of Northampton county, moved the adoption of a minute as follows:

HON. W. S. KIRKPATRICK:

May it please the court, my brethren of the bar of Northampton county, among whom the late chief justice lived upon terms of familiar and friendly intercourse and with whom he spent the years of his successful professional career, have chosen me to make the formal announcement of his death, and to express their deep sense of the great loss we have all sustained, and their profound veneration for his many generous and noble qualities of mind and heart. I am painfully aware of my deficiencies for this duty, and the inadequacy of language to convey all that this occasion demands. Indeed, in this assemblage of distinguished members of our profession and representatives of the bench of this commonwealth gathered here to do honor to the memory of our dead friend, I behold a more eloquent tribute than anything I may be able to utter; and, their reverent silence proclaims more truly the general grief than most impressive speech. Although he had passed the scriptural limit of human life, and had garnered the results of many years of faithful and productive labor, in that clear and kindling eye, that fresh and open countenance lighted as it was with the smile of friendly interest and the play of a masterful intellect, and in that strong and imposing physique, we thought we had the promise of long continued usefulness both upon the bench and in the fulfilment of those professional plans which he had already formed to follow the end of his term as a judge of the court.

“And I perceived no touch of change,  
No hint of death in all his frame,  
But found him all in all the same.”

But how uncertain our tenure of life! Hope and the quenchless love of existence weave a magic spell in our hearts, and we are beguiled despite our better knowledge, into the delusion that all are mortal but ourselves. We calculate, we build for an endless continuity of life. We see every day and on every side many snatched away, some in the flush of youth, others in the full strength of mature manhood, and still others in vigorous and mellow old age, and we live on in the fond self deception that we are exempt from that mortality, which is the inevitable destiny of all. But now and then our own closer circle is invaded and there comes a shock like this to stagger us back into the rude awakening that life after all is but a fragile, transitory thing, and that in that longing expectation of immortality we have hardly more than a feeble hint of the endless life beyond the grave. When we least expected it, death interposed its dark eclipse and veiled from us forever our lamented friend. That loss serves to remind us that we are all held in the hollow of the great hand of Him who

rules the limitless spaces and the myriad worlds that roll therein, who not only metes out to us the span of our own lives, but even condescends to measure the flight of the sparrow and watch its fall. When least looked for, in the pagan phrase of the old sightless poet,

"There comes the blind fury with the abhorred shears,  
And slits the thin-spun life."

This at least is one of the lessons of the departure from our sight of the friend whose memory we now sorrowfully gather together to honor.

We who knew him from the time of his early manhood, can perhaps with more affectionate emphasis relate the story of that honored, useful life. Judge GREEN was born in the adjoining state of New Jersey on August 29, 1828. He was, therefore, at the time of his death, almost seventy-two years of age. After spending his early years in the village of his birth, he attended a preparatory school at Easton, and in 1842 entered Lafayette College. He graduated at this latter institution in 1846. In 1849 he was admitted to the bar of Northampton county. He immediately gave promise of great powers, and already had a thorough grasp of legal principles. In 1851 he entered the law office of the late Andrew H. Reeder, who shortly after became, by presidential appointment, governor of the then territory of Kansas. During Governor Reeder's absence, he took sole charge of and held together the large practice, which as a result of that absence would otherwise have been dissipated. Upon Governor Reeder's return from Kansas, he formed a partnership with Judge GREEN, which continued until the death of the former in 1864.

Early in his association with Governor Reeder and his consequent introduction into cases of great magnitude and interest, he displayed that same comprehensive grasp of intellect, that forceful logic and that richness and copiousness of expression which characterized his more mature efforts in the great causes in which he became concerned, and the opinions which later he delivered as a member of this court. He at once attracted the admiration and confidence of Governor Reeder, who himself was a great lawyer, and fully able to properly estimate the legal capacity of others, and he frequently testified to his respect and high appreciation of the abilities of the rising lawyer.

After the death of Governor Reeder, he succeeded to the large and lucrative practice which the firm had built up, a practice embracing not only the more important causes in his own county, but also those of the four or five counties which made up the northeastern part of our commonwealth. In 1874 he became a member of the convention which framed the constitution under which we are now living and to which this court owes its organization and jurisdiction. In the deliberations of that body composed of the ablest men of our state, he performed most valuable service, and he was recognized as one of its most distinguished members. In 1879 he was appointed to the vacancy on this bench caused by the death of Hon. Warren J. Woodward, and in the succeeding year by nomination and election, he was chosen for the full constitutional term of twenty-one years. He now put off the robes of the lawyer and assumed those of the magistrate; he laid aside the armor and the weapons of advocacy, he emerged from the heat and excitement of forensic struggles, and took his seat in this passionless tribunal, in this clearer and calmer atmosphere,

where the cold, investigating faculty pursues its inexorable mission and the spirit of the law, that real yet impalpable existence, sits majestically enthroned.

Judge GREEN was great not only as a jurist but as an advocate. He was a distinguished lawyer and famous throughout our part of the state long before his promotion to this bench. He was the leader, easily the leader of the bar in northeastern Pennsylvania, and universally so recognized by his associates. He had not those rare and stormy gifts of eloquence which stir the popular heart, rouse the passions of men and ride the tempests of political excitement and revolution. Indeed, that kind of eloquence has had its day, and amid the complex, highly refined and elaborate conditions of this modern life of ours, it has lost its power to charm and move, just as it seems to me it is hardly possible in this age of intellectual progress, of skeptical science, of persistent investigation, of highly civilized methods of life and activity, for a great epic poet to appear. Both belong to the ruder ages, to the periods of boisterous youth and undeveloped growth, when turbulence and passion prevail and the imagination dominates the minds of men, and calm reflection has not yet firmly grasped its sceptre. Now, however, in this day of strenuous practical life, of cold reason and disillusioned thought, we look to the man who speaks, for some message, for some contribution to the sum of our useful knowledge, for some suggestion leading to the material and intellectual improvement of the race. Distinctness of thought and clearness of statement unadorned with the ancient graces of rhetoric and poetic style, are the essential characteristics of the orator of to-day. Judge GREEN was eloquent in the better and more modern sense of that term. He always had something weighty and definite to say, and no word was uttered by him that had not its purpose to serve in securing the intellectual assent of his hearer or in expressing some shade of meaning, the apprehension of which was necessary to a proper understanding of the point sought to be made.

We were sometimes disposed to think that he was redundant in his style. Even in the opinions which he delivered in this court, upon a hasty reading, we have sometimes thought that his language was too voluminous and luxuriant. But when we came to read those opinions more critically, it would be observed that every word and sentence had their appropriate office to perform, and that those fine yet important distinctions so necessary to be made in applying the law to each particular case, would have been lost sight of if terser and more sparing language had been used. I have said that at the bar he was an eloquent lawyer. He was so because he interested and convinced. He had not that rotund voice which would perhaps have impressed the groundlings. He had no special graces of gesture or manner, although he had an imposing presence and an attractive face, but there was that power of clear and accurate expression, that close and potent reasoning, that wonderful earnestness which he always manifested when he had a great cause at heart and conviction to secure in the mind of the tribunal he addressed, which carried one along on the resistless current of his argument to the conclusion aimed at, in spite of the skepticism and prejudice which the first announcement of his proposition may have aroused. He was, perhaps, not specially eminent as a mere jury lawyer, and yet he had great power in compelling verdicts, especially in civil causes where the result depended upon the proper analysis of volu-

minous and complicated testimony, or the unraveling of intermingling and confusing questions of law and fact. With the court he was all powerful, and in every case a most dangerous and resourceful antagonist.

Judge GREEN, in my judgment, was even greater as a lawyer at the bar than as a judge on the bench, and a most exceptionally large and lucrative practice, which brought him into close and constant contact with the leading legal minds of the state, is an abundant proof of the truth of this estimate. And then too in his professional intercourse with the members of the bar, he was a most delightful companion and colleague. His qualities and bearing were such as to endear him to us all. His friendly and genial manner, his kindly and open countenance, his helpful and hearty interest in the younger members of the profession, attached us all closely to him, and secured for him a hold on our affections which the dignity and reserve incident to his later position on the bench could never weaken. There was a magnanimity, a generosity, a cordiality in his relation to his professional associates and opponents, which will ever keep his memory fresh in our hearts and which now deepens our sense of irreparable loss.

Now a word as to his qualities as a judge. In this presence it would perhaps be more becoming to leave that to those who by closer and more intimate contact in the labors of the bench, are better qualified to speak on that matter. We have in the long series of opinions in which Judge GREEN, speaking for the court from time to time pronounced its judgments, the evidence of years of painstaking labor (which after all is genius), of deep and profound learning and of a clear and discriminating judicial intelligence, which now emphasizes the almost incalculable loss to the commonwealth in the death of this great judge. His monument is to be found in a hundred volumes of the state reports. They are a more lasting memorial than any we could rear of stone or brass. They clearly show forth his judicial qualities. They are the repositories of his great learning and intense mental activity. They vividly exhibit those habits of patient investigation and keen analysis so characteristic of his judicial methods. All who have read and studied those opinions will agree that in the death of Chief Justice GREEN, a great light in our jurisprudence has forever gone out.

Need I remind you of those amiable and winning qualities which made him so companionable? Courteous, kind and considerate, he was a gentleman, in the best and highest sense of that ancient word. In his busiest hours, and amid the intricacies of his most absorbing judicial labors, upon the approach of a friend, his pen would fall from his hand, his countenance light up with the smile of welcome, and that clear blue eye of his shine out with the kindest and deepest interest. Never have I heard a single unkindly word fall from his lips. Never did he inflict a wound by wanton act or speech.

He was a useful and honored citizen of the community in which his affection and friendships were so strongly centered. He did his part therein faithfully and well. Modest and unassuming, he yet plainly bore about him the indications of a capacious and powerful mind, a warm and generous heart, a strong and impressive personality.

But the end came with startling abruptness, and left an emptiness that we cannot fill. We shall miss his commanding figure in our streets. We shall no longer see him in this honored court, speaking the oracles of the

law. We shall miss that eloquent and discriminating pen, and no longer trace that virile and dominating intellect in its reported decisions. We, who count ourselves among those favored by his cherished friendship, shall no longer feel the genial warmth of his kindly presence. But he has bequeathed a great name in the juridical history of our commonwealth, a stimulating example of the power of a strong and trained intellect directed and intensified by patient and unremitting toil. In the words of another spoken under nearly similar circumstances, "he has left behind him the memory of great trusts worthily discharged, of opportunities for usefulness well improved, of a private life honorable, beautiful and without a stain."

Speaking, then, for the bar of my own county, who treasure that memory so faithfully and upon whom he has cast, by his long career of professional usefulness and devotion to public duty, great honor, I would move the court to make an entry of the following minute:

"In the lamented death of Chief Justice GREEN, this commonwealth has sustained an incalculable loss. He was a successful lawyer, a great judge, a useful and honored citizen. His work is embodied in more than a hundred volumes of our reports; and every deliverance in which he spoke for this court is characterized by the manifestations of a clear and powerful intellect. Above all, he was the incarnation of faithful and painstaking labor, which made available for the administration of justice in this court the resources of a thoroughly trained mind and the treasures of a most profound learning in the law. We retain in deep and affectionate memory his many amiable and attractive qualities, and that genial personality to which we were so closely bound by the ties of kindred pursuits and congenial companionship. We record our profound sorrow and sincere sympathy with the family he loved so well."

#### EX-JUSTICE SAMUEL GUSTINE THOMPSON:

The announcement of the sudden death of Chief Justice GREEN came freighted with great grief to a large circle of friends in every portion of our great commonwealth. To those who knew him well it came with a shock difficult adequately to express. Few men had greater capacity for creating warm friendships and strong attachments than he. He typified in an eminent degree the words of Pope when he says,

*"Of manners gentle, of affections mild;—  
In wit, a man, in simplicity a child."*

No man was more gentle in manners than Judge GREEN; no harsh words ever fell from his lips; no offensive utterance came from him that left a sting behind to create a wound and to cause it to fester. No man had stronger affections. His devotion to his friends was paramount and dominating; his confidence once established, his affections created a bond of friendship so strong that no extravagant services commanded by it seemed

to him difficult of performance. In wit assuredly he was a man in the broad and true sense of the term. While practicing at the Bar, he distinguished himself, and stood in the very front rank of his profession. In that great controversy in regard to the Packer estate, involving millions of dollars and intricate questions of law and fact, he had associated with him great lawyers, and against him, distinguished leaders of the bar; and in the conduct of that case he demonstrated that his skill, ability and learning were of a very high order and that he was, in fact, a leader of the bar.

Although a strong man, with fine intellectual qualification, he was in simplicity a child and without guile. His contact with the world, and the eminent positions filled by him, did not change him. No affectations born of gratified ambitions entered into his nature. He was as happy as a boy just from school when he was surrounded by his friends, and genial association ruled the hour. Here in this presence, in this court room, where we have been so accustomed to see him with his genial nature, his pleasant voice and his strong manhood, in our thoughts, the language of the great bard springs to our lips and finds a responsive beat in our hearts:—

“His life was gentle; and the elements  
So mixed up in him, that Nature might stand up  
And say to all the world, this was a man.”

Standing before this tribunal, I need not enter into any elaboration of his judicial qualities. Every member of this court will join with me in the thought that he possessed them in a high degree. The lawyers of this commonwealth who study the reports of this tribunal will all testify that he brought a high order of talent, ability and learning to the performance of his lofty judicial functions. If, as Bacon said, “Reading makes the full man,” he assuredly achieved that result. While he was a strong man, with positive opinions and decided views, he created no sharp antagonisms and moved on smoothly and gently in the “even tenor of his way.” He realized fully the description that he was a man, “Sapiens, teres atque rotundus.” But while death has stricken him down and while we stand here to mourn his loss, bowing our heads in deep grief, it is a source of comfort to know that when time has finally cured the wound made by the grim destroyer, we will be able to recall his genial manner, his gentle voice, and his broad manhood, and to feel that we were indeed most fortunate in the friendship of such a man as the late Chief Justice HENRY GREEN.

#### JUDGE MICHAEL ARNOLD:

May it please your honors, So much has been said concerning the judicial character, attainments and services of Chief Justice GREEN that I may save myself the trouble of speaking at length upon that subject. I speak more particularly for those of us who had the honor of a most intimate personal acquaintance and friendship with him; and for them I speak of him as a judge, a man, a husband and father, a friend and companion.

As a judge, I can say of him, without detracting from any of the honored men who have sat upon that bench, that he was the peer of any of them. I do not use any exclusive superlatives and say of him he was the

greatest or the best ; for the day for making the greatest and the best has gone by. There is a class of the greatest and the best ; and the effort amongst those now in this life is to put themselves in that class ; and in this Judge GREEN certainly succeeded. He was at once one of the best judges this state has ever had. He was patient, attentive, industrious and above all prompt in delivering his judgments, a very important qualification in a judge. If he had a fault, and all of us have faults, it was perhaps in being too laborious, in quoting too fully from the testimony of witnesses to prove those things which were declared to be facts by the verdict of a jury ; but when he ceased quotation and came to the expression of his own views upon the law of a case, whether reasoning upon principle or upon authority, he was full, plain, clear and convincing in his arguments. The people of this commonwealth owe Chief Justice GREEN a debt of gratitude for the services he rendered to them in establishing much of their law upon a firm foundation, which they can never repay. He sacrificed fortune at the bar for fame on the bench.

As a man Judge GREEN was amiable, affable and attractive, of easy approach, making every one feel at once at ease in his company. To the young he was especially agreeable, listening patiently to them, advising them carefully and otherwise showing an interest which, when shown by a great man on the bench to a young man, is the more gracious and valuable. I have heard young men speak of this subject, and I take pleasure in referring to it now. He was an associate of men, took part in their gatherings, their debates, their pleasures and loved to be in their society. He mingled among men and thereby studied and learned the customs of men. These customs, we all know, form the customary or common law of the people, so long as those customs violate no positively declared law. He was broad minded and liberal, just and fair, and courageous in the expression of the opinions which he was called upon to give.

As a husband and father he was most kind and affectionate, proud of his family and fond of every member of it. His heart constantly beat towards them, taking every opportunity he could to be in their company and with them at the family fireside, which is a mark of a truly great man. He always spent his Sundays at home, and with his family attended church, thereby giving evidence of a deep religious belief, which is instinctive in the human breast, which has existed from the beginning and will exist until the end, for no matter what science may discover, science will never displace the natural, instinctive manifestation of religion in the human breast.

As a friend and companion, he was most lovable. Here is where some of us will miss him most. He was a true, warm, genial friend and companion. He loved his friends and loved to be with them ; and his friends loved him as well. He has been taken from us. We who feel his loss personally will never see his like again ; and henceforth will bear our grief in silence.

**SAMUEL DICKSON** said :

May it please your honors, The record of Judge GREEN's work upon the bench will endure in the official reports of this court,—*littera scripta manet*,—but the memory of his very extraordinary career at the bar will



live only in tradition, and as has often been said, the fame of the lawyer, like that of the actor, is evanescent, and seldom outlives his generation.

Special mention should be made, therefore, at this time, of the fact that Judge GREEN was a great lawyer before he went upon the bench. At the time of his appointment, no one, at any bar, was carrying the burden of a greater practice. He was in the lead not merely in his own county, but in the Lehigh and Wyoming valleys; and in Allentown, Mauch Chunk, Wilkes-Barre or Scranton, he was to be found in every important cause. He was a man of unwearied energy, and indifferent, if not insensible, to the discomforts and fatigue of travel. His superabundant vitality carried him, with all his faculties fresh and alert, to the end of the most laborious litigation.

Allusion has been made to the case of *Packer v. Noble*, in which some years were consumed in taking the testimony, and Judge GREEN's argument, which occupied three months in its delivery, in answer to one of two months by Mr. William L. Hirst, fills more than a thousand printed pages. Some one has defined genius as the capacity of taking pains, and no one ever possessed that quality in a more eminent degree. He made himself the master of every item in the thousands of pages of testimony in that complicated and protracted controversy, and his mind was capacious enough to retain its hold upon the entire volume of fact and argument.

It was natural, therefore, that he should have come to represent almost every important interest in his section of the state, and built up a most lucrative practice, when tendered his appointment by Governor Hoyt. The pecuniary sacrifice involved in retiring from the bar was, of course, a heavy one; but fortunately the character and dignity of this court have been so maintained that no lawyer, however large his professional income, hesitates to give it up if the opportunity offers to obtain a seat upon this bench. No better proof of the maintenance of the best traditions of the bar, and no more striking illustration of the position which this august tribunal holds in the estimation of the profession and of the public can be found, than in the fact that any member of the bar of this commonwealth, however large his clientage, is proud and happy to close his office and to take his place as an associate justice of this court. That he did this, is Judge GREEN's most complete eulogy, and for more than twenty years he served the public faithfully and well. The power of work, and the habit of thoroughness which had given him unsurpassed success at the bar, were exhibited with undiminished force in his opinions as a judge. Nothing was slurred over, and counsel who had lost his case had the satisfaction in reading the adverse opinion from Judge GREEN, of seeing—and nothing is more consolatory—that his paper-book had been read from end to end, and that every argument and citation had been considered and weighed, and that all the elements which ought to enter into the judgment had been present to his mind and had been taken into account before the decision was reached. Higher praise than this cannot well be pronounced, and for twenty years of such work the lawyers of Pennsylvania will hold Chief Justice GREEN in lasting and grateful remembrance.

CHIEF JUSTICE McCOLLUM then responded as follows :

Gentlemen of the bar: In the addresses to which we have listened with so much satisfaction and interest, we may add that all the members of this court do most sincerely and cordially concur in all that has been done. We cannot at this time give particular expression to our feelings with regard to our deceased brother. We are not disposed now to add anything to what has been so well said. I say now—I mean at this time. It is our purpose, however, to add our tribute to the memory of the deceased ere long. We will now direct the prothonotary to make the proper entry of the proceedings in this case in the appropriate place.