

PROCEEDINGS

IN MEMORY OF

Associate Justice, F. R. E. CORNELL

The Honorable Francis R. E. Cornell, an associate justice of the supreme court of Minnesota, died at his home in Minneapolis, on the twenty-third day of May, 1881.

Judge Cornell was born at Coventry, in Chenango county, New York, on the seventeenth of November, 1821. He was graduated from Union College in 1842, was admitted to the bar in the supreme court at Albany in 1846, and began the practice of law at Addison, Steuben county, where he remained until 1854. He was a member of the state senate of New York for 1852 and 1853. In the year 1854 he became a citizen of Minnesota, making his home at Minneapolis, where he resided until his death. He was a member of the state legislature in the years 1861, 1862, and 1865, and attorney-general for six years, from January 10, 1868, to January 9, 1874. In November, 1874, he was elected associate justice of the supreme court, and qualified and took his seat on the eleventh day of January, 1875.

On the tenth day of June, 1881, at a fully attended meeting of the bar of the state, a memorial resolution was adopted, and Hon. Gordon E. Cole, chairman of the meeting, was instructed to present the memorial to the supreme court.

On the same day Mr. Cole presented to the supreme court then in session the memorial of the bar, and moved that it be entered in the records of the court.

MEMORIAL.

We, the members of the bar of the state of Minnesota, deem it appropriate that we should place upon record an expression of our sense of the great loss to our state and its Judiciary, and to our profession, caused by the death of Hon. Francis R. E. Cornell, one of the justices of the supreme court of our state, which occurred on the twenty-third day of May last.

More than twenty-five years of his vigorous manhood were passed among us in the constant and successful practice of our profession. Endowed with quickness of perception and clearness of judgment to a degree rarely united in the same person, with his thorough training and close application, he excelled in all branches of the profession, and stood foremost at the bar of the state, his career being marked, no less by eminent ability and strict integrity, than by that uniform kindness and courtesy toward his brethren which won for him the especial regard of the younger members of the bar, to whom he was the model of professional excellence.

His fitness for the highest professional honors was recognized by his brethren at the bar, and by the people of the state. After discharging the duties of attorney-general for repeated terms with signal ability, he was elevated to the bench of the supreme court, and has left a judicial record without blemish and above criticism, which will remain an imperishable testimony to his learning and ability after his fame at the bar shall have faded in the shadows of tradition. Deeply deploring our loss, which has taken from our state one of its most gifted and estimable citizens, from the bench one of the ablest of justices, and from our profession a brother loved and revered by us all, we can contemplate with satisfaction his useful and blameless life, and rejoice that so much of him is left to us in the records of the state and of the supreme court;

and we respectfully ask that this court permit this brief expression of our regard for the memory of our honored brother to be entered upon its records.

Mr. Cole then addressed the court as follows:

May it please your Honors:

In presenting this memorial it will perhaps be expected that I accompany it with some comments upon the life and character of Judge Cornell. I might perhaps have made careful preparation, and culled some flowers of rhetoric to strew upon his grave; but I cannot do it; I leave that for those who knew him less and loved him less. I must speak from the heart, and rely upon the inspiration of the moment.

Nearly a quarter of a century ago I came to this city, a mere boy, to assume the discharge of the duties of the office of attorney-general, without acquaintance or friends; and the first acquaintance and friend I made was Judge Cornell. The acquaintance thus begun ripened into an intimacy and friendship, which I cherished as I never cherished another friendship, and which ceased only with his life.

My opportunities for forming a correct estimate of his character and talents I believe to have been unusual, meeting him at the bar, first as prosecuting officer while he was engaged in the defence, afterwards, when he had become attorney-general and prosecutor, and I was employed for the defence. In later years I had the good fortune to be associated with him in a very important civil case in the federal courts, until, at the close of the litigation in the trial court, he was removed from the case by his appointment to the supreme bench. In the subsequent progress of the cause in the supreme court of the United States, he was succeeded by a gentleman who then stood and still stands at the head of the bar of the country, with a reputation and fame only circumscribed by the territorial boundaries of the nation. The opportunity of measuring Judge Cornell's powers by contrast with those of the highest I believe I did not abuse. I do not think that my judgment was swayed by personal friendship. At any rate it was deliberately formed, and has been since carefully reviewed, and I then thought and still think that in every attribute which contributes to form the character of a great lawyer, Judge Cornell was the peer of his successor, and that a reversal of opportunities would have produced a corresponding reversal of station, fame and reputation,

The salient feature of Judge Cornell's character as a lawyer was the unerring certainty with which his mind glided from premise to conclusion. I have often had occasion to note and to admire the rapidity with which, with almost the precision of intuition, he would arrive at the correct solution of a difficult legal problem, then first submitted to his attention; the comprehensive glance with which he would instantly sweep the entire subject, and take it in with all its qualifications and limitations. While his high character and standing in the state made him the constant recipient of civil honors, and in the politics of the state, as well as at the bar, his position was always conspicuous, yet a marked characteristic of the man was his innate modesty. In self-conceit he seemed absolutely wanting, and yet no man that I ever knew had a more constant and abiding confidence in himself.

No man who has ever embellished and adorned the bench or official position in this state was ever more conspicuously distinguished for the perfect purity of his public and private character than our lamented friend.

He was not a mere lawyer; he was not a man of the cloister and the office. In all the great enterprises which have made the beautiful and flourishing city of Minneapolis what it is, he bore a prominent part. In the politics of the state he was a leader, and, although for a quarter of a

century, participating in the always earnest and often bitter contests which politics engender, and often a candidate and elected to political office, yet at those periods when the character of no man is secure from the envenomed shafts of political enemies, if there is a flaw in his armor through which the spear of an opponent can pierce, nor ever, during the quarter of a century during which he has lived and moved, always a prominent figure, among us, has the breath of scandal ever so much as essayed to reach him. His character and reputation have remained untarnished by a whisper of suspicion.

The uniform urbanity of his manner, the innate kindness and gentleness of his character, endeared him to all; and especially to the young neophyte, embarrassed in the intricacies of his first case before the most august tribunal of the state, and then essaying his first flight in the atmosphere of jurisprudence, his gentle manners and attentive ear carried the same ease as to the older barrister, with assured reputation, flushed with the triumphs of hundreds of forensic successes.

He has gone from among us, and has left the judicial ermine not only spotless as when he assumed it, but has left to his family the priceless legacy of an unsullied private character as a citizen and a man. The bar of this state, with uniform accord, will endorse me when I say that in him were blended, with a harmony which the faultless hand of nature seldom achieves, the attributes which make the character of a great judge; profound legal learning, combined with the keenest accumen in its application, purity of public and private life, and the suavity of manners which marks the gentleman, producing a magnificent self-poise, and a beauty of character which is rarely permitted by the frailties of our common humanity.

Hon. Isaac Atwater then addressed the court as follows:

May it please the Court :

Having had occasion recently, at a meeting of the Hennepin County Bar Association, to render my tribute to the memory of the late Judge Cornell, I shall trespass but a few moments on your time today; and the more especially, inasmuch as I observe the most of those present have long known the judge professionally, and can render a more eloquent tribute to his eminent ability than I could hope to do. It seems peculiarly fitting that one who has so long been a distinguished member of the bar and bench of the state, and who has also adorned other important offices in the gift of the people, should not be permitted to pass away without some public recognition on our part of his merits. It is due, not less to the living than the dead, that this should be done.

Young as we are as a state, the profession is not yet so affluent in distinguished names that we can afford to forget the well-earned fame of any one. And shut out as we are, by the nature of our profession, from what are usually considered the highest prizes of life, there is the more reason that we should jealously guard the reputation fairly earned by any one of our number, in the strict practice of his profession. The law is a jealous mistress, and excludes her votaries from the rewards obtained by our merchant princes and railroad magnates. But such as she has are better worth effort to the true lawyer than all others; and it should be ours to see that, when once earned, they lose none of their value to the living.

But on this occasion, standing as we might say almost in the shadow of death, I find my mind dwelling on the qualities of the deceased which distinguished him as a man, a neighbor and friend, rather than on his eminent abilities as a lawyer. It was my privilege to know him somewhat intimately for more than twenty-five years. And I do not overstate when I say that for a high, delicate sense of honor, unswerving integrity, and a conscientious desire to discharge

with scrupulous fidelity every trust committed to him, I have never known him surpassed. But there was more than this. He was ever ready to assist his neighbors, and especially the younger members of the profession, with his valuable counsel and pecuniary means, so far as he was able. And I was forcibly struck, at the meeting of the association to which I have referred, at the number of young lawyers, who bore feeling and earnest testimony to this trait in his character, and herein he has left an example which, I am sure, we should all do well to heed and follow. We are too apt to become so wholly absorbed in the study and practice of our profession that we often forget our duties, to the younger members thereof—forget those kindnesses and amenities, which perhaps cost little, but are of more-value to the recipients than we are wont to think. It may not happen to any of us to attain that eminence in the profession which it was the rare fortune of our deceased friend to reach; for that was largely due to natural gifts which few possess. But in the practice of those moral virtues which adorned his life and the full development of which is largely a matter of cultivation, we may reasonably hope to approach more nearly the degree of excellence which he attained. And at the last supreme hour, if I mistake not, success in such an effort will give, in the retrospect, more satisfaction than the highest professional honors due to intellectual effort alone. For we must not forget that—

"Only the actions of the just
Smell sweet and blossom in the dust."

Hon. William Lochren then addressed the court as follows:

May it please your Honors:

It is difficult, in the brief time that can be taken at such a meeting, to say anything at all commensurate with what is fitting, or to what is felt by every one respecting the loss of such a man as Judge Cornell.

I was with him, at the bar of our county, since my coming to Minnesota, twenty-five years ago; have been frequently associated with him, and oftener opposed to him, in the trial of causes, and came to know him intimately. In my judgment he was the ablest lawyer who has ever practised at that bar, and second to none in the state. He excelled in every branch of the profession—equally as a counsellor, as a pleader, in the examination of witnesses, as an advocate before juries, and in the argument of questions of law to courts. It is seldom that one man possesses such varied ability; and whenever it occurs in our profession, it cannot fail to place the possessor in the foremost rank.

He loved his profession, and its work; and never permitted anything to divert or withdraw him from it. Trained to it from youth, he was familiar with the underlying principles of jurisprudence; and with his natural powers of perception and accurate judgment, he seemed to reach correct conclusions with the rapidity of intuition. But he never relied too much upon his natural powers, and was familiar with leading authors and decisions, to which he could refer with readiness whenever necessary to enforce his arguments.

A noted characteristic was his unfailing courtesy and consideration for others, especially his brethren at the bar. He was always ready to assist and encourage young men starting in the profession; and many such will gratefully remember his acts of professional kindness and friendly assistance.

Although his practice was large, he seemed to work more for love of his profession than for gain; and was proverbially careless about securing compensation for his labor. Without being a politician, in the ordinary sense of that term, he took a lively interest in everything affecting the material prosperity of the state, and of the city in which he lived; and on such

matters his counsel was always sought, and his influence great. Reaching at last the goal of a laudable professional ambition—a seat upon the bench of this honored court,—I shall not speak of how well he performed the duties of that high station. That is too well known and a recent to call for more than reference. Had he lived beyond his term of office, nearly closed at the time of his death, he would have been chosen, without opposition, to continue in the place for which all felt he was so well fitted. But the judicial honors, by him worn so worthily, have been laid down with his life. His labors are ended, and our brief testimony to his worth closes the record.

Honorable E. E. Nelson, Judge of the United States District Court for Minnesota, then addressed the court as follows:

May it please the Court:

I desire, as a member of the legal profession, a native of the same state, to add my tribute of respect to the memory of the deceased. I was not intimately acquainted with Justice Cornell. Others, his coworkers and associates in the profession, who learned by social intimacy to appreciate the man, have dwelt upon his excellent qualities of head and heart. My estimation of Judge Cornell is derived from a careful examination of his opinions, emanating from him in the discharge of public duties, and I can justly say no counsellor or judge was influenced by purer motives or surrounded by a higher moral atmosphere. His opinions show thorough education as well as cultivated literary taste. He was learned in the law, which he administered wisely, and thus won confidence and esteem.

The example of such a life should not be lost to the community, and the resolutions presented express the unanimous opinion of the legal profession.

General John B. Sanborn then addressed the court as follows:

May it please your Honors:

It was my purpose to do honor to the memory of the illustrious dead by sympathy, silence, and considerate attention to the words of eulogy uttered by others, possibly more intimately acquainted with him as a neighbor, friend, or relative than myself. But the sentiments already expressed bring so vividly to my mind the scenes and friends of the past, the important and great services rendered by the deceased, his faithfulness in all positions and under all circumstances, his wonderful mental acuteness and great legal attainments, that I cannot refrain from uttering a few words of tribute to his memory on this sad occasion.

More than twenty-five years have passed away since I first met him at the bar of Hennepin county, and such was the impression made upon me at the time of his mental power and legal knowledge, that within a year, when called upon to defend, in that county, a most critical case of murder, prosecuted by the late James R. Lawrence, whose vigor and legal capacity all the old members of the bar will well remember—I mean the case of the United States against Moon,—I called Judge Cornell to my assistance. The impressions previously made by his management and argument of the civil case were deepened and strengthened by his skill and conduct of this criminal cause. He demonstrated, beyond controversy, that he was the possessor of one of the most clear, incisive and accurate legal minds. The slightest shades of difference in the facts and the legal principles governing a case were as distinct and clear to him as the widest difference is to many of our profession. With his aid in that case the accused was discharged, although the homicide was admitted and was without excuse, and the alleged criminal was of sound mind upon all matters not connected with the person killed.

The conclusions then reached by me respecting the great powers and attainments of our departed friend have been retained to the day of his death. It has been my fortune often—almost every year since that time—to meet him at the bar, in political conventions, in the legislature, where we represented constituencies who considered that they had interests that were adverse; and in all positions, and at all times, he has shown himself a wise counsellor, a high-toned honorable man, a faithful and far-seeing legislator, an able lawyer who respected and adorned his profession; and even without his legal attainments he would have been a good judge. For although a good judge may be a bad man, a good man cannot be a bad judge. And this vacancy made by the death of the learned and upright judge will be hard to fill.

Be it ours to cherish his memory and emulate his example.

Hon. M. J. Severance then addressed the court as follows:

May it please the Court:

The vacant seat on your bench has convoked this assembly today. Its late revered occupant has crossed the ocean that has no refluent wave, his earthly duties all performed.

We are not here today to tender to any the cold and formal courtesies always due to the great catastrophe of death, but we are here in the interest of the living, and those who are yet to live, to pay a just and merited tribute to the life and character of one who on the forge of life wrought out an honorable and enduring fame. We do not yield this tribute for the benefit of the dead, but to excite and awaken the emulation of the living, who, hearing the applause we bestow on noble action, may take the only pathway that can justify the highest hopes of mankind.

As a lawyer, our friend possessed those natural endowments that could but give him preeminence in the forensic arena; and as a judge on the bench, those same endowments lifted him far above the common plane. A quick perception and a power of analysis that never lent its ear to the sophistries of ingenious debate, ever enabled him to test the soundness of any proposition presented to his mind, and to bring method out of the chaos of conflicting opinions. Add to these natural endowments an inherent love of justice, and an unswerving integrity, born with him and in him, and you behold Judge Cornell as a lawyer and as a judge.

Splendid original gifts, and high intellectual endowments lavishly bestowed, invoke human admiration, and give to their possessor the stately tread of a giant. But it is not on these that we bestow our highest encomiums today, though they rounded out the majesty of our friend's career. We instinctively turn to the social department of his life, generous with sensitive emotion, unobtrusive, but ever radiating the vernal warmth of love and kindness. Exacting in nothing, he acknowledged the mutual obligations of his race, and yielded that deference to others that forbids personal tyranny, and smothers that effusive self-assertion which so often breeds hatred and contempt. No cloud of egotism ever drew its shade across his generous mind to mildew its opening flowers. He cultivated the finer emotions of the heart, for he knew that they were the headlight that ought to gleam along the pathway of intellectual action in every walk of his earthly duty. And when his life went out, another ray of light and warmth vanished from the earth forever.

Judge Cornell was a brother in the great brotherhood of man, and ever held out his hand to the weary as he ascended the hillsides of life. He never looked back with contempt on those who had just entered with uncertain step on the long pathway over which he had passed, but he pointed to the summit illumined with hope and then with kindly counsel wooed them along. As a man, a lawyer or judge, he never embraced the shallow fallacy of personal triumph in order to prod the feelings of others, but in every condition of life, its highest amenities furnished the

rule of his action. In the spirit of love and equality he fashioned his character with all the graces of moral symmetry, so that whatever blemishes it had were easily hidden under the mantle of human infirmity. His domestic life so full of sunshine is sacred to others. I will not unroll its once bright panorama, now moist with pearly tears, the offerings of love to love. If his death left broken hearts, let them heal again under the benign radiance of a life's sunset golden with personal honor. Judge Cornell loved his home, and every night the neighboring waterfall of Saint Anthony throbbed its soft music through the trembling lattice of his window, and lulled him to earthly sleep. Now let it forever murmur the requiem of his dreamless slumber.

Other remarks were made by Messrs. Eugene M. Wilson, William M. McCluer and John M. Shaw, at the conclusion of which, Chief Justice Gilfillan, on behalf of the court, responded as follows to the addresses of the bar:

Gentlemen of the Bar:

The memorial which has been read will be entered in the minutes. It is peculiarly fit that it should be of record in the court of which Mr. Justice Cornell was a member for the last six years of his life, and in the performance of his duties in which he spent his last strength. He had in the highest degree every claim to appropriate memorials.

His career and character as a man, as a citizen, as a shaper and leader of public opinion, as a legislator, as a member of the legal profession, and finally as a judge in the court of last resort in the state, were such as call for marked public recognition, now that he is gone. Of his public services to the state at large and to the more immediate community in which he lived, the press has made honorable mention. His personal friends, those who got to know his inner life and character, have in their private discourse, as you have done, recalled and borne their testimony to his virtues as a man; virtues which made him dear to all who had the good fortune to be on terms of intimacy; with him. It is for us, at this time and place, more especially to dwell upon and pay our tribute to his memory as a member of our profession, and as connected with it by his judicial station and services. Most of us, the oldest of us at any rate, knew him for many years. His position at the bar, from the first, was such that no one could as a member of the bar in the state without knowing him either personally or by reputation. At a very early day, at the time when the bar here may be said to have been in its infancy. When, as a political community, Minnesota was about passing from the guardianship of the general government to the free condition of a self-governing state, he was already among the foremost in the profession. Who would, for the next quarter of a century, lead in its labors, contests and honors, was then, to a great extent, uncertain. But he had taken his place. Whosoever future standing might seem doubtful, his was not. He was then an acknowledged leader. His ability, learning, eloquence and force of character, already recognized, made it evident that whoever else might fall behind, he would, so long as he remained in the practice of the profession, stand in its front rank, the equal of the highest. From that time the bar steadily increased in numbers, in strength, in learning, in influence and importance. Through all its growth his relative position in it remained the same, until he took his place upon the bench.

The mental qualities and characteristics that enabled him to maintain so high a position at the bar eminently fitted him for the bench. The character of his mind, indeed, was more judicial than forensic. Its more appropriate field of action was the bench rather than the bar. To assure a lawyer the highest success as an advocate, his mind must be capable, in a large degree, of taking a partisan view of a cause; of adopting as its own the feelings and prejudices of the client; and of seeing and judging of the cause through the medium of such feelings and prejudices. A mind of that stamp is apt to see but one side of the case, though, to make its possessor a great advocate, it

must see all of that side at once, and as by the full light of the noonday sun. One with such a mind, especially if that be its controlling characteristic, rarely, if ever, makes a great judge. Erskine, by far the greatest advocate who has spoken in the English language, was a striking instance of this. Those who, while he was at the bar, knew Judge Cornell, not intimately, who saw his sanguine, nervous temperament, the zeal with which he engaged in the trial of a cause, his instantaneous perception of the rules and principles of law governing it, and the intense force and clearness, and, fervid, energetic eloquence with which he set forth and urged upon the courts those rules and principles, might be led to suppose that his was that stamp of mind. But to suppose that would have been a grave mistake. His more intimate acquaintances knew then, his career on this bench has demonstrated since, that his success at the bar was owing to other and larger intellectual attributes than the peculiar characteristic I have ascribed to the advocate. From the time of his transfer to the bench it became apparent to all that his intellect was notably liberal and comprehensive, and singularly impartial; calmly and dispassionately taking in the whole of a case, and judging it only upon those considerations which lead to a correct result. His learning in the law was great; his quickness to apprehend the true issues in a cause and the right solution of them was marvelous—more so than I ever knew in any other man; and, at the same time, his judgment was cautious and profound, his habit of investigation patient and conscientious. In his mental operations were united two characteristics not often found together—quick, intuitive perception, and careful, patient reasoning. To these was added a clear, unflinching natural sense of justice, of moral right and wrong, on the rules of which the rules and principles of law are mainly based. These mental traits, with an intimate knowledge of human nature, and a generous but discriminating charity towards its failings, united in him the elements that go to make the great magistrate. In respect to the harmonious combination of these conditions, it will be long before his place on the bench will be wholly filled. To the bar and to the judiciary his loss is well nigh irreparable.

I should fail of doing justice to his memory, and to his associates' appreciation of his memory, if I omitted to mention, as you have mentioned, his uniform courtesy of manner, and the amiability and gentleness of his disposition and temper; an amiability and gentleness joined with the highest degree of manly energy. These were very marked in his intercourse with his brother lawyers and the courts, while at the bar. They were more conspicuous to us, his associates on the bench, brought, as we were, into most intimate relations with him. Two of us were with him on the bench for more than six years. During that time our intercourse with him, and knowledge of him and of his traits, both of mind and heart, were necessarily very close and intimate. In the hearing of causes, in the subsequent investigation of and consultations upon them, and the preparation and comparison of decisions and opinions, we were together day by day. Frequent conflicts of opinion have necessarily arisen, followed by earnest discussions, sometimes leaving irreconcilable differences as to how causes should be decided. But in no instance that I can recall, during all that time, did he ever let fall any discourteous, unkind or irritating expression to either of his associates; nor did any difference of opinion, or anything occurring in the discussions, ever for a moment interrupt the unvarying kindly relations between him and them. In this his forbearance was the more remarkable, because, for the latter part of the time, the disease of which he died was upon him, causing him often severe suffering, at all times harassing anxiety. That under such trying conditions he should at all times preserve even temper, and exercise towards others perfect courtesy and consideration, marks strongly the character of the man.

Gentlemen, I have endeavored briefly, I know with imperfect success, to express what his

survivors on the bench think and feel in regard to our departed associate. Your eloquent and appropriate memorial shall be entered in the records of the court, there to remain as a testimony so long as those records shall be preserved. The clerk will record the memorial in the minutes for today, and the court will adjourn *sine die*.