

PROCEEDINGS OF THE COURT

ON THE

DEATH OF THE HON. EDWARD NORTON.

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TUESDAY, October 15th, 1872.

Court met at eleven o'clock this day, pursuant to adjournment. Present, Hon. W. T. WALLACE, C. J., J. B. CROCKETT, A. L. RHODES, A. C. NILES, I. S. BELOHER, Associate Justices.

W. W. COPE arose and addressed the Court as follows:

"May it please the Court: I have been delegated by the members of the San Francisco Bar to announce to your Honors the sad intelligence of the death of the Hon. EDWARD NORTON, formerly one of the Justices of this Court, and to present a series of resolutions adopted by them expressive of their appreciation of his character and services and the feelings occasioned by his loss. Having been associated with Judge NORTON during a portion of his judicial career, I feel that the duty devolved upon me ought not to be discharged as a mere formality, and I trust your Honors will indulge me in a few remarks which I have deemed appropriate to the occasion.

"Judge NORTON was a native of New York, and received

a liberal education at Union College in that State. After his admission to the Bar, he practiced for several years in Buffalo, and subsequently in the City of New York. In both places he became favorably known as a rising member of the profession, and the reputation he afterwards acquired in this State was foreshadowed by the estimation in which he was there held. His practice in New York City brought him in contact with some of the ablest jurists in the country and he not only commanded their respect as a lawyer but impressed them with a profound conviction of his peculiar fitness for the Bench.

“ His chief triumphs, however, were reserved for our own Golden State. It was here that he established his fame and made it imperishable. We think of him only as a Californian, and claim for ourselves the principal place among those who honor his memory. He came to this State in 1849, and from that time until his elevation to the Bench in 1854, he was engaged in the practice of his profession in San Francisco. Of this period of his life, it is sufficient to say that his learning and ability were fully appreciated, and that none of his associates at the bar enjoyed in a greater degree the confidence of the public. He was distinguished for his thorough acquaintance with legal principles and his sound and discriminating judgment in their application, and was sought after more as an adviser than as an advocate. His clients accepted his opinions with absolute assurance of their correctness, and his devotion and fidelity to their interests were never doubted or called in question.

“ But his natural position was the Bench. As a practicing lawyer his highest and best qualities would never have been known, and his advancement to the Bench was equally fortunate for himself and the public. The distinction he achieved was not only great and enduring, but the just reward of meritorious services. His judicial career was commenced as Judge of the Twelfth Judicial District. He was the first Judge of that district, being appointed in 1854, and

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subsequently elected. A candid opinion of him as a *nisi prius* Judge must be expressed in terms of unqualified approval. The ruling principle of his conduct was a profound reverence for the law, and he discharged his duties with a promptness and impartiality which excited universal admiration. His legal learning was extensive and accurate, and his quick perception, aided by a powerful memory, enabled him to dispatch the business of his Court with remarkable facility. It was not his habit, however, to proceed with undue haste. He practiced patience as an indispensable virtue, and formed his conclusions after a full hearing. A correct decision was the object at which he always aimed, and this was so apparent that a difference of opinion never created the slightest doubt as to his sincerity. No one ever imagined that an error committed by him was the result of an improper motive. It might be too much to say that he was absolutely free from bias and prejudice, but it is certain they never appeared in any of his judicial acts. Whether sitting alone, or in connection with a jury, he was the same impartial Judge, guiding and directing the proceedings before him to a just determination. In the trial of jury causes he carefully avoided any interference with the province of the jury; but he never hesitated to set aside an improper verdict. His sense of justice revolted at the idea of perpetuating a wrong, either in the findings of a jury or in the rulings of a Court. He was firm and decided in his opinions, but an argument could always be addressed to him with perfect assurance that due weight would be given to it. His only ambition was to maintain the law, and no Judge ever had a clearer conception of the requirements of his position, or labored more earnestly to fulfill those requirements. His success, and the reputation which followed it, were the natural results of his great qualities faithfully and conscientiously applied in the performance of his duties.

“ He continued on the District Bench for a full term of six years, when he retired on account of his health, which had

become seriously impaired. His retirement was looked upon as a public calamity, and the most urgent solicitations were employed to induce him to remain. He had formed his resolution, however, and declined to change it; and soon after the expiration of his term he left on a visit to Europe, intending to be absent several years. Before his departure, the leading members of the Bar, as a token of their admiration and respect, procured his portrait to be painted by an eminent artist, and placed it upon the walls of the Court room in which he had presided with such signal ability. No other Judge in this State has been the recipient of so high a compliment.

“After his arrival in Europe and without his knowledge, he was elected a member of this Court. On receiving information of the fact he abandoned his intention to remain abroad, and, returning to the State, he qualified, and took his seat at the commencement of his term, in January, 1862. Being myself a member of the Court, intimate relations were established between us by reason of our position, and it gives me great pleasure to bear testimony to the ability and fidelity with which he discharged his trust. The qualities which distinguished him as a *nisi prius* Judge were exhibited here in an equal degree, and, in addition to these qualities, he proved himself to be possessed of others peculiarly adapted to the investigations of an appellate tribunal. To great readiness he united a remarkable capacity for laborious research and prolonged deliberation, and his opinions were always the result of exhaustive inquiry and examination. His accurate knowledge of the principles of the law enabled him to weigh authorities with an intelligent comprehension of their value and effect; and though yielding implicit obedience to the doctrine of *stare decisis*, he regarded it as a reasonable rule, to be applied with discrimination. He was neither the slavish follower of other Judges nor the ambitious author of new theories and modes of reasoning. Having studied law as a science, he endeavored

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to administer it in accordance with established principles, and was never controlled in the application of these principles by the hardships of particular cases. His record on this Bench is a part of the published history of the jurisprudence of the State, and it shows that he is entitled to rank among the eminent jurists of the country. It is a record of which any Judge might well be proud, and it will always be pointed to as the work of a great and good man.

“Some of the personal characteristics of Judge NORTON were strange and peculiar; but they never gave offense, and did not amount even to eccentricities. He never did a discreditable act, and has left behind him a bright example, and a name which all must respect.

“I now present the resolutions to which I have alluded, and move your Honors that they may be spread upon the minutes of the Court. I also move that the Court adjourn as a mark of respect to the memory of the deceased.

“WHEREAS, In obedience to that inevitable law which governs all things mortal, our late associate and brother, EDWARD NORTON, has been suddenly summoned from the ranks of life; and whereas, his legal and judicial labors through the lapse of years have attained to a deserved and a commanding eminence, and become identified, in a large degree, with the rise and progress of our jurisprudence, commending us to a career which was conspicuous for professional achievement through its prime, and devoted to retirement at its close — a career of which the summary is this:

“From the earliest period of its history he connected himself with the fortunes of this rising State. Of the Bar of California — which, in its wide and influential membership, embraced many who had risen to distinction before their advent hither — he became a prominent and shining light. He possessed, in rare degree, that intellectual organization which is designated as a legal mind. In all the operations

of government, in all its administrations of discipline and power, in all the social regulations of community, he traced out and developed the principle of law. Unimpassioned and didactic, to him, as to Calhoun, every movement of the material creation, every vibration of the mental fabric, was governed by a law; hence, law became the absolute criterion of thought and action. His whole existence was a system, his daily life a rule. Based upon fundamental truth, his mental processes employed reason as a guide, and traveled on to logic as a goal. Deeply read in the abstrusest lore of that science to which his life had been devoted, yet equally avoiding the unsophisticated simplicity and the imposing affectation of the scholar, he was profound rather than brilliant, practical rather than pedantic, and his speech was more remarkable for force of argument than elegance of diction. His recognized ability, his eminent success, soon raised him from the private ranks of his profession.

“Elevated to the District Bench, his intelligence gave weight, his integrity gave luster, unto its decrees, until his very name became synonymous with judicial purity and soundness. By the clearness of his exposition, the terseness of his style, the integrity of his doctrine, and the dignity of his deportment, he imparted unto his adjudications a character, and unto his rulings a respect, which classed him among the earlier oracles of common law.

“To the Supreme Bench of California, when ultimately honored with the highest station within the people’s gift, he bore the same exalted traits, the same enlarged capacity by which his *nisi prius* labors had been graced, exemplifying in himself, through his opinions, the able and enlightened jurist, leaving as a rich legacy to his successors a series of decisions upon complex questions which will ever serve for models in the jurisprudence of the State. Such was his public history; and yet, through all his individuality, he was exceptional and strange. In the language of Napoleon’s eulogist, he was a man grand, gloomy, and peculiar. He

left the Bench — he left his country. Like Cincinnatus, he resigned the pomp and pageantry of power; but, unlike him, he followed not the plow. Aloof from the companionship of his fellows, he sought, amid the changes and diversities of travel into foreign lands, to occupy his mind in contemplation of itself and nature. With a disposition singularly reticent, and a habit inflexibly retiring, he sought for isolation, and in the last crisis passed away from earth apart from his countrymen, apart from his comrades and his friends, in a sublime solitude—fit preparation for the silence of the tomb. Abstract and impersonal, his being seemed rather the incarnation of a principle than the vivid animation of corporeal life. And yet, at times, and to the favored few who could penetrate beneath the crust of his reserve, he was fluent, genial, and kind; therefore,

*Resolved*, That although the grave could not arrest those estimable labors which his own retirement from the sphere of active duty, during life, had caused him to suspend, yet, with the consciousness that his venerable form and lofty spirit have beheld the last of earth, there comes to us a sense of deep bereavement.

*Resolved*, That we realize, as the converse of the poet's moral, that the good which he has done lives after him, and while its useful influences will survive unto the living, its bright example will stimulate and strengthen those who follow unto higher aims and nobler efforts."

Mr. Chief Justice WALLACE, in behalf of the Court, made the following response:

"The resolutions of the Bar, and the remarks with which they have been introduced, offer a well deserved tribute to the personal and professional worth of the distinguished man whose character they fittingly commemorate. The judicial history of California bears upon its pages no name more honored than that of EDWARD NORTON. His career as a Judge, beginning in 1854, in the Court of the then newly

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created Twelfth Judicial District, and ending in 1863 with the old Supreme Court, covers a period of some nine years. It was illustrated in both Courts by an erudition at once varied and profound, a spotless purity of conduct, personal and official, and to these was added an unflagging assiduity in the dispatch of the public business. Judge NORTON was in later life no less than in his earlier years emphatically and always a student, and a diligent student, of the law; its learning was to him a delight — he loved to thread its labyrinths and intricacies, and to elaborate the artificial reason which is its life and through which its principles are illustrated and applied. He was deeply versed in the black letter lore of the common law. *Petere fontes*, if not his motto, was his habit, and if we are to consider, with Butler, that ‘he is the best lawyer and will succeed best in his profession who best understands Coke upon Littleton,’ the first place in the profession must be assigned to NORTON — the death of Lockwood left him without a competitor. The habit of studious thought which was constantly about him, joined with manners actually unobtrusive in their character, imparted to the man an appearance of unusual reserve — almost amounting to austerity. Observed in the busy scenes of life, he seemed one who ‘mid the din, the stir, lived as a separate spirit.’ He rarely engaged in conversation, and exhibited but few of the qualities which ordinarily awaken warm personal friendships or invite to intercourse of a social character; yet he was popular in the true sense. It is notorious that no Judge who ever occupied a judicial position in the State enjoyed so large a share of popularity as he. It was a popularity founded upon moral and intellectual worth, upon a blameless life and an incorruptible integrity of purpose; the popularity to which Lord Mansfield aspired when, upon a celebrated occasion in the Court of King’s Bench, he exclaimed: ‘I wish popularity, but it is that popularity which *follows*, not that which is *run after*. It is that popularity which sooner or later never fails to do justice to the pursuit of

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noble ends by noble means.' He was popular with the masses of the people, who instinctively recognized in him a servant of the law, sincerely devoted to its impartial administration, following without hesitation whithersoever it might lead, and in the discharge of his high duty to be neither bullied nor cajoled. He was popular with the Bar, who looked upon him with pride and justly regarded him as an ornament of the profession which was theirs no less than his, and who readily forgave him his reserve when behind it they discerned the working of an intellect gifted by nature, enriched by culture — clear, luminous, and of singular capacity in the prompt and satisfactory solution of intricate and perplexing questions of law. As a man, in his capacity of citizen, divested of the ermine of his office, he was seen to be patient, charitable, and of the frugal habit which is the concomitant of virtue. His nature was earnest, his convictions deep, his purpose firm; he had the comprehension of his whole duty, in which, as Seneca thought, is to be found the true felicity of life, and with the spirit of that great philosopher, he might with confidence have appealed to the gods, both as the witnesses and the judges of his words and deeds. Providence had vouchsafed him length of days and a long life, and he has gone to his rest crowned with years and with honors — 'in a full age like as a shock of corn cometh in its season.' The Bar have preserved his features upon the canvas of the limner hung in the chamber where his judicial labors began; the records of the Courts in which he sat will forever attest the public services he rendered; and tradition, handing him down to posterity, will repeat his eulogy and embalm his memory as a learned Judge and an honest man.

"As a mark of respect to his memory, we direct that these proceedings be entered of record here, and that the Court do now adjourn for the day."