

In Memoriam

Thomas Bard McFarland

[At the opening of the Supreme Court of California for the January session on Monday, January 11, 1909, brief exercises in memoriam of Hon. Thomas Bard McFarland, late Associate Justice of the Supreme Court, were held.

Mr. George C. Sargent, on behalf of the San Francisco Bar Association, presented a memorial in honor of the deceased jurist, which, after appropriate remarks by Mr. Chief Justice Beatty, was ordered spread on the minutes.

The memorial, and the remarks of the Chief Justice, in full, follow:]

THOMAS BARD MCFARLAND was born on the nineteenth day of April, 1828, upon the homestead of his family, near Mercersburg, Pennsylvania. He graduated from Marshall College, Mercersburg, in 1846; and soon thereafter, becoming interested in the law, began its study with his cousin, Robert M. Bard, in Chambersburg, Pennsylvania. He was admitted to practice in 1849, by Honorable Jeremiah S. Black, who was then the presiding judge of the judicial district in which Franklin County was situated. Instead of commencing practice, however, he joined the throng hurrying westward, and crossed the plains to California, where he arrived in September, 1850. Like all newcomers, he sought to realize his golden dream by mining, which he followed for three years. At length his intellectual nature asserted itself, and he commenced the practice of his profession at Nevada City, where so many men who afterwards became famous in the history of the state, were met together. Among others were the late John Garber, Judge Niles Searls, Judge A. P. Niles, Judge Lorenzo Sawyer, Judge David S. Belden, United States Senator William M. Stewart, United States Senator Aaron A. Sargent, and many others. Among these distinguished men, Judge McFarland practiced with success and distinction until 1861. During that time he served one term in the assembly, to which he was elected in 1856.

On September 4, 1861, he was elected judge of the fourteenth district court, in which capacity he served for two terms. At the end of that time he retired from the bench, and commenced practice in the city of Sacramento, which he continued for the next twelve years, except an interval during which he served as register of the United States Land Office at Sacramento. He accepted this position at the suggestion of the late Senator Sargent.

In 1879 he served as a member of the convention which framed the existing constitution of the state of California, and took a conspicuous and useful part in the framing of that instrument. On December 18, 1882, he was appointed to fill a two-years vacancy upon the bench of the Superior Court of Sacramento County by Governor George C. Perkins; and in 1884 was elected for the full term. In 1886, however, he was elected for a full term as associate justice of the Supreme Court of California, whereupon he resigned his superior judgeship, and took his seat upon the bench of the Supreme Court in January, 1887. He sat continuously as an associate justice of the latter court up to the time of his death, a period of over twenty-one years.

Judge McFarland was originally a member of the old-time Whig party; but upon the organization of the Republican party, joined that party, and with characteristic strength of conviction, remained an ardent member up to the time of his death.

On November 20, 1861, Judge McFarland was married to Miss Susie Briggs at Nevada City, California.

The application of Judge McFarland to his official duties left him little time for other pursuits. He found time, however, to serve with zeal and efficiency upon the board of education of the city of Sacramento, and also as one of the trustees of Leland Stanford Junior University, in which latter capacity he served from the time of the organization of the university until his death.

Judge McFarland was tall, strong, and robust in physical frame. He had the full white beard of the generation gone. This, and his hearty, rough-and-ready manner, proclaimed him a typical man of pioneer days—a type one cannot regard without emotions of affection and respect.

His fidelity to his friends was enduring, ardent, and devoted. He cared little for wealth, beyond his modest wants.

He had a strong, clear sense of justice, which refused to be bound by arbitrary rules, which led him to cut through and cast away all technical objections in order to get at the right. He had a sincere admiration and a chivalrous devotion for the weaker sex, and the many decisions rendered by him upon the appellate bench, show an anxiety that they shall at all times receive just consideration, accorded in a spirit of open-handed liberality, often found in the miner of olden days.

Judge McFarland was a man of fine literary taste and judgment. His decisions show that his education did not end when he left his alma mater, but continued all his life. A vein of poetical sentiment—of many-hued fancy—like a golden thread, often illuminates the somber writings on the law which flow from his pen.

The private life of Judge McFarland was singularly pure and amiable. He had all that should accompany old age—as honor, love, obedience, troops of friends. He had a ready fund of wit, of story and anecdote, so essential to a well-balanced mind, and which the history of our country has shown is often associated with true greatness and moral worth.

In his last illness, like all strong natures, he was patient, gentle, and thankful for all that was done for him. He died on September 16, 1908, leaving surviving him a loving wife and daughter. His loss leaves a vacant place in the hearts of all who knew him, an affectionate regret, which is the best monument to his memory.

We deem it fitting that this brief statement of his life and career be presented to the court, with the request that a permanent record be made of it.

At the conclusion of the reading of the memorial the Chief Justice remarked:

"It is perhaps appropriate for me, as the oldest associate of Justice McFarland on this bench, to say—as I have no doubt that I can say with entire approval of all with whom he has been here associated—that we very heartily concur in all that has been so well expressed in the memorial presented by the Bar Association in praise and appreciation of the official course and amiable character of our departed brother.

"The clerk will record the memorial in the minutes of the court."