

PROCEEDINGS OF THE COURT
ON THE
DEATH OF EX-JUSTICE OSCAR LOVELL SHAFTER.

At the opening of the Supreme Court, on Monday, November 23d, 1873, Wallace, C. J., and Crockett, Rhodes, Niles, and Belcher JJ., being present Ex-Chief Justice Sanderson arose and said:

IF THE COURT PLEASE: At the April term of this Court last past, upon my motion, a committee, consisting of members of the bar, was appointed to take such action as they might deem proper in respect to the death of the Honorable Oscar L. Shafter, late Associate Justice of this Court, and report at the next term. The committee, as appointed, consisted, in addition to myself, of Ex-Chief Justices Sawyer and Currey, Ex-Justice CORE, Attorney-General John L. Love, and Messrs. Joseph P. Hoge, John B. Felton, John W. Dwinelle, Samuel M. Wilson, Edmond L. Goold, and Hall McAllister. The committee, in discharge of the duty assigned them, came to the conclusion that the most fitting and proper notice that could be taken of the death of Judge Shafter, would be to cause to be prepared a brief biographical sketch of his life, and an analysis of his intellectual and moral character, and ask that it be spread upon the records of this Court, and published in its Reports. Pursuant to this determination, and at the request of the committee, the Honorable John W. Dwinelle consented to prepare, and has prepared, such a sketch, which I now have the honor to submit to the Court, and ask that it be spread upon its Minutes and published in its Reports.

Ex-Chief Justice Sanderson then read the following memorial:

OSCAR LOVELL SHAFTER, LL.D., late Associate Justice of this Court, was born at Athens, Vermont, October 19th, 1812. He came of a patriotic and cultivated stock. His paternal grandfather, James Shafter, fought at Bunker Hill, Bennington, and Saratoga, and was, afterward, for twenty-five years a member of the Vermont Legislature. His own father was for several years County Judge, a member of the Constitutional Convention of 1836, and more than once a member of the Legislature. He is described as being an able, intelligent, and upright man. His wife, the mother of our deceased brother, was a woman of superior endowments; majestic in form, with a countenance of infinite expression, and possessing rare conversational and social qualities. She lived long enough to mold his character and fix his principles.

He was prepared for college at Wilbraham Academy, Massachusetts, and graduated at the Wesleyan University, in 1834. He immediately commenced the study of law in a private office in Vermont. But he soon became dissatisfied with his progress; probably because the study of law, in a practicing office, is generally of a synthetical character, where a student, after becoming possessed of a few propositions, which to him are rather facts than principles, is at once initiated into the routine of practice. Such a method could not suit the analytical mind of young Shafter, and accordingly he entered the law school of Harvard University, under Judge Story, where he completed his law studies, and commenced the practice of the law at Wilmington, Vermont, in 1836 or 1837.

He won his way at once to the front rank of the profession. He became a member of the Legislature, and was the candidate of his party for Representative in Congress, Governor, and United States Senator. He belonged to what was then known as the Liberty party, yet always appreciated the difficulties which encumbered the subject of slavery, and the embarrassments which surrounded the position of the South. He was consistent in these views to

the last; but, when the war had terminated, believed that the militant spirit should subside, and was full of sympathy for the distresses of the South.

He was married to Miss Sarah Riddle in 1840. Of the children of this marriage, six daughters survive. Two others, a daughter and a promising son of seven years, died in their infancy.

For reasons which will soon become apparent, we epitomize his subsequent history. He came to California in 1854, practiced law with great success until January, 1864, when he took his seat as Associate Justice of this Court for the term of ten years, which position he held until December, 1867, when he resigned his place on account of ill-health, and afterward went abroad, still failing in mind and body, and died at Florence, Italy, January 22d, 1873.

Judge Shafter arrived at San Francisco November 13th, 1854, without his family, and immediately entered upon the practice of his profession in connection with the leading firm of Halleck, Peachy, Billings & Park. During the next ensuing year, until the arrival of his family, he kept a journal, in which he entered his impressions of the climate and the scenery of California; his views of society, and of the practice in the Courts; many current events; some biographical sketches; and notices and analyses of the books which he read. But more especially is this brief diary remarkable for its manifestations of his deep affection for his family and other relations; for his diffidence of his own ability; and for the gradual growth of a self-confidence that he was equal to contend with the foremost leaders of the bar. It was during this period that he received intelligence of the death of two children within the period of a month—one of them the only son that he ever had. He appears to have been wholly inconsolable under this double bereavement, and could not refer to it for several years afterward without expressions of almost uncontrollable grief.

In another place he says: "At home the familiarity that I had attained with the routine of questions ordinarily litigated, and perhaps the firmly-established position that I had secured among the lawyers of Vermont, left me, with my

easy and sluggish temperament, with no incentive to exertion except a simple desire for further excellence. But here constant and unremitting occupation furnishes new inducements, which supersede all inclination to indolence by intense activity and the higher modes of moral and intellectual life."

In commenting upon a life of Lord Mansfield, which he had just been reading, he thus describes his own method of studying law: "I began with the most general principles of the science of the law, and from them proceeded to principles that were relatively subordinate to them, and so on through series after series of dependent truths until the final details had been examined and exhausted. In other words, I began with the *genera*, from them proceeded to an examination of the different *species* included in each *genus*, and from them to individual truths of which those species were severally constituted. It will be obvious to every one that the memory must be most powerfully aided by this method of study. The principles of law, though in one sense their name is legion, yet all bear relations to each other, and, taken together, form a system; and if once mastered in those relations, so long as one of these principles is retained by the mind, the principle of association gives signal aid in recalling the others. I have for the last fifteen years prosecuted all my professional studies on the above plan, and although my memory is not remarkably tenacious, I have had no difficulty in remembering, when once acquired, all the details of legal truth that can be brought within the scope of legal principles. When I read a new decision, I always ask myself the question: 'Whereabouts in the system of the law does the result ascertained belong?' In the twinkling of an eye its appropriate place is at once suggested to my thought, and I put it in its place, and then I stop and look at it there; and I find by experience that it is very apt to stay there without watching until I want it."

These remarks were penned in the fullness of parental affection for the instruction of the infant son whom he afterward lost, in case he should study law. They are full of matter which may be profitably pondered by practition-

ers as well as students of the legal profession. But they are doubly valuable at this time, because they indicate and illustrate Judge Shafter's methods and characteristics as lawyer and judge.

It was sometimes said of him, while at the bar, that he was slow in the preparation of his cases. This was only another mode of saying that when he encountered a case which presented elements that were new to him, he was never satisfied that it was fully prepared for trial until he had subjected those elements to an analysis and classification which enabled him to master their minutest details.

So of his decisions as a Judge, it was not seldom remarked that they savored of technical logic. But this was merely confounding logical analysis with the logic of the books. If his decisions have any prominent characteristic, it is that they present constantly the ruling presence of that faculty which combines the similar and rejects the dissimilar, and descends from the general to the specific. So that, in truth, his cases at the bar were not too laboriously prepared, nor his decisions from the bench too elaborately wrought. He merely applied to each the methods of study which are above described. As a consequence he was very successful at the bar, and his decisions from the bench have rarely been questioned.

While at the bar, no one was more scrupulous than he in the respect with which he treated the judiciary, both in bearing and in language. He regarded it as the palladium of our free institutions, and not to be desecrated by thought, word, or deed. And when he came to the bench he magnified his high office in the same spirit, and honored his associates there. No one was more thoroughly imbued than he with that personality which made him identify with himself the highest function of the State, and with that impersonality which removed him from every influence except a desire for judicial truth.

He was very successful in gathering the material rewards of his professional labors, and by their judicious investment accumulated an opulent fortune.

We have spoken of his strong family affections. He was also an attached friend. His was not an impulsive nature,

but his feelings were deep and permanent. He was remarkably genial in his social relations. He loved the society of young men, to talk with them, counsel them, encourage them in their plans and studies. His religious principles were fixed, and comprehensive enough to embrace all mankind. Exact in his business, he was yet bounteous and liberal in his benefactions. The large sums which he disbursed in this manner would never have been known, even to those who knew him best, if they had not been entered from mere habit in the accounts which he kept of all his expenditures. He could not listen unmoved to the cry of distress, and when it was sometimes urged that the objects of his bounty were probably unworthy, would reply that that responsibility was theirs and not his. He was an ardent student of nature, and loved to be a boy again amid mountains, forests, fields, and waters. And on such occasions he showed an apt familiarity with the best poets of the English language, which caused it to be said of him that "he was a learned lawyer of an older school"—one whose reading was not of the law-books merely, but extensive, tasteful, and varied. His sense of humor was great, and frequently illuminated his logic with a sudden flash of light. His language was generally elegant in its simplicity, but he did not reject the word which best expressed his meaning, no matter what its origin, and the occasional unconscious use of quaint expressions showed the extent of his reading among the older writers of our tongue.

Such is an imperfect outline of the man, the lawyer, and the judge. It is full of example, of encouragement, and of warning. Of example to those who are content with the rewards which belong to personal integrity, professional fidelity, and political consistency. Of encouragement to those who are willing to win success as the prize of industry and perseverance. Of warning, that there is a price too dear to be paid for great professional success, high position, and abundant wealth; that mind and body, when overworked, often react upon themselves, and upon each other, and present the sad spectacle of a noble column riven from capital to base long before it topples to its fall.

The memorial having been read, and the Judges having signified their concurrence, the Chief Justice directed it to be spread upon the Minutes of the Court, and to be published in the Reports.

A large assemblage of the bar was in attendance during the proceedings, which were conducted with all the impressiveness and solemnity due to the memory of the distinguished deceased.