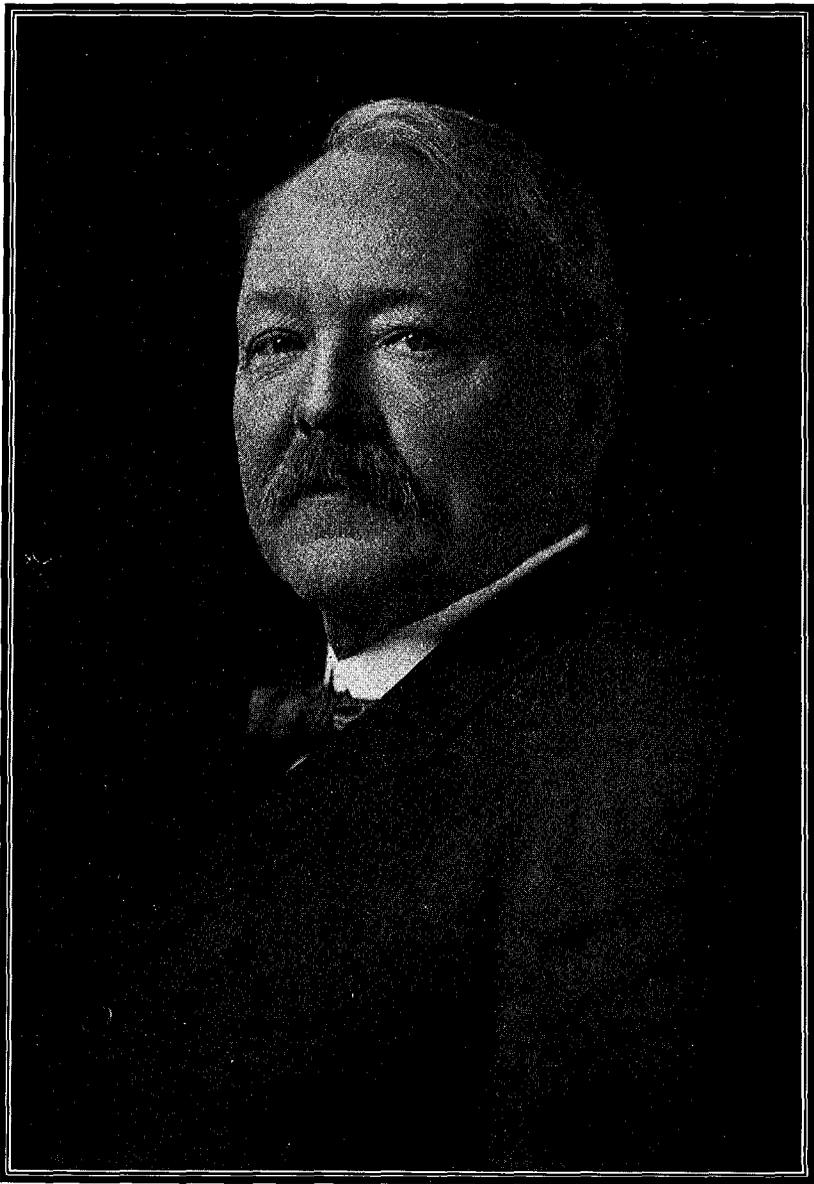


In Memoriam

Judge W. H. Munger.



United States District Court

Omaha, Nebraska

The Court opened October 11th, 1915 at 10 A. M. when the following proceedings were had:

Judge Thomas C. Munger—We have met this morning to pay our respects to the memory of the late Judge William H. Munger. Is the Committee ready to report?

William D. McHugh—If the Court please:

The memorialist, studying the life and character of his subject, especially if his studies are aided by the knowledge which comes from long and intimate personal association, necessarily absorbs the point of view and guiding principles of him concerning whom he writes.

The prominent characteristic of the life and conduct of the late Judge Munger was simple sincerity; and in this spirit the Committee prepared the memorial which it now presents.

“Judge William Henry Munger was born at Bergen, Genessee county, New York, October 12, 1845. Until he was 21 years of age he lived at home upon his father’s farm, having only those educational advantages which the common district schools of the time and place afforded; he went to Cleveland, Ohio, and became a clerk in a drygoods store; he studied law at night while in this employment and in 1868 was admitted to the bar. In that year he came to Nebraska and located in Fre-

mont. He was married March 30th, 1871, to Jennie M. Fowler. She and a son and two daughters survive him. He was a devoted husband and father.

He steadily grew in practice and prominence and became one of the recognized leaders of our profession in this state. He was a member of the Constitutional Convention of 1875.

In February, 1897, he was appointed by President Cleveland, Judge of the United States District Court for this district, and held this position until his death, at Omaha, on August 11, 1915.

Judge Munger's ancestors were of Welsh stock and for generations had been American farmers; they were wholesome, clean-living people; not restless or migratory. The Judge was born upon the farm where his father was born; he inherited a simplicity of faith, a high standard of honor, a conservative temperament, and a great capacity for friendship.

He was thoroughly grounded in the fundamental principles of the law, and these he held constantly in mind. Neither as a practicing lawyer nor as a judge did he incline to the technical niceties of the law. His sense of right was clear and strong; his mind was logical and his thinking honest. He realized that courts are created to administer justice; and, in practice, the rights of the parties occupied his thought and determined his action, rather than nice questions of pleading or of practice.

He was transparently honest. This court is held in high esteem not only by the profession but

by all the community; and the recognition of the zeal for absolute right, which was the moving force in the character of Judge Munger, has had much to do in building this popular confidence and esteem.

His relations with the bar were ideal. He was always open to access and ever welcomed the lawyers to his chambers. His kindness was universal; the young lawyer as well as the old found in him a genial and sympathetic friend.

To every occasion he proved himself equal. His decisions cover many important subjects. His work upon our Circuit Court of Appeals, to which he was often called, was done with careful thoroughness.

Judge Munger was a good lawyer, a good judge, and a good man. He has rendered to this community a service running through many years.

That there be kept a permanent record of our affection for Judge Munger, and of our appreciation of the spotless integrity and high ideals which characterized him, together with our acknowledgment of the great value of his long service as a Judge, we ask that this memorial be spread upon the journal of this court.

WILLIAM D. MCHUGH,
JOHN L. WEBSTER,
ANDREW J. SAWYER,
JOHN J. SULLIVAN,
JOHN J. HALLIGAN,
WILLIAM J. COURTRIGHT,
EDWARD P. SMITH,
Committee."

Hon. J. J. Sullivan.—May it please the Court:

The memorial written by the chairman of the committee presents in language, eloquent in its simplicity and touchingly tender, a just conception of the character and worth of Judge Munger. I want to add in a few words a tribute of my own. I want to say here something that I have often said elsewhere and that is, that, although my acquaintance with him was intimate, extending over a period of thirty years, I never knew him to do an act or speak a word, private or official, that did not have behind it the full sanction of his own conscience—that was not altogether sincere and honest, through and through. His mind was strong and logical, his scholarship adequate; but it takes more than intellect and learning to fill well the judgment seat. There are other essentials, and these Judge Munger possessed in lavish measure. His heart was large, his impulses good, his perception of justice intuitive, his conception of the judicial office right. He realized always that he was not invested with arbitrary powers; that the judgments he pronounced were not his judgments but the judgments of the law; that he was not the divinity but only the priest of the oracle. God, in the plenitude of his gifts, had given him a moral firmness, a quiet, steady courage, that never permitted him to falter or hesitate for an instant in the path of duty. He would do the thing reason and conscience impelled him to do, whatever might befall. Like other men, he found pleasure in approval of his official conduct, but the certainty of disapproval could not deter him. Time was when

the great body of the Nebraska bar stood in awe of this court and shunned it as a place of mystery and labyrinths, of pitfalls and snares, but Judge Munger dissipated that feeling; he popularized the court. Under his genial, leveling influence it came soon to be known as a democratic tribunal, a court easy of access, where controversies were decided on their merits, after a fair hearing, before an impartial, able and courteous judge. The life of Judge Munger was full and well-rounded; he had no enemies; all who knew him were his friends. He kept the faith and the covenants. True to himself and false to no man, he leaves behind him a memory that will be long cherished and an inspiration to others that has in it something that is a partial triumph over death--something akin to immortality.

Mr. W. J. Courtright—May it please the Court:

It was just twenty-five years ago that I entered the office of Judge Munger. Perhaps my earliest recollection of him, after getting acquainted, and I never had met him but once previous to entering the office, was the congenial and somewhat boisterous warmth with which he received visitors who might drop in upon him; that impressed me at that time so much that I have always remembered it; perhaps the next recollection of him is a statement that he made to me during my first year with him, that he frequently looked back, to the time in the earlier years of his practice, when he had an overwhelming ambition to climb up and up in the profession to the zenith where he might have an income of a thousand dollars a year. It was more than twenty-five years ago that he felt that way; and as

I look back to that period, twenty-five years ago, I think of the changes, I think of the conditions that existed then as compared with the conditions now; only four lawyers are left in Fremont who were there when I went there. At that time no law office had a telephone; no law office had a salaried stenographer; handwriting was the regular thing; we had a typewriter, however, in our office, and I immediately got busy to learn how to use it some. I recollect that Mr. Munger came in one day and found me writing out a contract upon the typewriter; he was surprised that I had no memorandum by my side; he says do you mean that you are composing that as you write it. That was only twenty-five years ago. Think of the change today. One recollection that I have of him, during the six years of our partnership, is seeing him sitting in his private room, with the door open, his feet cocked up on the window sill, apparently day dreaming. As I learned him better, however, I learned that he was not dreaming; he was gathering in the feather-edges of the case that he had under consideration. As I saw him in the days of my earlier acquaintance sometimes the fear got upon my nerves that he was going into the trial of a case without thorough preparation; as I learned him better I got over that fear, for I never knew him to go into the trial of a case without thorough preparation. His preparation, however, was not so much as we do now, by the study of the cases or by making of a brief, but the preparation that comes from a good, hard thinking out of the fundamental principles, of what is right, of what is wrong, of what the court ought to do, and all of these things,

and I found him from that standpoint a firstclass lawyer possessed of the principles that I knew when he went on the bench would make him a first-class judge.

I remember a statement that I made about twenty years ago, about the time that he was appointed to this bench; I am glad to repeat it now; for the twenty years have added nothing; they have simply emphasized its truth; I said then that I believed there were three kinds of honest men; one is the man who is religiously honest; he was honest as long as the spirit moved him; the other was the man who is policy honest; he was honest so long and so far as it is apparently profitable; and the other is the man who is naturally honest; and I stated twenty years ago that there were only two men, in my experience, that I was absolutely sure were naturally honest, and Judge Munger was one of them; of course, since then I have found others, but I cannot count them by the thousands. In the six years of our partnership I found him as the two preceding speakers have said; always a gentleman; always fair; always pleasant; always congenial; he was the sort of man that anyone could get along with harmoniously, agreeably, and enjoy the association, and those associations will continue to be a pleasant recollection throughout all the years to come. I do not believe that I shall ever look upon any other man with any higher degree of personal admiration than I have upon Judge Munger, based upon the six years partnership during which one man learns to know absolutely the other.

Hon. A. J. Sawyer—May it please the Court:

I cannot allow this occasion to pass without offering a word of tribute to the life and character of our departed friend and brother, Judge William H. Munger.

For the hour the wheels of justice are at rest; hushed are the voices of contentious advocates, while a spirit of gloom and sadness pervades the breasts of those here assembled to do honor to the memory of a truly great and good man so recently removed from our midst by the decree of our Heavenly Father. He was not a great man when measured by certain standards of greatness; he never brought any captives home to Rome to enrich the general coffers, nor did he ever wade through slaughter to a throne or gain prominence, wealth and fame by devious ways and means; nor was greatness, as in some cases, thrust upon him; but he achieved what may be termed true greatness by his own individual exertions and an invincible determination to search out the right and having found the right to do it regardless of all consequences.

Coming to Nebraska when a young man, only twenty-three years old, he settled in the then little village of Fremont, named after the great western explorer. Here he began the practice of his profession and the exploration of the great field of jurisprudence. Possessed of a judicial temperament, a clear intellect, a keen sense of justice, a logical mind and an untiring industry, a character unsullied and an affable and kindly disposition, he soon established himself in the affections of his neighbors and won the esteem and confidence of all who knew

him. Soon his ability as a lawyer, his honesty of purpose, his integrity of character, coupled with all the accomplishments of a gentleman, brought to him a respectable clientage, furnishing him a practice, though not lucrative, highly satisfactory and encouraging to the young attorney.

As a mark of their appreciation and in recognition of his ability as a lawyer, his qualifications as a statesman and his worth as a man, he was chosen by his constituents, at the early age of twenty-six, a member of the Constitutional Convention which framed the Constitution of 1875, which, with but a few changes, remains intact to this day, covering a period of forty years.

In 1887 he was honored by being appointed one of the secretaries of the board of transportation, which office he held for two years. When the bench of this district was made vacant by the death of the venerable Elmer S. Dundy, then as now the administration was democratic, and President Cleveland honored himself as well as the District of Nebraska, by appointing him, in February, 1897, to the high office of District Judge of this district, which position he held with deserved confidence and universal esteem up to the time of his death, a period of about eighteen years.

Reared on a farm, disciplined in the stern school of adversity, inured to the hardships and privations of a pioneer life in Nebraska, devoid of all pomp, pride and pedantry, endowed with good common sense, a comprehensive and penetrating mind and an ardent love for justice, always patient and gentle yet firm, he possessed those admirable qualities

of heart and mind which served to make him the ideal judge that he was and to enshrine him in the memory of all who knew him.

For some forty years it was my privilege and pleasure to know him. From the first I admired him for his geniality, sweet simplicity, gentle demeanor and rare intelligence. Later, when he assumed the office of Judge, our relations became more intimate; we boarded at the same hotel, and on occasions with rod and bait and basket we would hie away to spend a few days beside the beautiful lakes of Minnesota. It is at such times that men learn to know each other best.

On our rambles or sitting by a camp fire he would tell me of the home where he was born, the struggles of his early life, and I would tell him of mine. He loved to talk of the farm, the beauties of nature, the infinite wisdom of the Creator, the wonderful varieties of the animal, vegetable and mineral kingdoms, the admiration excited by the contemplation of the solar systems and the innumerable other worlds swinging through the infinite space of the universe, of the philosophy of life and other kindred subjects.

One evening on returning from an elevation up which we had clambered to witness a Minnesota sunset, we flung ourselves down upon a grassy bank by the edge of the crystal waters of Lake Washington; strains of music from an orchestra at the hotel were borne by the breezes to our ears, the moon and myriads of stars were mirrored in the placid waters of the lake; we had, among other things, been discussing the trial in the Merchant

of Venice, in which Portia held aloft the scales of justice with such poise and equanimity; as we sat there listening to the entrancing music and admiring the charming scenery, the Judge broke the silence by inquiring if the environment reminded me of a scene in any of the plays of Shakspeare; "yes," said I, "I was at this very moment thinking of a scene that was enacted at Belmont, in sunny Italy, hard by Portia's mansion, on the evening of the day of her return from the trial." "You are quite right," said he, "and the language, the sentiments and the settings are sublimely beautiful and have long been imbedded in my memory." At my request he recited the words with a deep sense of appreciation, and these are the words:

"How sweet the moonlight sleeps upon this bank!
Here will we sit, and let the sounds of music
Creep in our ears: soft stillness, and the night,
Become the touches of sweet harmony.
Sit, Jessica: look, how the floor of heaven
Is thick inlaid with patines of bright gold;
There's not the smallest orb, which thou behold'st
But in his motion like an angel sings,
Still quiring to the young-eyed cherubins:
Such harmony is in immortal souls;
But, whilst this muddy vesture of decay
Doth grossly close it in, we cannot hear it."

While he had great love for the sublime, the good, the beautiful and the true, he also had a lively appreciation of the humorous and was an adept at good story-telling, but his stories were always such as not to offend the sensibilities of the most refined.

His genial, sunny and cordial disposition was a characteristic which always accompanied him and rendered him a most lovable companion.

Measured by years, it was permitted him to live out almost the allotted time of man; but measured by service, nobleness of life and high ideals, he immeasurably outlived the allotted seventy years, for—

“We live in deeds, not years; in thoughts, not
breaths;
In feelings, not in figures on a dial.
We should count time by heart throbs. He most
lives,
Who thinks most, feels the noblest, acts the best.”

He did not wear wide phylacteries nor subscribe to man made creeds or superstitions hoary with age; but he was ever broad minded, kind, generous and charitable to others and believed in the ultimate triumph of justice and righteousness and in the brotherhood of man, the fatherhood of God, the leadership of Jesus, and the progress of mankind onward and upward forever.

For such an one death has no terrors. Hard by the city in which he lived and loved so long, is a city of the dead wherein his mortal remains repose to mingle with the elements and be resolved to dust whence they came; but he is not there. Both pagan and Christian philosophers so declare.

Addison interpreting the dialogue between Cato and Plato, living centuries before the Christian era, makes Cato say:

“It must be so, Plato, thou reasonest well!
Else whence this pleasing hope, this fond desire,
This longing after immortality?

* * * * *

The soul, secure in her existence, smiles
At the drawn dagger, and defies its point.
The stars shall fade away, the Sun himself
Grow dim with age, and nature sink in years;
But thou shalt flourish in immortal youth,
Unhurt amid the war of elements,
The wreck of matter, and the crash of worlds.”

Bulwer Lytton voices the Christian sentiment of
the modern world when he says:

“There is no death! The stars go down
To rise upon some fairer shore;
And bright in heaven’s jeweled crown
They shine forevermore.
There is no death! The dust we tread
Shall change beneath the summer showers
To golden grain or mellow fruit
Or rainbow-tinted flowers.
There is no death! An angel form
Walks o’er the earth with silent tread;
He bears our best loved things away,
And then we call them dead.
And ever near us, though unseen,
The dear immortal spirits tread;
For all the boundless universe
Is life,—there are no dead.”

When I look around and note the missing mem-
bers of the bar that were wont to meet with us in

this and the old court room-but who shall meet with
us no more,

“When I remember all
The friends so linked together,
I’ve seen around me fall,
Like leaves in wintry weather;
I feel like one who treads alone
Some banquet hall deserted,
Whose lights are fled, whose garlands dead,
And all but he departed.
Thus in the stilly night
E’er slumber’s chain has bound me,
Sad memory brings the light
Of other days around me.”

As we think of our brothers that have gone before
we are reminded that a little while and we too shall
join the procession that moves to the pale realms of
shade, and we are moved by a feeling that—

“Singeth low in every heart,
We hear it each and all,—
A song of those who answer not,
However we may call.
They throng the silence of the breast,
We see them as of yore,—
The kind, the brave, the true, the sweet,
Who walk with us no more.
‘Tis hard to take the burden up,
When these have laid it down;
They brightened all the joy of life,
They softened every frown:
But, oh, ‘tis good to think of them,
When we are troubled sore;
Thanks be to God that such have been,

Though they are here no more.
More homelike seems the vast unknown,
Since they have entered there;
To follow them were not so hard,
Wherever they may fare;
They cannot be where God is not,
On any sea or shore;
What e'er betides, thy love abides,
Our God forever more."

The best tribute in the fewest words that can be paid to Judge Munger is that "he lived a hero and he died a man."

Mr. Arthur C. Wakeley—May it please the Court and the gentlemen of the bar:

It seems fitting that in these rooms, so intimately associated with his presence, we should meet to recall something of the life and to note the death of the late Judge Munger, our friend, who in his very early manhood cast his lot with the pioneers of Nebraska, just as it was entering upon its career of statehood.

As we ourselves remember, conditions were then, in a measure, primitive. Our state, our laws, our policies were passing through the formative period. Problems of statehood were yet to be worked out; the courts of the state were yet to find and to apply the principles of law to the exigencies of the commonwealth.

This was the atmosphere, the environment, in which Judge Munger wooed the law, which then became and continued to be for fifty years a jealous mistress.

We, as lawyers, know the wide field, the diverse questions, to which the general practice in those days gave rise. The earlier reports of our decisions contain ample evidence of the fact that it was in this arena that Judge Munger shattered many a lance in contest with able lawyers—men like Poppleton and Woolworth, Redick and Doane, who, like him, had been attracted to this state, promising so much in the possibility of advancement.

As litigation increased, as our courts were more and more called upon to resolve questions often novel and difficult, arising under our constitution and statutes, Judge Munger brought to their discussion and elucidation, a discriminating and analytical mind, informed and equipped with basic principles and adjudicated precedents, the result, your Honor, of an unremitting study of the law extending over his entire legal career. In brief, he supplemented his natural abilities, with ceaseless research for the cases which illuminated the case in hand. And so, as litigation assumed a relatively greater importance in our economic conditions, so also did Judge Munger develop as a jurist; so also became more apparent those inborn qualities which individualized him, so to speak, as a man of exalted ideals, of tolerant views, of fairness and candor in every relation of life—qualities as to which we shall all agree, accorded so well with his elevation to the federal bench, the responsibilities and exacting duties of which he administered with so much of learning, of dignity and gracious courtesy for almost twenty years. So evident was his desire to do what was right, that I do not believe he ever

rendered a decision which left a rankling or a heart-burning in the breast of any litigant or any attorney.

If I were to mention that trait of his character which impressed me most, it would be his innate sense of fairness, of justice, of a residing equity which controlled the result of every case; his inclination and his ability to subordinate the technical aspect of the case to the very right and justice of it.

Kind, patient, considerate to all, he commanded the confidence and respect of the public; the affection and the love of the bar and his professional associates; and if, as Judge Sawyer has so beautifully said, we live in deeds not years, surely the beneficent influence of the life we commemorate today, will radiate far beyond the narrow confines of this room; neither can such an influence be circumscribed by the considerations of time or place.

“Peace to the just man’s memory; let it grow
Greener with years, and blossom through the
flight
Of ages; let the mimic canvas show
His calm, benevolent features; let the light
Stream on his deeds of love that shunned the sight
Of all, save heaven; and in the book of fame
The glorious record of his virtues write.”

Mr. Michael F. Harrington—I feel that it will not be out of place for me to speak a word for the country bar of Nebraska. I came to this state seventeen years after Judge Munger did. I can remember when I purchased a set of books containing the decisions of the supreme court of the United

States with some ambition to gain federal practice if the opportunity offered; settling in a homestead country as I did it was not easy. I think I am speaking truthfully of the country bar of Nebraska when I say that our universal idea of this court was that it was an aristocratic court where the lawyer with a country practice had no business to be and he had a feeling that he was being excluded from it; in fact for myself I had about three cases in this tribunal up to the time that he was appointed judge and one of these was called and tried in my absence, but when Judge Munger was appointed there was a different feeling among the country lawyers of the state. Before he was appointed we knew him in our familiar intercourse not as judge, because the frontier life makes firm and lifelong friendships; we knew him as Billy Munger, just as we have known the very able judge presiding in South Dakota as Jim Elliott; just as we know the very able lawyer and worthy man who is a candidate and who is among those who are to be considered as a successor to Judge Munger, just as we know him affectionately as Billy Thompson. After the appointment of Judge Munger the country lawyers generally felt that they had a place in this court. At that time there was a general prejudice against federal courts, but after the state was cut into divisions and Judge Munger got to going about among these lawyers and jurymen and witnesses the federal court became a popular institution in Nebraska; it was found that the ordinary man could approach that court just as easily and with just the same feeling that he would get fair play as if he approached the court in his own county; and I think while we are

saying this of the dead we can say for the living that in rural Nebraska his associate has been equally good in popularizing the court and making the ordinary man feel that it is his court and not some institution that is aristocratic in its nature and where the common man has no standing; and if Judge Munger did nothing else than to make popular the federal court in Nebraska and make its plain citizens believe and feel that justice was impartially and courteously administered there he would have rendered the public a great service.

Mr. T. J. Mahoney—If the Court please:

It would be impossible within the limit of such time as one ought to consume to recite anything like an adequate catalogue of Judge William H. Munger's transcendent virtues; but like most men some of his characteristics were more noticeable than others; of these one of them was what is referred to in the statement of the chairman of the committee as "transparent honesty;" a candor that was so entirely devoid of any false pride of opinion that he was always prepared to say, "I have made a mistake." I saw that illustrated in this room in the trial of an action at law to the court and jury when, upon the close of the plaintiff's evidence, the defendants moved for a directed verdict, assigning two reasons for their motion. As soon as the reasons were assigned Judge Munger said, "I am with you upon the first of those reasons but against you on the second; however, as I am with you upon one I will hear from the plaintiff." The plaintiff thereupon devoted an argument to convincing the Judge

that he was wrong in believing that the plaintiff could not recover upon that ground, or for that reason and succeeded; thereupon Judge Munger gave the defendant an opportunity to support the reason, which he had assigned and upon which the court had announced he was against him, and listened patiently to the argument upon that. When both sides of the discussion had concluded, the court made his announcement, as he generally made his announcements, in the presence of the jury, in the presence of the bystanders and the public, and in the presence of the press; "Gentlemen, I have changed my mind; on both questions I believe I was wrong." And then he announced his decision accordingly. It would be no great sin, no great offense against the reputable and just Judge, had he given his judgment and announced the result without so open and frank and candid an acknowledgment that he had been mistaken; but he did not have even a trace of that false pride of opinion that for a moment stood in his way to making a candid correction when he believed he had gone wrong.

Another characteristic of Judge Munger; he was intensely human, and was intensely devoted to his work at the same time. It has been observed by many of us. Many of the members of the bar in this room now who have had occasion to call upon Judge Munger in his room in this building, on some particular errand, having completed that errand, being about to depart, the Judge would say; "Hold on a minute, you are in no hurry; I have got a case here that is giving me a little trouble; what do you think about this proposition?" How many of us

have had that interview with Judge Munger! And then laying aside that sort of reserve which some men believe ought to prevent a Judge from even mentioning the fact that he is considering John Doe's case against Richard Roe. He would candidly tell you all about the facts in the case and how the question arises how the matter arises in his mind so as to trouble him. I don't know how much importance he would attach to an off hand opinion of a member of the bar in response to such an inquiry as a final conclusion; but that it served two purposes there can be no doubt; he got some other man's view of a question that was giving trouble; it afforded him an opportunity of stating in words the difficulty that he was struggling with mentally, and it afforded some little outlet, aside from arranging the words or thought that was in his mind; but it also did this, it showed this human interest in the performance of an important judicial function.

Now, if your Honor please, notwithstanding our faith in immortality and our belief that all things done by God are done well, it is yet impossible to repress a certain human sorrow and regret that, having served until just about seventy years of age, it was not his good fortune to continue with us for years longer to enjoy that leisure which this government has believed is due to one who has served his country in the capacity in which Judge Munger served it. Every member of this bar I think feels that one regret, but submits without rebellion, and extends to those nearest and dearest to him a sympathetic feeling and desire that they may at least find great consolation in the extraordinarily noble, meritorious and courageous record of their loved one.

Mr. Harry C. Brome—If the Court please.

It was my good fortune to know Judge Munger longer perhaps than all save a very few members of this bar, and it is perhaps proper that I should bear witness to the fact that the memorial which your committee has prepared, in my judgment, correctly reflects his history and his character and his service.

I first met Judge Munger thirty-six years ago last month at a term of court in Stanton county in this state; it was the first term of court at which it had been my privilege to appear as a lawyer and I became acquainted with him at that time; he was then a lawyer who had made his mark; he had attained some prominence and achieved some reputation at the bar in this state; from that time on, until his death, it was my fortune to be rather intimately acquainted with him. In the early years of my practice, on several occasions, I was associated with Judge Munger, when I needed more experience and more legal knowledge than I then possessed and never in all my experience have I been associated with any man on the same side of any controversy who was of more service and whose association with me in the transaction of business of that character gave me more pleasure.

He had no pride of opinion; his judgment was sound; he gave credit to the judgment that you had formed and the opinion that you propounded, and in that relation his service was not only of the greatest value but it was given under those circumstances and in a manner that rendered it most

satisfactory to the young lawyer who relied upon the experience and ability and knowledge of his older associate.

It was my fortune on several occasions to sit on the other side of the table and meet him as an adversary in controversies, and he was a dangerous adversary; not because by any oratorical display he swayed juries or by any profound claim with respect to his knowledge of the law he impressed the court, but because it was absolutely foreign to his nature to advance a proposition of law that he himself did not believe to be sound and because his characteristics in that respect had impressed themselves upon the tribunals before whom he appeared, and if Judge Munger insisted that the rule of law was different from the insistence that I made, I knew that that characteristic was likely to impress the judge who must ultimately determine who was right. So too with the jury in the community where he was known and where his practice chiefly lay; his weight with the jury was I sometimes thought undue, arising from the fact that he could not argue a proposition of fact well that he did not think was sound, and that he would concede away all the propositions upon which we had the best of it and insist only upon those where he could honestly and truthfully say that the probabilities were in favor of the contention he made on behalf of his client.

Later on, during my practice at the bar of this court, during his entire administration here, he impressed me as he impressed the committee and as he impressed every member of the bar with the

fact that he was inherently honest; that he was not honest because honesty was the best policy; that he was not honest for any consideration except the fact that it was not possible for him to transact business in any other manner. He was fair; he was affable.

It is the right or at least it is the privilege of every lawyer to criticize an adverse decision; sometimes that criticism goes further than the decision merely, and in some measure criticizes the conduct of the tribunal that pronounces the decision; but I think that in all the history of Judge Munger's services upon the bench no instance can be found or has occurred in which any lawyer whose conclusions were overturned and whose client was defeated as the result of Judge Munger's judgment, ever for a moment reflected upon either the integrity or honesty or the capacity of the Judge who had pronounced judgment.

There is another attitude in which I had an opportunity to become well acquainted with Judge Munger: Reference has been made here to the fact that he enjoyed leaving his work and going out in the fields, in the woods, and on fishing and hunting trips, getting close to nature. It has been my fortune on several occasions to be his companion on a trip of that character. Now I think I may truthfully say that it requires more good qualities to measure up to the standard of a gentleman under those circumstances when away from the accessories of civilization and the comforts of civilized life as we understand it; you put in days or weeks together under those circumstances; you get to

know a man better; and as I suggested it requires more good qualities for a man to measure up to the highest standard under those circumstances than it does to be a successful lawyer or a capable judge; and yet I think the companions of Judge Munger on these trips would all bear witness to the fact that the same honesty, the same geniality, the same willingness to accord to every one else the rights that he asserted for himself; the same willingness to bear his share of the burdens and to enjoy without complaint whatever there was connected with the enterprise; bear its troubles and tribulations if there were any, and preserve unflinching good nature and geniality at all times and under all circumstances; was an attribute that he possessed as few men possess it.

There never has been and there never will be in the history of this court or in the history of the jurisprudence of this state a Judge who will grace the bench or who has graced the bench, who possessed in a larger measure that transparent honesty, as it has been expressed here, that absolute fairness, that desire to do right constituting the groundwork and the foundation of the work of the just Judge everywhere, in a larger measure than that which was possessed by Judge William H. Munger.

Mr. Warren Switzler—I hesitate to invade the recitation of the manifest virtues of our deceased friend or to attempt to add to what has been said.

We have traced very carefully his early manhood and his early history at the bar and his honored career on the bench. There is one element, how-

ever, in his history, which I think has had a bearing upon all of his career, which has not so far been adverted to, and it is that experience and that element which lies somewhat in the background and to which we do not sufficiently give recognition, and that is the home life of a man, the help of the silent partner at home, the woman who is so often the maker of the man, the woman who is so often his stay and his support in trial and in trouble, when questions of importance and difficulty arise to be disposed of. Those of us who have had a touch of the home life of our deceased friend can readily understand where the cheer of his disposition came from; why it was that he always had a happy manner in meeting members of the bar, and why it was that even in his declining years of illness, lasting so many months, that he had that support and that comfort which comes to so many men when we are prone not to give sufficient recognition to it. I want to pay a tribute to Mrs. Munger, the silent partner of the judge; she who does not sit upon the bench; she who did not appear in the court room; she who did not follow over the fields and through the plains and beside the lake shores of Minnesota, but she who always had a warm place after his return and who was his comfort in time of sorrow and distress; she who for more than a year gave the vigilance of the midnight to his care; she who devoted her life to his support and gave us as much as any one the judge whom we so much honored upon the bench. I want to say that she is entitled to the recognition of the members of the bar, as all of our wives are who help us when a veil hides us from public gaze; she who stands by us and stands by our children

and makes our homes and our happiness for us. And there never was a case more in point to illustrate the application I am making than the instance which is now before us.

Another thing, if your honor please: all these words which have been said here would be very pleasant to the ear of our deceased friend if he could hear them, and he doubtless does; but there is another thing which would give more honor and more delight and more pleasure to him than the mere recalling his virtues and that is this; that after we go away from this meeting, which we soon shall do, and we shall have recorded upon the records of the court our expressions of admiration, and then the waters should close over all the impressions we have made, it would not be the greatest delight to him or benefit to those members of the bar who have watched his career that we should have traced his history here today with admiration; all of which is true and more might be said; in doing this it does not reach the highest point of satisfaction, I am sure, to him; but if, recalling these things; if keeping them in mind; we should fashion our own conduct and our own life after the pattern which he has furnished and, as we go out upon the street, as we go to the various courts, as we have our contact with our clients and our clients' business, we should appropriate to ourselves in our lives and thus perpetuate the elements of his character which we have described, we will give to his memory the greatest honor and to ourselves the greatest benefit.

Response by Judge Thomas C. Munger—

Gentlemen of the committee and gentlemen of the bar:

As a colleague of Judge W. H. Munger for more than eight years, having the privilege of official and personal intimacy with him, it is my pleasure to concur in the just tributes of praise that you have accorded to him by your memorial and by your remarks. The clerk will be instructed to spread upon the journal of this court the memorial which has been presented, and as a further mark of respect the Court will now be in recess.