



PIONEER OF RETIREMENT

JUSTICE SAMUEL NELSON

Ross E. Davies

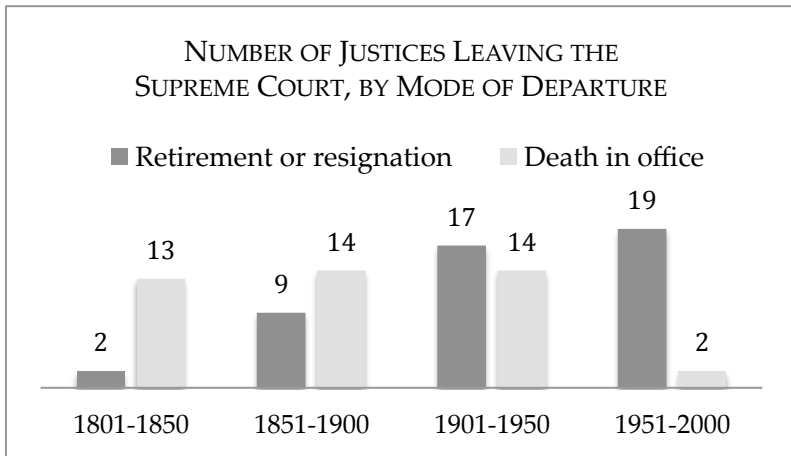
IN NOVEMBER 1872, Justice Samuel Nelson retired from the U.S. Supreme Court. The formal farewells were of the good-spirited kind that prominent public figures have almost always received: heavy on recitations of his virtues, light on mentions of flaws that were really, of course, merely misunderstood manifestations of his greatness.¹ There were, however, two unusual features of the Nelson celebrations.

First, he was both alive and able to fully appreciate the accolades. Among 19th-century Justices, Nelson was just the third to retire while in full possession of his mental faculties, the others being Alfred Moore in 1804 and Gabriel Duvall in 1835. Of the rest, nearly all (18 Justices and two Chiefs) had died in office. Two (Benjamin Curtis in 1857 and John Campbell in 1861) had quit while young and in the pink of good health at moments of high institutional tension relating to slavery and civil war. One (Robert Grier in 1870) had retired, but only under pressure from colleagues concerned that his obvious mental incapacity was corrupting the Court's work.²

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¹ Cf. H. Kumar Percy Jayasuriya, *Preface*, in 6 MEMORIALS OF THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES ix (2009); Scot Powe, *Introduction*, in *id.* at xv.

² See David J. Garrow, *Mental Decrepitude on the U.S. Supreme Court*, 67 U. CHI. L. REV. 995, 1003-6 (2000); but see *Resignation of Mr. Justice Grier*, 75 U.S. vii (1870).



Thus, Nelson was the first Justice in generations to leave the Court because it was, in his own sound judgment, time to hang it up. His decision was, as we can see with hindsight, an early step in a long and uneven but dramatic transition from a 19th-century Court on which Justices died with their robes on, to a 20th-century Court on which Justices passed the torch before passing away. The causes of this change have been explored in depth by able scholars, and are beyond the scope of this little essay.³ Here, it is enough to know that when Nelson retired, his colleagues on the Supreme Court and the members of its bar were confronted with the second unusual feature of the Nelson celebrations: a departing Justice to whom they could and should say farewell but not goodbye, for whom they could throw a retirement party rather than a wake.

The Supreme Court and its bar were seemingly ill-prepared for this extraordinary situation. The officially reported proceedings at the Court honoring Nelson on his retirement were perfunctory.⁴ And there is, as best I can tell, no unofficial report (the kind commonly published in pamphlet form) of any more elaborate proceed-

³ See, e.g., Chad M. Oldfather & Todd C. Peppers, *Till Death Do Us Part*, 95 MARQ. L. REV. 709 (2012); ARTEMUS WARD, *DECIDING TO LEAVE* (2003); DAVID N. ATKINSON, *LEAVING THE BENCH* (1999).

⁴ *Resignation of Mr. Justice Nelson*, 81 U.S. vii (1872).

ings conducted by the Supreme Court bar. Moreover, when he died the next year (December 1873) – out of the public eye at his home in Cooperstown, New York – there was only an eight-line notice in the *U.S. Reports*.⁵ This was almost certainly not because of any bad feeling between Nelson and his colleagues on the Court or in the bar. He was widely liked and respected in his day (if not so highly thought-of nowadays).⁶ It may be fair, therefore, to assume that the Court community was so accustomed to having its Justices drop dead in Washington, DC (or, rarely, leave the Court too early or too late under a cloud) that it had no traditions of (or plans for) graceful, friendly send-offs under less final or unhappy circumstances. That would soon change. When former Justice Curtis died in 1874, both the Court and the bar saluted him handsomely.⁷

None of this is to say that Nelson did not receive a respectful and resounding retirement send-off. He did. But it was delivered in New York rather than Washington, and by the Second Circuit bar rather than the Supreme Court's. This sort of thing was surely as natural for the New Yorkers as it was unnatural for the Washingtonians. New York had a long (though not uninterrupted) history of mandatory retirement for its judges.⁸ Most famously, James Kent had been obliged by the state constitution to retire as Chancellor at the age of 60, in 1823. He then spent much of his decades-long retirement from the bench practicing law, lecturing at Columbia College (now University), and composing his *Commentaries on American Law*.⁹ The

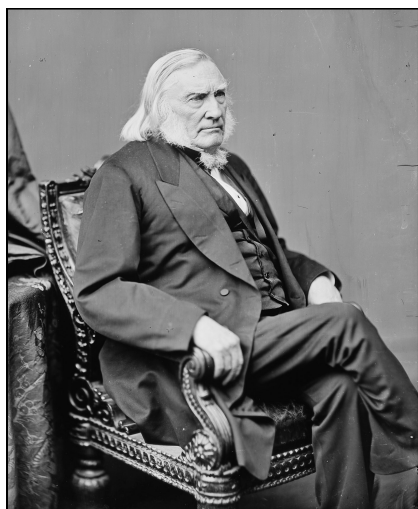
⁵ *Death of Mr. Justice Nelson*, 84 U.S. xvi (1874).

⁶ See generally Frank Otto Gatell, *Samuel Nelson*, in 2 *THE JUSTICES OF THE UNITED STATES SUPREME COURT* 408-20 (1995) (Leon Friedman & Fred L. Israel, eds.).

⁷ *Benjamin Robbins Curtis*, 87 U.S. v (1874); *Proceedings of the Bench and Bar of the Supreme Court of the United States on the Occasion of the Death of Benjamin R. Curtis* (1874), reprinted in 2 *MEMORIALS OF THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES* 17 (1981).

⁸ See *People v. Mann*, 97 N.Y. 530, 532 (1885).

⁹ Judith S. Kaye, *Commentaries on Chancellor Kent*, 74 *CHI.-KENT L. REV.* 11, 25-27 (1998); see also, e.g., Robert Ludlow Fowler, *Constitutional and Legal History of New-York in the Nineteenth Century*, in 3 *THE MEMORIAL HISTORY OF THE CITY OF NEW-YORK* 625 n.2 & 626 n.1 (1893) (James Grant Wilson, ed.).



Born in upstate New York in 1792 and educated at Middlebury College in Vermont, Samuel Nelson rose rapidly in New York law and politics. He was a presidential elector in 1820 and a county representative at the 1821 state constitutional convention. He served on New York state courts from 1823 to 1845, and on the U.S. Supreme Court from 1845 to 1872.

New York bar knew about – indeed included – judicial retirees. And that bar knew Nelson, who had been a New York state court judge from 1823 until his appointment to the U.S. Supreme Court in 1845, and had also served as Circuit Justice for the federal Second Circuit (which included New York) for his entire tenure on the Court.¹⁰

So it was that on January 17, 1873, the bar of the Second Circuit met in a federal courtroom in New York City to prepare a salute to the recently retired Justice Nelson. On February 12, a deputation delivered the results of that meeting to Nelson in Cooperstown. The whole business was reported in a pamphlet published later that year. It is reproduced in its entirety below on pages 213-233.

It is too late for the Supreme Court bar to conduct proceedings in honor of Nelson like the ones with which it has routinely honored his modern successors. But it is not too late to fill some gaps in the six-volume (so far) collection of *Memorials of the Justices of the Supreme Court of the United States* for those Justices who were never subjects of suitable “Memorials” at the Court. In the case of Nelson, the choice is pretty obvious. It begins on the next page.

¹⁰ Gatell, *Samuel Nelson*, at 409-14; LEE EPSTEIN ET AL., *THE SUPREME COURT COMPENDIUM* 416, 418 (4th ed. 2007).



PROCEEDINGS BY THE BAR OF THE UNITED STATES
COURTS FOR THE SECOND CIRCUIT, ON THE

RETIREMENT OF

MR. JUSTICE NELSON

FROM THE SUPREME COURT OF THE UNITED STATES.

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As Professor Davies explains above (beginning on page 209), what follows appears to be the closest Justice Samuel Nelson got to receiving a full-blown public salute from the bar of the U.S. Supreme Court.

— *The Editors*

THE Bar of the United States Courts for the Second Circuit will meet in the United States Circuit Court room, on Friday, January 17th, 1873, at 2 o'clock, P.M., to take action upon the retirement of Mr. Justice Nelson from the Supreme Court of the United States.

(Signed) EDWARDS PIERREPONT, GEO. TICKNOR CURTIS, GEORGE GIFFORD, MURRAY HOFFMAN, ERASTUS C. BENEDICT, WILLIAM M. EVARTS, JAMES W. GERARD, THEO. W. DWIGHT, CHARLES O'CONOR, EDWIN W. STOUGHTON, JOSHUA M. VAN COTT.

These proceedings were published in a pamphlet in 1873 by Francis Hart & Co., Printers and Stationers, 12 & 14 College Place, New York.

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At a meeting held in pursuance of the foregoing notice, and on motion of Joseph S. Bosworth, Charles O'Connor was elected President.

On motion of Sidney Webster, the following gentlemen were chosen to be Vice-Presidents:

JAMES W. GERARD, MURRAY HOFFMAN, EDGAR S. VAN WINKLE, JOSEPH S. BOSWORTH, WELCOME R. BEEBE, HENRY NICOL, JOHN MCKEON, ERASTUS C. BENEDICT, JOHN K. PORTER, HENRY E. DAVIES, EDWARD J. PHELPS, JOHN GANSON, GEORGE B. HIBBARD, LYMAN TREMAIN, FRANCIS KERNAN, HENRY R. SELDEN, SAMUEL HAND, RICHARD D. HUBBARD, CHARLES R. INGERSOLL, HENRY E. STOUGHTON.

And Clarence A. Seward named as Secretary of the meeting, Sidney Webster.

The meeting having been thus organized, the President said:—

Brethren of the Bar:

The great lawyer who for half a century has been practically the very life and light of our jurisprudence, has retired from active duty. His illustrations of practical justice remain for our enlightenment and will descend to posterity. In these — his gifts to man — the present and the future are participants alike; but in some things we are exclusively his beneficiaries. His magnificent demeanor on the Bench was a model of all the judicial graces. In that high place his princely bearing and lion front inspired every honest suitor with confidence, while it paralyzed the most audacious guilt. These things we have witnessed and will ever remember; but neither tongue nor pen can convey to future times an adequate portraiture of them. These memories and the pleasure of contemplating him in the serenely tranquil retirement which closes his great career are our own. The Augustan age of our jurisprudence, when Wells and Emmet argued the causes which Kent and Spencer decided, is happily connected in history with all that is now recognized as best and purest by the period which Nelson adorned. Patriotism and professional pride can hope for no more than that the rising lawyers of to-day may sustain and transmit to worthy successors the great fame derived by their class from such high sources and through such a noble channel.

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Edwin W. Stoughton then moved that a committee of five be appointed by the Chair to prepare an address to be presented to Mr. Justice Nelson, which motion having been adopted, the following gentlemen were named by the President as such committee:

EDWIN W. STOUGHTON, BENJAMIN D. SILLIMAN, THEODORE W. DWIGHT, GEORGE GIFFORD, CORNELIUS VAN SANTVOORD.

The committee, after consultation, presented the following address:

To the Honorable SAMUEL NELSON:

Sir:— Your retirement from the Bench of the Supreme Court of the United States, after a judicial service of more than forty-nine years, is an event which the members of the Bar of the Federal Courts cannot allow to pass into history without connecting therewith the expression of their profound sense of the solid benefits conferred by your labors and example upon the Bar and people of this country.

Appointed at an early age to the Bench of the Circuit Court of the State of New York, you commenced your judicial career under a system which pledged to you a long and independent tenure; in return for which, you devoted to the discharge of your responsible duties faculties and acquirements which singularly fitted you to administer justice among men. You brought to this work great energy, a noble ambition, an earnest love of justice, absolute impartiality, an elevated conception of all the duties of a magistrate, united with a judgment of unsurpassed soundness. Acknowledging responsibility only to your conscience, to the law and to your God, you early won the confidence of a Bar, among whose members were numbered some of the greatest lawyers of the last generation. From the Circuit Court of the State you were advanced to the Supreme Court, and there you proved yourself worthy to sit in the place of the great Masters of jurisprudence who had preceded you, and whose reputations will endure forever. Again you were advanced, and the Bar, with pride, saw you robed as Chief Justice of the State. As such you presided for many years, and had your judicial career terminated with the resignation of that office,

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the records of jurisprudence would have transmitted your name to posterity as that of a great and just judge.

Your labors were not thus to end. You had administered justice for the period of twenty-two years. During that time you had mourned the departure of many members of that illustrious Bar, which had greeted your entrance into judicial life. Around you had grown up a younger Bar, to whom you were an object of admiration and reverence. You had served the State of your nativity well, and well had you maintained the State and even national fame of the Court over which you presided. Your opinions there delivered will long stand as examples of the right application of established legal principles, exact learning and sound common sense to the cases presented for judgment.

More than twenty-seven years ago, in the full maturity of your powers, you were appointed an Associate Justice of the Supreme Court of the United States. There, and at the Circuit, you encountered new and untried questions. The law of Nations, of Admiralty, of Prize, of Revenue and of Patents, you mastered; and, as those who now address you can bear testimony, administered with unsurpassed ability. With critical accuracy you studied and applied a vast amount of legislation and a multitude of rules, comprised within the special branches of jurisprudence you were compelled to administer.

The benefits you conferred did not consist solely in bringing, as you did, to the investigation and decision of causes, a deep insight – a judgment matured by long and varied experience and solid learning – the fruit of a life of study and reflection. Your kind and generous treatment of young lawyers ever encouraged them to renewed exertion; and in struggling to deserve your approval, they were inspired by a worthy ambition; for they knew that your standard of professional excellence was high, and that to win your approval was an earnest of future distinction.

Beyond all this, you have afforded to the Bench of this country an example by which the wisest and best of its members have profited; and by your long and spotless life as a magistrate, you have added dignity and lustre to the history of our jurisprudence; for whilst the degradation and corruption of the judges of a nation inflict upon it an offensive, a revolting blot,

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their independence, their purity and their learning, have ever written the proudest annals of national life.

There are among those who now address you, many who have so long been accustomed to your presence upon the Bench, that they will never be quite reconciled to your absence. They will sometimes earnestly wish that you could have remained to steady them in the performance of their duties, until the close of their professional career. Nevertheless, all who now address you will never cease to be thankful, that upon your retirement to your family and home, it can be said of you as was said of Lord Mansfield:

“It has pleased God to allow to the evening of an useful and illustrious life, the purest enjoyments which nature has ever allotted to it, the unclouded reflections of a superior and unfading mind over its varied events, and the happy consciousness that it hath been faithfully and eminently devoted to the highest duties of human society.”

Earnestly hoping that these blessings may be enjoyed by you for many years, the members of the Bar who unite in this tribute to your worth, remain forever your friends.

Edwards Pierrepont, in moving the acceptance of this report, addressed the Chair as follows:

Mr. Chairman:

When eminent men have died, it has been the custom among civilized nations to take some public notice of the event. But the number of those who have *voluntarily* retired from a great office are so few, that it can hardly be said, that any custom touching such retirement has been established; the rarity of this occasion makes it the more noted, and for every reason it was most fit that you, Mr. Chairman, should have been selected to preside at this unusual meeting of the Bar.

When a man in his early prime resigns a high office to enter some broader field of ambition, or to seek new gratifications in the pursuit of wealth, he neither deserves nor receives any especial marks of approbation from his fellow-men. But when one has spent a long life in the public service, and has so borne himself in his great office as to command the respect of every honest citizen, and at the call of duty lets go his hold on power,

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while all his faculties remain, he is a man so rare as to attract more than a passing notice; and we have met to say something of this GRAND OLD MAN who was eighty years old the 8th of November last; and who, by continuing three months longer, would have had an uninterrupted career of judicial life full fifty years. We search in vain for a career like this! How nobler is it, than to have clung feebly to his place until death pulled him reluctant from his seat.

How like the man; how in harmony with his high sense of duty was his retirement from an office in which he, sooner than others, felt that the burden of his years might possibly diminish his usefulness. No pride, no love of power, no vanity stood for a moment in his way; a lofty sense of duty governed him in the end as at the beginning, and as all through his life.

It was well known, if Judge Nelson retained his office until April next, that the half century of his judicial life would then be complete, and many supposed that the natural desire to fill up the fifty years would prolong his stay upon the Bench; but those well acquainted with Judge Nelson knew that the high tone of his character would not allow him to retain the office one day after he became satisfied that he could not fully discharge its duties.

Lord Mansfield, the Chief Justice of the King's Bench, resigned at the age of eighty-three. He had been upon the Bench thirty-two years. Between Judge Nelson and the Lord Chief Justice there were some striking points of resemblance. So noted was Lord Mansfield for preferring substantial justice to musty precedent, and so firmly did he believe in the flexibility of the Common Law, and that its rigid rules should bend to new exigencies in the advancement of commerce, of science, of civilization and humanity, that it was a common thing for the old lawyers to sneer at what they called "Lord Mansfield's Equity Judgments;" and Junius, in a letter addressed to the Lord Chief Justice, November 14th, 1770, says:

"Even in matters of private property we see the same bias and inclination to depart from the decisions of your predecessors, which you certainly ought to receive as evidence of the Common Law. Instead of those certain positive rules by which the judgment of a court of law should invariably be determined,

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you have fondly introduced your own unsettled notions of equity and substantial justice. Decisions given upon such principles do not alarm the public as much as they ought.”

The *public* were not alarmed; the public saw that Lord Mansfield was right, and that “equity and substantial justice” was what good men desired, and not in-equity and injustice, in deference to worn-out precedents unsuited to the advancing times.

In earlier years we heard the same criticisms from old lawyers about the rulings of Judge Nelson, and almost in the same language; but the names of those who censured Lord Mansfield and Judge Nelson for their adherence to “equity and substantial justice” are already forgotten, while both of these great jurists will be held in reverence so long as the Common Law continues to be administered.

In the construction of statutes of the United States, subtle and unsubstantial technicalities interposed to defeat justice, had small chance of success where Judge Nelson was presiding.

At the trial of the great frauds of Kohnstamm I was employed by the Government to conduct the prosecution; several of the eminent lawyers here present were engaged for the defence; and one, now no more, — the lamented and much beloved James T. Brady — whose great legal abilities would have made him distinguished without the aid of his more brilliant and unparalleled rhetorical powers. Mr. Brady, with his usual eloquence and skill, summed up the case for the accused; but the jury found the defendant guilty; and upon remarking to Mr. Brady that the jury were prompt and that I had feared a disagreement, “I had *hoped* it” said Mr. Brady, “until the charge, but what could I do against that old lion there?” turning towards the Judge as he sat kingly upon the Bench, and looking like a veritable old lion, as he was.

Nature did much to make Judge Nelson what he has been. Nature gave him a commanding presence, a strong constitution, an even balance of the passions and the intellectual faculties, a genial soul and great vital forces, a natural love of right and substantial justice, a resolute will and an honest heart; a mind, body and a moral tone, healthy, manly and robust. Culture did greatly aid him; but his natural endowments were vast. He did not deserve much credit for being a great, just man; he could

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not help it very well. It was natural and easy; and his life flowed on as the strong current of a river. It would be interesting and instructive to have his brother judges of the Supreme Court give their estimates of Judge Nelson's characteristics and judicial abilities. I have frequently heard several of them speak of their eminent associate, and quite recently the Chief Justice has expressed unmeasured admiration of the easy facility, wisdom, ability, and remarkable character of him whose retirement from the Bench the Chief Justice considers an irreparable loss to himself personally, and to the public service generally.

The influence of Judge Nelson upon the New York Bar has been very great. The tone and manners of the Bar will always depend upon the tone and manners of the Bench. Good temper, courteous manners, and dignity of deportment are very important, *if not essential*, in the administration of justice. The Bar and the Bench will ever go hand in hand and quite abreast in every respect, and the community are quick to discover the fact; and great merchants and men of business will not entrust their important interests to a Bench and a Bar composed of inferior men; and so sure as you degrade the Bench, you degrade the Bar; and with equal certainty you thus drive the important business from the lawyers and the courts, and other means of adjusting differences of magnitude will be found.

Judge Nelson took no active part in politics; but no man was a more close or more interested observer of public affairs. In the distracted times of 1860, when the Democratic party looked around for a candidate who could unite the North and the South and command the confidence of the entire country, Judge Nelson seemed to be the only man; the sole difficulty in the way was the fact that he was a member of the Supreme Court; and the sentiment of the people seemed then, as now, to be, that when a man enters that temple of justice, and puts on the robes of office, he shall never make the sacred seat a stepping-stone from which to ascend to any political place.

When the Governments of Great Britain and of the United States undertook a negotiation which resulted in the Treaty of Washington, our sagacious Secretary of State, with that good judgment for which he is distinguished, selected (by the approval of the President) Judge Nelson as one of the High

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Commissioners; and the crowning act of a great career in the public service was the prominent part he took in concluding that treaty, by which enduring peace between these two great nations, speaking the same language, governed by similar laws, and worshipping the same God through the same religious forms, was secured.

The Lord Chief Justice Mansfield lived five years after resignation of his office. May our equally great and equally respected Judge live many times those years, if he so wishes, and God wills; "and when old Time shall lead him to his end, Goodness and he fill up one monument."

On the conclusion of the remarks of Mr. Pierrepont, the meeting was addressed by Clarence A. Seward, who said:

Mr. President:

It is with unfeigned satisfaction that I concur in the adoption of the proposed address. It is meet and right that the evening of a well-spent life should be brightened, ere its close, by the commendation, "Well done, good and faithful servant." The utterances of approval are more timely now than if postponed till sorrow tempered them. Better is it to say to the living, "thou art worthy of honor," than to reserve the recognition for eulogy and mausoleum.

For thirty years have respect and friendship, formed in school-boy days at Cooperstown, grown stronger, and with them both is mingled an affection which, today, finds cause for regret that professional intercourse must henceforth cease. For many repeated words, kindly suggestive of patience, hope and promise, I am to-day the debtor of him in whose honor we are gathered here. Therefore it is that I appreciate the privilege of acknowledging my obligations, and of uniting with those who are here assembled, to testify to him the high regard in which he has been held by those among whom his lifetime has been spent.

No one feels more grateful than I do, that we are not assembled here as a brotherhood in mourning, but to testify our affectionate regard for one who still lives, as is so felicitously stated in the address, "to enjoy the happy consciousness that his life has been faith fully and eminently devoted to the highest duties of human society."

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It is not necessary that one should have passed away to insure an example worthy of emulation. There are three characteristics of Mr. Justice Nelson, which conspicuously marked his judicial career, and which may be mentioned in his lifetime without trenching upon propriety, as worthy of observance. They are his calmness, courtesy and dignity.

His calmness was imperturbable, and never deserted him. Procrastination and ignorance could not disturb it. Ill temper could not ruffle it. It held himself in check, and restrained the ebullitions of others. It permeated the atmosphere of the forum, and insured confidence and decorum.

His courtesy was natural, and therefore always manifest. It insured a patient hearing; and its silent influence, teaching by example, secured the courtesy of all. If it failed in so doing, a kindly word from him restored the broken harmony.

His dignity was his own, not borrowed. It was nature's outward clothing of the gentleman within. It repelled familiarity, as it forbade insult, and it imparted itself alike to counsel, witnesses and jurors. It "grew with his illustrious reputation, and became a sort of pledge to the public for security."

These three qualities are said to have been the attributes of Lord Mansfield, but his biographer assures us, "that he had a serious defect, a want of heart." No biographer of Samuel Nelson will ever make that charge against him. Contemporaries and tradition will alike refute it. That he has a large heart filled with human kindness, those who knew him best can best attest. It acted like a magnet in the court room, and drew from every one respect, which, longer continued, ripened into affectionate regard. It insured for the younger members of the Bar a manifestation of attention, precisely equal to that which was bestowed upon older and more able advocates. It sympathized with nervous inexperience, and was itself too tender to wound by biting sarcasm or harsher jest. It could be just to one not liked; more than that — it could be just to a friend, and in so doing, rise superior to apprehensions of possible hostile comment.

Of his logical understanding, quick perception, judicial abilities and juridical knowledge, there is no occasion now to speak. They are evidenced for ourselves and for posterity in the "Reports," and need no encomium now.

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I never heard but one criticism upon his conduct as a judge, and that was the old one made of a celebrated English judge, that “he did not dispatch matters quick enough.” This complaint is to be answered now, as it was answered when made two hundred years ago: “But the great care he used to put suits to a final end, as it made him slower in deciding them, so it had the good effect that causes tried before him were seldom, if ever, tried again.” When they were decided, whether verbally or in writing, the decision was couched in a few apt and expressive words, for he seemed to believe in the maxim of Lord Bacon, that “a much-speaking judge is not a well-tuned cymbal.”

Our regret here to-day is, that he will no longer preside among us; that he has asked for his “writ of case,” and to be relieved from the duties of his office, and almost in the language of one of the Chief Justices of England, addressed to Charles II., because “he could not, in good conscience, continue in it since he was no longer able to discharge the duty belonging to it.”

In his retirement, so honorably sought, he carries with him the respect, the veneration, and the affection of that Bar which knew him best.

Mr. President, when Sir Matthew Hale died, his friend Baxter purchased a Bible, in which he placed a print of the deceased judge, and underneath it he wrote these words:

“Sir Matthew Hale: That pillar and basis of justice, who would not have done an unjust thing for any worldly prize or motive, entered on, used, and voluntarily surrendered his place of judicature with the most universal love, and honor, and praise that ever did English subject in this age, or any that just history does record.” What was true of England’s most venerated Chief Justice is equally true now of New York’s most venerated Judge.

Professional ties are broken here to-day never to be reunited. Those of friendship still remain, and across them, as across the cable, we send our New Year’s greeting to our retired Chief in his country home, with our benedictions for his instruction and example. We can see the frosts of eighty years gathering upon his honored brow. It is our gratification, as it is his, to know that their whiteness and purity are rivaled by his judicial robes, worn for half a century, without spot or blemish.

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In seconding the motion for acceptance, William M. Evarts spoke as follows:

It is our expectation, Mr. Chairman, that appropriate committees will be appointed to present this address to Judge Nelson, in the name of his brethren at the Bar, to the United States Circuit Court of this District, and to the Supreme Court at Washington, and in connection with the address and with these dispositions of it, appropriate to our feelings and our duty, I may be permitted to say a few words. When you notice that in the year 1821, Judge Nelson was a member of the constitutional convention of this State, and that in the year 1871 he was a member of the great diplomatic body which disposed of all differences between Great Britain and his own country, you have included, as between the points of the compasses, a great span, I will not say in the life of a man, but in the life of this nation. And, in naming these two great public trusts that he has discharged, you have exhausted the list of all his public duties, all his public services, and all his public honors that do not belong exclusively to the profession of the law and the distinctions of the judiciary. Now, we must consider how large a combination of what constitutes the fame of very many celebrated men is united in the fame and the services of Mr. Justice Nelson. As the address has noticed, while exhausting the honors and filling out the services of the highest judicial stations of the State, he justly earned, by the manner in which he discharged these great duties, a place by the side of the most eminent lawyers and judges whom the State has produced. From the moment that he was transferred to the Federal judiciary, until his retirement, the general judgment, not only of this Bar and of this community, but of the Bar of the United States, and the sense of the country at large, confirm his position as on a level with that of the most celebrated judges of the nation. Again, if we compare him with those who have gained great fame, among ourselves or in the mother country, in the different departments of the law – as common law judges, as equity judges, as admiralty judges – who is there but must concede that in the number of his causes, in the magnitude of his judgments, in the wide comprehension of the principles which he applied in *each* of these different departments of the law, he stands now, in his old age,

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to be compared with such masters in those separate departments as Sir William Scott, Lord Eldon, Lord Mansfield, Dr. Lushington, Kent, Spencer, Tilghman and Shaw. We find also, in this extraordinary life, no defect apparent, and nothing wanting. We mark a collective force and strength of varied and prolonged service and of sustained credit in his career which are not to be conceded to any single life of judicial distinction either in England or with us. He had, by the lofty discharge of the great trusts confided to him, in the language of Lord Bolingbroke, “built up about him that opinion of mankind, which, fame after death, is superior strength and power in life.” Wherever he moves, in whatever attitude he is regarded, these traits of dignity and force of character must always be accorded to him.

My own personal observation, Mr. Chairman, covers the whole period of Judge Nelson’s services in the judiciary of the nation, and carries me back through a few years of his latest service as Chief Justice of this State. He signed the warrant for my practice as an attorney. My first knowledge of him, probably, was at the term of the Court at which I received it, and, subsequently, during the three or four years while he remained on that Bench, I had the good fortune to make his personal acquaintance, and the honor to make arguments before him in several suits. I argued, I think, before him one of the very first causes of much importance after he took his seat here, in the Circuit Court of the United States, being a re-argument of a cause which I had argued before Judge Thompson, and his death had left undecided. From that time to this, in New York, in Vermont, and at Washington, socially and professionally, I have enjoyed his kind friendship, and he has ever been present to my personal and professional admiration.

Mr. Chairman, Archbishop Whately, in his Notes to Lord Bacon’s Essays – which, I believe, scholars and moralists regard as a not unworthy commentary on so celebrated a text – has drawn a contrast between the relations to the community of a great lawyer and of a great judge, that is more pointed than it is flattering to those of us who adhere to the Bar – more pointed, perhaps, than is just. He says, in substance, for I quote only from distant memory, that when a preeminently great advocate dies, or is withdrawn from the service of the law, it by no

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means follows that the public or the administration of justice thereby suffers a loss. For, as he suggests, the great interests of society demanding, and the whole judicial establishment existing for, the perfection of the administration of justice among men, where an advocate has so far outgrown his fellows as greatly to overmaster them by his eloquence, by his learning, by his will, by his fame, and, so, suitors find at their service no equal weight to throw into the scales of justice against him, perhaps the community, instead of losing, gains something by the subtraction of this disturbing force. But, this critic adds, with regard to a great and eminent judge there arises no such question. His talents, his powers, his authority, his name, his fame, are wholly committed to the general interests of the whole community, and when he is withdrawn from the scene of his labors, and from their beneficent distribution and activity, it is, for the moment, as if the sun were taken from the heavens. Do we not all agree that if this be true of any judge, it is true of Judge Nelson?

Now, Mr. Chairman, may we not all be permitted to feel, at this point in this remarkable life, and before the end, death, has set its coronation to its illustrious work, that we may assign to Judge Nelson a place by the side of Eldon and Mansfield, of Kent and Spencer, of Shaw, of Marshall, and Taney, among those who share the lustre of the Homeric eulogy of men “renowned for justice, and for length of days.” Indeed, sir, in face of the classic caution against premature judgment, we still fear no imputation of rashness in pronouncing *this* life fortunate, although it has not reached its close.

The Address presented by the committee having been adopted, it was then resolved, on motion of Edwards Pierrepont, that it be signed by the officers of this meeting, and presented to Mr. Justice Nelson. The following Committee of Presentation was appointed by the President:

EDWARDS PIERREPONT, EDWIN W. STOUGHTON, CLARENCE A. SEWARD, EDWARD H. OWEN, CHARLES M. KELLER, WILLIAM M. EVARTS, SIDNEY WEBSTER, THOMAS C.T. BUCKLEY, JOSHUA M. VAN COTT, JOHN E. WARD, SAMUEL L.M. BARLOW, AARON J. VANDERPOEL, JAMES THOMSON, AUGUSTUS F. SMITH, JOHN SHERWOOD.

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It was then moved by Edwin W. Stoughton, that a committee be appointed by the President to present the Address and the proceedings of this meeting to the United States Circuit Court for the Southern District of New York.

An amendment thereto was offered by Clarence A. Seward, that the President of this meeting be Chairman of this Committee, which having been put to vote by Mr. Seward, and accepted by the meeting, and the original motion having been adopted, the President, in pursuance thereof, added the following gentlemen as members thereof:

JAMES W. GERARD, JOHN MCKEON, DANIEL D. LORD, BENJAMIN D. SILLIMAN, JOSEPH H. CHOATE, STEPHEN P. NASH, JAMES C. CARTER, CHARLES DONOHUE, GEORGE BLISS, JR., CHARLES M. DA COSTA.

A motion of William M. Evarts was then adopted, that a committee be appointed by the President to present the Address and the proceedings of this meeting to the Supreme Court of the United States at Washington; and the following gentlemen were appointed to form such committee:

WILLIAM M. EVARTS, EDWARDS PIERREPONT, EDWIN W. STOUGHTON, GEORGE TICKNOR CURTIS, SAMUEL J. TILDEN, GEORGE GIFFORD, CHARLES M. KELLER, CHARLES F. BLAKE, SIDNEY WEBSTER.

John K. Porter moved that a committee be selected by the President, of which Edwin W. Stoughton be chairman, to present the Address and proceedings of this meeting to the Court of Appeals of the State of New York, at Albany, which having been carried, a subsequent motion was made by Mr. Porter and adopted, that the Chair be authorized to name the members of this committee after the adjournment of this meeting. The following gentlemen were subsequently selected by the President:

EDWIN W. STOUGHTON, JOHN K. PORTER, FRANCIS KERNAN, LYMAN TREMAIN, SAMUEL HAND.

On motion of George Gifford, the meeting adjourned.

CHARLES O'CONOR, *President*.

SIDNEY WEBSTER, *Secretary*.

PRESENTATION OF THE ADDRESS.

In fulfillment of the agreeable duty imposed upon the Committee appointed to present the foregoing Address, Mr. Stoughton, Mr. Seward, Mr. Owen, Mr. Keller, Mr. Webster, Mr. Buckley, Mr. Vanderpoel and Mr. Thomson, waited upon Mr. Justice Nelson at his residence in Cooperstown, on Wednesday, the 12th day of February, 1873. The Committee invited the Circuit and District Judges of the Federal Courts for the Second Circuit to accompany them as their guests; and all were able to accept the invitation except Judge Shipman, who was occupied in holding the Circuit Court, in the Southern District of New York, and Judges Hall and Smalley.

Mr. Justice Nelson informed the Committee that he would be pleased to receive them and the Judges in his house at two o'clock. The attendance of Mr. Pierrepont, the chairman of the Committee, having been prevented by illness, Mr. Stoughton was chosen in his place, and introduced the Committee, and the purpose of its presence, by the following remarks:

Honored Sir:

We appear before you to-day as a Committee of the Bar of the Second Circuit, appointed at a large meeting of the members thereof, lately held in the city of New York, for the purpose of taking action upon your retirement from the Bench of the Supreme Court of the United States, after an uninterrupted judicial service of nearly fifty years. That meeting was presided over by the leader of the Bar, Mr. Charles O'Connor, and the members of the Bar composing it, unanimously adopted an Address, which, with their entire proceedings, as there recorded, they have instructed the Committee to present to you. We are here to discharge that agreeable duty. We are here upon a mission of deep interest to the Bar we represent, and, as we believe, to the Bench and to the country. To the Bar, because it owes to you reverence and honor for your long, unwearied service in encouraging and instructing them; to the Bench, because it is your debtor for the noble judicial example you have recorded for its guidance; to the country, because you deserve its gratitude for the devotion of your life to its service, in the performance of duties the most

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arduous and the most useful which man can perform for his fellow-man. That distinguished members of the Bench share these sentiments with us, is illustrated by the appearance before you upon this occasion, of Judges Woodruff, Blatchford, and Benedict, whose reputations have already become national, and who, laying aside other pressing engagements and duties, have come to you from afar, at this inclement season of the year, to manifest by their presence the interest which they feel in this most unusual ceremony. The other Federal Judges of the Circuit in which you so long administered justice would have also been here, had not imperative engagements elsewhere prevented, as they have signified by letters which this Committee will hand you. The Committee regret that the sudden illness of their chairman, Judge Pierrepont, has prevented his attendance here. In consequence of this, he who addresses you has been appointed in his place; and now, in discharge of the duty imposed upon the Committee, we read to you the Address of the Bar, which we are instructed to present.

Mr. Stoughton here read the Address, and in delivering it to Judge Nelson, with a copy of the proceedings of the meeting, added:

In delivering this to you, as we now do, we tender to you our most heartfelt respect and reverence.

Judge Woodruff, of the Circuit Court, then addressed Mr. Justice Nelson as follows:

The members of the Bench of the Circuit over which, Honored Sir, you have so long presided, desire to express their cordial concurrence in the sentiments of the Address tendered to you by the Bar of that Circuit.

So truthfully and so well those sentiments are expressed in that Address, that we should weaken its force and gracefulness, and diminish the pleasure of this occasion, if we were to attempt a reiteration, on our own behalf, of what has been there stated. As members of the Bench, we may however add, that your long experience and the learning and wisdom you have brought to the discharge of the duties of your high position have lessened our labors, enlightened our understandings, eased the burthen of our responsibilities and greatly furnished us for the performance of the duties we have yet to discharge; which we have to discharge, I

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regret to say, without the present aid, counsel and advice we should receive from you had you deemed it wise to continue in the position from which you have now retired.

Your learning has instructed us; your example has stimulated and encouraged us to a higher estimate of judicial worth, and has awakened a nobler ambition to do what belongs to our several duties so as to gain a kindred, though it be a humbler, appreciation when our work shall be finished.

By that example our pathway is made luminous, and the grace and dignity which adorn the judicial office is constantly presented to us. A judicial life of fifty years! marked, all along its array of days and months and years, by learning, integrity and a pure conscience, and by the honor, respect and confidence of your fellow-men. Our sincerest wish can offer to you no higher or warmer expression of our admiration and regard than the earnest prayer that we may be able, in our stations, to deserve some reasonable proportion of the esteem now so justly and so cordially felt for you.

I have, further, only to say: may the days be yet many in which you shall go in and out before us in reverence and in honor. May your last days be your best days; and may they be crowned with that reward which is the true aspiration and the blessed hope of a Christian life.

Mr. Justice Nelson made the following reply:

Gentlemen of the Committee:

I cannot but feel extremely honored by this Address of my brethren of the Bar on the occasion of my retirement from the Bench, not more from the friendly and complimentary opinions therein expressed than on account of the unusual and extraordinary mark of respect and affection with which it has been presented; and I am the more deeply impressed with this manifestation from the consideration that the gentlemen of the Bar who have originated and promoted this honor, some of whom are before me, have been themselves not only eye-witnesses of the judicial administration which they so favorably commend, but in which many of them largely participated in their professional capacity. I shall ever recur to the sessions of the United States Circuit Court held in the city of New York, extending over a period of more

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than a quarter of a century, with pride and pleasure. The calendar was large, and many of the causes important, involving great labor and responsibility. As an evidence of the magnitude of the business for many years, the Court was held three months in the Spring and three in the Autumn of the year, and still left an unfinished calendar. But the gentlemen of the Bar concerned in the trials were intelligent, faithful to their clients and to the Court, whose learning and diligence in the preparation greatly relieved the Judge of his labors, and whose professional deportment and respect banished from the Court room every disturbing element, leaving free the full and undivided exercise of the faculties of Court and counsel in their inquiry after the truth and justice of the case. No one knows better than the presiding Judge how essential this state of feeling between the Bench and the Bar is, not only to the case and pleasure, but to the sound and successful administration of the law. I have said that the gentlemen of the Bar who have originated this unusual honor have been eye-witnesses of the judicial services so highly commended. On the other hand, I can say that I have witnessed their professional career from the beginning, and until their present eminence, many of whom hold my license to practice when Chief Justice of the Supreme Court of the State. The eminent chairman of the meeting, Mr. O'Connor, the eldest of them, is scarcely an exception. The first session of the Supreme Court of the State, after my appointment as Associate Justice, was the May Term of 1831, held in the city of New York, more than forty-one years ago. He was then a young counselor, just rising in the profession. He held a good many briefs in cases before the Court from the young attorneys, and was struggling upward, manfully and with youthful ardor, contending for the mastery, against the aged and elder counselors at the Bar – Jay, Ogden, Colden, Munroe, the elder Slosson, Sherwood, Anthon, Duer and others, who then held almost a monopoly of the business before the Courts. The prevailing impression had been, and to a qualified extent was then, among the junior members of the Bar, that the experienced seniors had the ear of the Court. This, according to tradition among them, had been undisguisedly so, and to a much larger extent, before the old and revered Supreme Court of the State. But even at the time I speak of, this feeling in the Court, and which was perhaps not unnatural, had not entirely disap-

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peared. It required, therefore, ability, courage, and resolution on the part of the junior to encounter this impression, which he must in some degree have felt in the trial of strength against the experienced and favored senior. In the country where I have always resided, Talcott, a young counselor, remarkable for intellectual power and legal learning at his age, led the way, under some discouragements in the trial and argument of causes before the Circuits and *in banc*. Other juniors, taking courage from his example, followed. He was afterward Attorney-General of the State, the youngest counselor, I believe, ever appointed to that office in New York at the time, with, perhaps, the exception of Josiah Ogden Hoffman, among the earliest of the Attorney-Generals. I was still young when advanced to the Bench of the State, and, as was perhaps natural, my sympathies inclined toward the younger members of the Bar struggling upward and onward in their profession, and as far as was fit and proper, they had my favorable consideration and kindness. I would do injustice to my feelings and convictions if I closed these few observations without making my acknowledgments to the Bar of the Second Circuit, of my great indebtedness to them for any judicial standing to which I may be entitled. Since my first advancement to the Bench, nearly half a century ago, I have had their uniform good-will and friendship, have been instructed by their learning and encouraged by the expression of their favorable opinions. They have ever been not only ready but forward to economize and lighten the labors of the Court when the amount of the business pressed the hardest, even at the expense of their own personal convenience. So uniform and habitual were these exhibitions of respect and friendship, that I felt, when in Court and engaged in the administration of the law, that I was surrounded, not in courtesy, but in reality, by professional brothers, and that every error would be charitably considered and every act worthy of commendation would receive its full reward. This Address of the Bar of New York on the termination of my judicial labors, and in approbation of them, I look upon as the crowning reward, which will be a source of perpetual consolation in the decline of life, and so long as a kind Providence shall permit the speaker to linger here on earth in the enjoyment of faculties unimpaired.

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New York, February 15th, 1873.

EDWIN W. STOUGHTON, Esq.

Dear Sir:— We beg that you will accept for yourself, and make known to your associates of the Committee of the Bar, our grateful acknowledgments for the thoughtful courtesy which prompted the invitation to us to accompany them, as guests, on their visit to Cooperstown, and for the kind attentions which we received at their hands during the trip. It will always be to us a gratifying remembrance that we were permitted to participate in the ceremonies of the occasion, and to join in a tribute of respect to the venerated magistrate, whose public services we so highly appreciate and whose private friendship we have so long enjoyed.

We are, with great respect,

Very sincerely Yours,

L.B. WOODRUFF,
CHAS. L. BENEDICT,
SAM'L BLATCHFORD.

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