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THE FEDERAL REPORTER.
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IN THE
CIRCUIT AND DISTRICT COURTS
OF THE
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RETIREMENT

OF THE

Honorable Samuel TREAT,
JUDGE U. S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI, FROM THE BENCH,
AND THE INAUGURATION OF HIS SUCCESSOR, THE HON. AMOS M.
THAYER.

MARCH 5, 1887.

ADDRESSES BY JUDGES TREAT, THAYER, AND BREWER.

Judge TREAT'S address was as follows:

All persons present are aware that this is the last hour of my long official life. In disappearing from the bench, I wish to express my profound gratitude to the living and the dead of bench and bar, state and federal, through whose generous aid I have gone forward in my judicial work for now nearly 38 years. Without such aid my life might have been a failure. I have had to lead the way in many untried paths of jurisprudence, the record of which, for good or ill, is now closed. Never through fear or favor have I suffered justice to be perverted. Errors have been committed, but not through passion, partiality, or cowardice.

The contest for public and private rights are not determined amid the carnage of battlefields alone, but more frequently in legislative halls and in the judicial forum. A wise statute or far-reaching judgment often shapes the destinies of a nation; though silently, yet potentially. COKE, at the cost of his judicial life, refused to surrender, under royal behests, his independent judgment. That sturdy independence culminated in the petition of right, the overthrow of royal usurpation, and the incoming of the commonwealth. So, at a later day, the trial of the seven bishops caused the expulsion of the Stuarts, and, through the bill of rights consequent thereon, permanent safeguards of civil and religious liberty. When popular rage sought to overbear the deliberations of the court, MANSFIELD, defiant of such clamor, calmly and courageously pronounced the judgment which law and justice demanded. Are not such scenes, and the leaders in such conflicts, as worthy of commemoration as if they had fought with Cromwell at Naseby, or Wellington at Waterloo?

This is not the hour to trace the growth of the law, and its many changes

through legislation or otherwise. Though often impeded by obstructive and unwise legislation, the judicial mind has ultimately to control. Every judge of the supreme court of this state and of the local bench who were in office when I commenced my first judicial labors; every justice of the United States supreme court, and of the district courts, save three, when I passed to the United States bench; all of my contemporaries at the bar, except a favored few,—have gone to that “bourne whence no traveler returns.” Those who survive patiently await the inevitable. One after another has fallen, and others must fall by the way, as the “innumerable caravan” moves forward. It has been my painful yet grateful duty to pronounce from the bench just tributes to the memory of those who, from year to year, have been numbered among the departed. To-day, officially, I join the departed, and invoke the charity implied in the well-cherished maxim, “*De mortuis*,” etc., which, liberally interpreted, reads, “Speak no ill of those who are gone.” The elder members of the bar will call to mind from the portraits in yonder court-room those who have been with me in my arduous labors. First was Justice CATRON of the United States supreme court, “*clarum et venerabile nomen*.” Next, the still living justice allotted to this circuit, whose judgments have been treasures of wisdom, and whose opinions on the supreme bench have shown a strength of learning and forecast which, as I well know, have commanded the admiration, not of this country alone, but also of all cognate judicial tribunals abroad where free government obtains. As associates, on the district bench, I had at first the learned, wise, and experienced judge, ROBERT W. WELLS, who was followed in office by one whom you all honor, and who still is with us, ARNOLD KREKEL. Under the changed conditions of judicial organization, came United States circuit judges: First, that wise, learned, and honored judge, JOHN F. DILLON, followed by GEORGE W. MCCRARY, equal to all the high demands of his great office; then our present circuit judge, “*non longo intervallo*,” who favors us with his presence at this hour, and whom you all know and honor. His predecessors have been forced from their high position through inadequate compensation, as others have been. Now may it so be that those Who remain or succeed are not to be starved into retirement when the needs of public and private justice demand such able and wise judges for the conservation of whatever is dearest and best to each and all in every department of life. He will administer the oath of office to my successor, which terminates my official career, and I congratulate my successor that so able and worthy coadjutors will be with him in the consideration of the many important questions to be presented for their determination.

With gratitude and thanks to each and all who have aided in my important labors, I request the same measure of kindness and fidelity for my successor, who you know is eminently worthy in all respects of the high trust committed to him.

May I cause to be read for my last official words the following communication, which has touched me profoundly:

“DEPARTMENT OF JUSTICE, WASHINGTON, February 26, 1887.

“SIR: I am directed by the president to acknowledge the receipt of your letter of the seventeenth inst., tendering your resignation of the office of United States district judge for the Eastern district of Missouri, to take effect on the fifth day of March proximo, and, at the same time, to express his regret that the public are now to lose your valuable services, and his earnest hope that the retirement upon which you are about to enter may be marked by the tranquillity and happiness Which all who love justice and good government wish may attend the able and upright judge when he lays down his office. I am, with great respect, your obedient servant.

“A. H. GARLAND, Attorney General.

“To Hon. Samuel Treat, United States District Judge, St. Louis, Mo.”

I remain here, at this last moment, only to witness the introduction into office of my honored successor, and, on surrendering my high trust into such faithful hands, to express the devout wish that he and his colleagues may, with continuing strength and ability, and also with increasing happiness, not pass away until at least 30 years to come measure their official life.

At the conclusion of Judge TREAT'S address, Judge THAYER arose, and the oath of office was administered to him by Judge BREWER. After administering the oath, Judge BREWER said:

AMOS M. THAYER, I salute you as judge of the United States district court for the Eastern district of Missouri. In so doing I can express no higher wish than that, in the discharge of your duties as such judge, you manifest the same loyalty to your convictions, the same purity of judicial life, the same fidelity, unswerved by popular clamor, whether of demand or threat, the same wise knowledge of the broad, enduring principles of law and justice, and the same diligence and devotion to the duties of your office, that have so eminently characterized your predecessor.

Col. JAMES O. BROADHEAD then presented to the court, on behalf of the bar of St. Louis, a portrait of Judge TREAT and delivered an eulogistic address.

Judge THAYER accepted the gift on behalf of the court in the following words:

GENTLEMEN OF THE BAR: It is with great pleasure that I accept, on behalf of this court, the admirable portrait of the distinguished judge who has just left his seat on this bench, having committed to younger but less experienced hands the trust which he has so long and faithfully discharged. Without this portrait to adorn its walls, Judge TREAT'S influence would long be felt in this court-room, where so much will always remain to perpetuate his memory; nevertheless the feeling on the part of the bar which has prompted your action must commend itself, not to the legal profession alone, but to every citizen who feels an interest in the honest and fearless administration of justice. Your gift is expressive of reverence for the law, and of gratitude to one who has courageously, impartially, and wisely administered it. I need not say, gentlemen, how heartily I sympathize with the feeling which has inspired your action, and how cordially I approve your desire that one who has so long presided in this court may, through portraiture, be ever present as an encouragement and example to his successors.

Judge TREAT'S term of judicial service covers a period so memorable in the history of the country, and in the growth of law, that it is impossible, in a few words, to speak fittingly of his most notable official acts; nevertheless I deem it proper on this occasion to supplement what has already been said by a brief reference of my own to some of his important services to the profession and to the community. As a *nisi prim* judge on the state bench, it was his duty, under adverse influences, to make almost the first practical trial of the new Code of Procedure in this state, without the aid of text-books or previ-

ous adjudications. During his period of service on that bench, rights of property involving many titles to realty in this city and the adjoining county were also in litigation. It became his duty to explore French and Spanish law, and to determine how, under changes of government, treaties, and acts of congress, individual right was to be ascertained and established. How well the task was performed other persons have borne witness; but the many anxious hours spent in laborious examination of the complicated questions involved are known only to the judge himself, and to those members of the profession who are familiar with such labors Fortunately for those who succeed

him, the beneficent growth of law, and the shifting conditions of judicial service are such, that the questions of real-estate law, which then taxed bench and bar to the utmost, have in great part been solved, and have almost disappeared from the court as matters for serious debate.

When the supreme court of the United States, after years of contention, decided that admiralty and maritime jurisdiction under the constitution was not limited to tide-waters, but extended "wherever navigation successfully aided commerce," and hence covered our great inland lakes and rivers, this court was created, and Judge TREAT, as its first judge, was called to a new field of judicial duty. It so happened, from the geographical location of the court, that in most every instance a new pathway had to be explored and marked out to successfully apply the principles of maritime law as enforced on the high seas to inland navigation and commerce. No man was better fitted for that difficult task than Judge TREAT. He understood perfectly how to mould principles to meet the necessities of the place and the occasion, and thus give effect to the reason and spirit of the law rather than to its letter.

Following closely upon his accession to the district bench came the many grave responsibilities and bitter questions occasioned by civil strife. In this jurisdiction an unknown and difficult course had to be pursued by the judiciary. The passions of the hour, bearing first in one direction and then in the other, tended mainly to the overthrow of civil law, with all which that implies. The judge of this court had daily to pass upon complicated questions, new in all their aspects, growing out of non-intercourse and confiscation acts, and oftentimes to interpose the strong authority of the bench against influences which tended to the disregard of some of the most cherished constitutional safeguards. Of Judge Treat's record during that eventful period it is all sufficient to say that he never swerved from the straight line of duty as a judge, through the pressure of circumstances, or through cowardice or favor.

The establishment, as an incident of that war, of a system of internal revenue bearing directly on all of the leading industries and business interests of the country, led to the enactment of an elaborate code of laws, and to the invention of machinery for their enforcement with which the public, and even the legal profession, were very generally unfamiliar. Into this new field of litigation it was Judge TREAT'S fortune to lead the way. Very few persons, I apprehend, who have not made a study of that branch of the law, can form an adequate conception of the labor devolved on the judge of this court in familiarizing himself with the many provisions of those statutes, and in mastering the details of minute and complex treasury regulations. It is a matter of public history that those statutes imposed greater burdens of litigation on the federal court of this district than on any other tribunal throughout the country, and that prosecutions here were more numerous, and excited, both here and elsewhere, a most absorbing public interest. In the presence of so

many lawyers who were daily witnesses of the proceedings to which I allude, it is unnecessary for me to pass any comments upon the masterful manner in which Judge TREAT discharged the labors and responsibilities incident to that legislation.

Next, in order of time, came the bankruptcy system, with all of its cumbersome and ill-digested provisions, which daily taxed the powers of the court to make Out of chaos some well-defined rules for the determination of the respective rights of debtor and creditor. With great credit to himself, and with vast benefit to the public, Judge TREAT supervised the proceedings under that law from its adoption to its repeal, and the fruit of his labor has been preserved for the advantage of those who will succeed him, if like legislation shall be hereafter repeated.

This brief sketch of some of Judge TREAT'S important labors on the bench of this court would be incomplete if I failed in conclusion to mention his services

to the public and to the profession in the domain of patent and commercial law. In patent cases his decisions for years have commanded as great, if not greater, consideration at the hands of the profession as those of any other *nisi prius* judge on the federal bench; while in the department of commercial law he has been conspicuous in moulding its principles and enlarging its scope to meet the necessities of trade and the conditions of the time.

And now, after nearly 38 years spent in the continuous discharge of laborious duties such as have been this morning only partially described, he retires from the bench to engage in less arduous, and, it is to be hoped, in more congenial, labors. His professional brethren in commemoration of the event, and in recognition of his great services and the healthful influence he has had on the jurisprudence of the country, tender this portrait as an ornament to the courtroom wherein he has so long presided. The gift, gentlemen, is gratefully accepted. I know that I but echo the thought of my predecessor on this bench, and of yourselves and of all good citizens, when I express the wish that his portrait may here long remain; that these walls may stand through years to come; and that a long succession of lawyers and judges may here be heard in vindication of right and justice.

Judge THAYER'S speech of acceptance was followed by an address by Judge BREWER, who spoke as follows:

GENTLEMEN OF THE BAR: This is an hour of death and birth. "We bury the dead, and we baptize the new born. The Persians have a pleasant way, on the birth of a babe, of saying: "Oh, little one, you come into life with a cry, while those around you are smiling. So live that when you go out you may go out with a smile, while those around you cry." We say good night to Judge TREAT with tears. We say good morning to Judge THAYER with smiles. While we say good-night to Judge TREAT, and know that his official life is dead, yet the highest form of Christian faith affirms that when we lay down these bodies of ours, these garments of flesh, the real and the true life still goes on, and goes on forever. And so, while the official body of Judge TREAT is dead to-day, the life that he has lived in this city and in this court will never die. When I think of him coming to this city in early years; when I think of all that he has done to affect the legislation of this city and this growing commonwealth; of all that he has done to give tone and character to the judicial and political life of this city and state;" when I think of the influence which he has exerted, which has been so well referred to by the gentlemen who have preceded me, in the various departments of law, in building up that magnificent structure of federal jurisprudence, which obtains throughout the length and breadth of this land to-day, (and in respect to whose growth and perfection he may well say, with the Roman of old, "*Omnia vidi et quorum magna pars fui*,")—when I bring ail these to mind, I feel that he may well say with Tennyson:

"Men may come, and men may go
But I go on forever."

We rejoice to see this painted representation of Judge TREAT adorn these walls; we rejoice to meet in this magnificent building, erected as a temple of justice; but, gentlemen of the bar, long after that picture will have grown dim and faded, and these walls have fallen to the ground, the name and the influence of Judge TREAT will go on through the jurisprudence of this land, and will go on till time shall be no more.

Three times ten years have passed since he was sworn into office, as my Brother THAYER has this day been sworn in. If I might trespass upon your time, and if there were not others far more competent to speak, I could picture the changes that have come during all those years. But I leave that to other tongues. Nor will I, among the many virtues which have been referred to, and others which might be mentioned which have characterized Judge TREAT

during his long judicial career, single out one to commend. And yet, gentlemen, you will pardon me, I trust, if in this day and hour I refer to that which to my mind is in the present exigency the most essential qualification of a judge, and which my Brother TREAT, during his 30 years of service, has manifested in the fullest degree. It is that of glorious loyalty to his convictions; it is that of uplifting his judicial life above every voice of popular clamor, indifferent whether it says yea or nay, but looking only to the single question of, "What is my judicial duty?" And in this day when popular clamor is sweeping over the land, and burying many a weaker man, it is an exceeding comfort to look upon one who, at the close of 30 years of judicial life, can truly affirm, "There never has been a question which I have faced or decided with reference to the applause or the condemnation of any man, or set of men." [Applause.] But, gentlemen, I will not trespass upon your time. While Judge TREAT'S official life is ended, and while, ere the silver cord has begun to loosen, or the golden bowl to shatter, he has returned to the people of these United States the sacred trust committed to his care, and which for 30 years he has held with pure and unstained hand, we all hope that he will remain in this city and state which he has honored during these many years, and that he will give to us all the benefit of his advice and of his example, and I know I shall but voice the sentiment of every true man in this city, and of every true man in the state, when I say to him, in the words of Horace to Cæsar Augustus:

"Serus in coelura redeas, diuque
Letus intersis populo Quirini."

The following letter, from Judge KREKEL, was then read:

KANSAS CITY, March 3d.

John W. Noble and David P. Dyer, Committee—Gentlemen: Your kind invitation to be present on the occasion of the Hon. SAMUEL TREAT retiring and the Hon. AMOS M. THAYER assuming the duties of judge of the United States court at St. Louis has been received. Unavoidably detained, I will not forego the pleasure of speaking a kind word to and of my friend. It was my good fortune on assuming the duties of my office to be introduced to them by my friend Judge TREAT. Our intercourse has uniformly been pleasant, and I profited largely from his experience. I have freely consulted him on all occasions, and have implicit confidence in his knowledge of the law, and, what is more, expounding it in the interest of justice. The people of the United States are largely indebted to Judge TREAT for aiding in the settlement of questions in admiralty and commercial law. Coming from the past to the future, I congratulate our friend, Judge THAYER, as a co-laborer. It is a consolation that in the loss Of an old, we gain in Judge THAYER a new, friend, who, no doubt, will in every way show himself worthy of the high trust' reposed in him. May the occasion of the meeting of the judge and the members of the bar be a pleasant one is the sincere wish of your friend.

KREKEL.

Addresses then followed by Hon. Gov. T. C. REYNOLDS, Gen. JOHN W. NOBLE, CHESTER H. KRUM, Col. D. P. DYER, Mr. HENRY HITCHCOCK, and Mr. D. P. BASHAW, District Attorney.

JUDGES
OF THE
CIRCUIT AND DISTRICT COURTS
OF THE

UNITED STATES.
FIRST CIRCUIT.

HON. HORACE GRAY, CIRCUIT JUSTICE.
HON. LE BARON B. COLT, CIRCUIT JUDGE.
HON. NATHAN WEBB, DISTRICT JUDGE, MAINE.
HON. DANIEL CLARK, DISTRICT JUDGE, NEW HAMPSHIRE.
HON. THOMAS L. NELSON, DISTRICT JUDGE MASSACHUSETTS.
HON. GEORGE M. CARPENTER, DISTRICT JUDGE, RHODE ISLAND.

SECOND CIRCUIT.

HON. SAMUEL BLATCHFORD, CIRCUIT JUSTICE.
HON. WILLIAM J. WALLACE, CIRCUIT JUDGE.
HON. NATHANIEL SHIPMAN, DISTRICT JUDGE, CONNECTICUT.
HON. A. C. COXE, DISTRICT JUDGE, N. D. NEW YORK.
HON. ADDISON BROWN, DISTRICT JUDGE, S. D. NEW YORK.
HON. CHARLES L. BENEDICT, DISTRICT JUDGE, E. D. NEW YORK.
HON. HOYT H. WHEELER, DISTRICT JUDGE, VERMONT.

THIRD CIRCUIT.

HON. JOSEPH P. BRADLEY, CIRCUIT JUSTICE.
HON. WILLIAM McKENNAN, CIRCUIT JUDGE.
HON. LEONARD E. WALES, DISTRICT JUDGE, DELAWARE.
HON. JOHN T. NIXON, DISTRICT JUDGE, NEW JERSEY.
HON. WILLIAM BUTLER, DISTRICT JUDGE. E. D. PENNSYLVANIA.
HON. MARCUS W. ACHESON, DISTRICT JUDGE, W. D.
PENNSYLVANIA.

FOURTH CIRCUIT.

HON. MORRISON R. WAITE CIRCUIT JUSTICE.

HON. HUGH L. BOND, CIRCUIT JUDGE.

HON. THOMAS J. MORRIS, DISTRICT JUDGE, MARYLAND

HON. AUGUSTUS S. SEYMOUR, DISTRICT JUDGE, E. D. NORTH CAROLINA.

HON. ROBERT P. DICK, DISTRICT JUDGE, W. D. NORTH CAROLINA.

HON. CHARLES H. SIMONTON, DISTRICT JUDGE, SOUTH CAROLINA.

HON. R. W. HUGHES, DISTRICT JUDGE, E. D. VIRGINIA.

HON. JOHN PAUL, DISTRICT JUDGE, W. D. VIRGINIA.

HON. JOHN J. JACKSON, DISTRICT JUDGE, WEST VIRGINIA.

FIFTH CIRCUIT.

HON. WILLIAM B. WOODS, CIRCUIT JUSTICE.

HON. DON A. PARDEE, CIRCUIT JUDGE.

HON. JOHN BRUCE, DISTRICT JUDGE, M. AND N. D. ALABAMA.

HON. HARRY T. TOULMIN, DISTRICT JUDGE, S. D. ALABAMA.¹

HON. THOMAS SETTLE, DISTRICT JUDGE, N. D. FLORIDA.

HON. JAMES W. LOCKE, DISTRICT JUDGE, S. D. FLORIDA.

HON. HENRY K. McCAY, DISTRICT JUDGE, N. D. GEORGIA.²

HON. WILLIAM T. NEUMAN, DISTRICT JUDGE, N. D. GEORGIA.³

HON. EMORY SPEER, DISTRICT JUDGE, S. D. GEORGIA.

HON. EDWARD C. BILLINGS, DISTRICT JUDGE, E. D. LOUISIANA.

HON. ALECK BOARMAN, DISTRICT JUDGE, W. D. LOUISIANA.

HON. ROBERT A. HILL, DISTRICT JUDGE, N. AND S. D. MISSISSIPPI.

HON. CHAUNCEY B. SABIN, DISTRICT JUDGE E. D. TEXAS.

HON. A. P. MCCORMICK, DISTRICT JUDGE, N. D. TEXAS.

HON. E. B. TURNER, DISTRICT JUDGE, W. D. TEXAS.

SIXTH CIRCUIT.

HON. STANLEY MATTHEWS, CIRCUIT JUSTICE.

HON. HOWELL E. JACKSON, CIRCUIT JUDGE.

HON. JOHN WATSON BARR, DISTRICT JUDGE, KENTUCKY.

HON. HENRY B. BROWN, DISTRICT JUDGE, E. D. MICHIGAN.

HON. HENRY F. SEVERENS, DISTRICT JUDGE, W. D. MICHIGAN.

HON. MARTIN WELKER, DISTRICT JUDGE, N. D. OHIO.

HON. GEORGE R. SAGE, DISTRICT JUDGE, S. D. OHIO.

HON. D. M. KEY, DISTRICT JUDGE, E. AND M. D. TENNESSER.
HON. E. S. HAMMOND, DISTRICT JUDGE, W. D. TENNESSER.
SEVENTH CIRCUIT.

Hon. JOHN M. HARLAN, CIRCUIT JUSTICE.
HON. WALTER Q. GRESHAM, CIRCUIT JUDGE.
HON. HENRY W. BLODGETT, DISTRICT JUDGE, N. D. ILLINOIS.
HON. SAMUEL H. TREAT, DISTRICT JUDGE, S. D. Illinois.¹
HON. WILLIAM J. ALLEN, DISTRICT JUDGE, S. D. OHIO.²
HON. WILLIAM A. WOODS, DISTRICT JUDGE, INDIANA.
HON. CHARLES E. DYER, DISTRICT JUDGE, E. D. WISCONSIN.
HON. ROMANZO BUNN, DISTRICT JUDGE, W. D. WISCONSIN.

EIGHTH CIRCUIT.

HON. SAMUEL F. MILLER, CIRCUIT JUSTICE.
HON. DAVID J. BREWER, CIRCUIT JUDGE.
HON. HENRY C. CALDWELL, DISTRICT JUDGE, E. D. ARKANSAS.
HON. ISAAC C. PARKER, DISTRICT JUDGE, W. D. ARKANSAS.
HON. MOSES HALLETT, DISTRICT JUDGE, COLORADO.
HON. OLIVER P. SHIRAS, DISTRICT JUDGE, N. D. IOWA.
HON. JAMES M. LOVE, DISTRICT JUDGE, S. D. IOWA.
HON. C. G. FOSTER, DISTRICT JUDGE, KANSAS.
HON. RENSSELAER R. NELSON, DISTRICT JUDGE, MINNESOTA.
HON. SAMUEL TREAT, DISTRICT JUDGE, E. D. MISSOURI.³
HON. AMOS M. THAYER, DISTRICT JUDGE, E. D. MISSOURI.⁴
HON. ARNOLD KREKEL, DISTRICT JUDGE, W. D. MISSOURI.
HON. ELMER S. DUNDY, DISTRICT JUDGE, NEBRASKA.

NINTH CIRCUIT.

HON. STEPHEN J. FIELD, CIRCUIT JUSTICE.
HON. LORENZO SAWYER, CIRCUIT JUDGE.
HON. OGDEN HOFFMAN, DISTRICT JUDGE, N. D. CALIFORNIA.
HON. E. M. ROSS, DISTRICT JUDGE, S. D. CALIFORNIA.
HON. GEORGE M. SABIN, DISTRICT JUDGE, NEVADA.
HON. MATTHEW P. DEADY, DISTRICT JUDGE, OREGON.

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¹ Qualified January 29, 1887.

² Deceased.

³ Qualified August 13, 1886. Appointed to fill vacancy occasioned by death of Hon. HENRY K. McCAY.

¹ Deceased.

² Qualified April 18, 1887. Appointed to fill vacancy occasioned by death of Hon. SAMUEL H. TREAT.

³ Retired.

⁴ Qualified March 5, 1887. Appointed to fill vacancy occasioned by retirement of Hon. SAMUEL TREAT.