

MEMORIAL ADDRESS
ON THE OCCASION OF THE PRESENTATION OF THE PORTRAIT
OF
JUSTICE AARON ASHLEY FLOWERS SEAWELL
TO
THE SUPREME COURT OF NORTH CAROLINA

By FRANK P. GRAHAM

In the unveiling of this portrait of the late Associate Justice, A. A. F. Seawell, in which the artist, W. C. Fields of Cumberland, has caught the likeness, character and spirit of the man, we would in grateful memory briefly recall his life and services to the people of North Carolina. In the making of the man were the physical and spiritual robustness of the stock from which he came, the self-reliant democracy of the community in which he grew to manhood and the issues of the stirring times in which he lived and struggled for the better life of the people.

From These Roots

Aaron Ashley Flowers Seawell, son of Aaron Ashley Flowers Seawell, was born in that part of Moore County, now Lee County, on October 30, 1864. He came from God-fearing pioneer stock whose self-reliance and independence of spirit are a robust and common part of the epic story of the making of America. His grandfather was Jessie Seawell, a stonemason and Baptist preacher whose sermons on Sundays were as rugged as the stones he fashioned on the days between. Steeped in the Old and New Testaments, he gave his children Biblical names. The name Aaron was the first name of one of his sons, from whom the name descended in full force to his son, grandson and great grandson.

We find ancestral Seawells with three different spellings, Sewell, Sewall and Seawell in 17th century Massachusetts, one of whom was Judge Samuel Sewell of the famous Sewell Diary, who in a church meeting courageously recanted for his part in the Salem witch trials. The Seawells migrated north to Maine, south all the way to Texas and west all the way to California. In these Seawells was the spirit of those dissenters and pioneers by which Americans, early and since, self-selected by the will to get away from the regimentations of older countries, older states, more static societies and church establishments, kept moving on to fresher soils, newer freedoms and wider vistas. In such a spirit, grandfather Jessie Seawell and his wife, Nancy Ritter Seawell, after they were eighty years old, moved on in a covered wagon from North Carolina to the fresh lands of Texas. Another Seawell, a contemporary of our Justice Seawell, was a Justice of the Supreme Court of California.

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*New England Sewells Meet Highland Scots in the
Bonnie Braes of Moore, now Lee, County*

Some of the New England Sewells who trekked south stayed in North Carolina where their roots struck deep in the sandhill country for generations. In the making of the Old North State, the Sewells, with the heritage of the pioneers, the imprint of the frontier and the crossing of robust strains, have played, and are playing, a lively part in the general life, at the bar and as leaders of both political parties. The first A. A. F. Seawell was a physically powerful man, a farmer, lawyer, skilled mechanic, buggy maker, breeder of plants and fruits and master of a fine orchard. A zest for learning sent him to all the rummage sales where he was the chief bidder for good books. Mainly self-taught, he was the homespun philosopher of the community. Governor David S. Reid, whom he had actively supported in the campaign for manhood suffrage, appointed him Lieutenant Colonel of the North Carolina militia. Later, during the Civil War, by appointment of Governor Vance, he commanded the local forces of three counties.

While some Sewells were moving on, he stayed in North Carolina and married a bonnie Scottish lass of Moore County. Janet Anne Buie was the granddaughter of Malcolm Buie of the Highland MacDonald clan on the Isle of Jura of Argyleshire. The Buies and MacDonalds were among the thousands of loyal followers of Bonnie Prince Charlie, latest of the Stuart contenders for the British throne, whose gallant Highlanders were defeated at the battle of Culloden by the English Army of George II of the House of Hanover. The King did not know what to do with these Scottish rebels against his title to the British throne. Upon the plea of Gabriel Johnston, professor of Oriental languages at the University of Glasgow, who had lately been appointed Colonial Governor of North Carolina, they were permitted to migrate to North Carolina with consequences historic for the Old North State and personal for A. A. F. Seawell. The Buies, coming from the Highlands of Scotland, were to meet the Sewells, coming from New England, in the bonnie braes between the branches of the Upper Cape Fear. A. A. F. Seawell, 1st, married Janet Anne Buie, January 7, 1853, in Moore County where they reared a large family. The sixth child was A. A. F. Seawell, 2nd, who was born during the Civil War on October 30, 1864. The Buies and Sewells gave this child his inheritance of robust body and mind and the enduring ties of a closely knit family of love and loyalty.

Influences of Time and Place in the Post-bellum South

The times were to test and develop his character in the years of strife and desolation. The community was to imprint him with the hardships and sympathies of a rural democracy struggling for self-recovery from

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the ruins of war and the tragedies of Reconstruction toward the hopes of a better day. Near the Seawell place was a farm of the Scottish family of McIvers whose son, Charles Duncan McIver, was to be the founder of what is now the distinguished Woman's College of the University of North Carolina. Edwin A. Alderman, a college mate of Seawell at Chapel Hill and later President of the University of North Carolina, Tulane and Virginia, himself from southeast North Carolina, said of the community in which lived the McIvers and Seawells, that it had the self-reliant spirit of the simplest democracy in America, and that, in common with the rural South, the people believed in God, revered Robert E. Lee, read the Bible and Sir Walter Scott, and voted the Democratic ticket.

In such a family, in such a time, and in such a community, A. A. F. Seawell grew in the sharing of needs, struggles, sympathies and hopes. There was a challenge in the poverty of a broken civilization and a lift in the unconquered spirit of the people. For all the meagerness of the times there was a wholeness in the development of a boy into whose wholesome life went the powerful influence of family, school, church, fields, streams, forests, dogs, horses, cows, work on the farm and in the shop, play in the neighborhood, and through it all the simple life of a community in which everybody knew everybody and shared in the struggles, sorrows and hopes of all. Of such was A. A. F. Seawell made—strong in body, serious in mind, touched with good humor and lively wit, reverent in spirit, steeped in the Bible and the literature of the ages, inventive with skilled hands, sensitive in poetic and musical soul, at one with nature speaking to him in many languages whose mystic meanings were the sources of his unending youth, his zest for life and quest of various learning for almost ninety-five years.

Education in Rural School, Jonesboro and Chapel Hill

It was natural, when the Seawells met in family council to decide which one of the many sons and daughters should, out of the combined family income, go to college, that the unanimous choice was the one with the most versatile talents, who most loved books, nature and people, and was most loved by them all. Flowers had been prepared for college by his oldest sister, Kate, by the short-termed rural schools, and in the school at Jonesboro, where the family moved for the better schools of the town. He had also taught himself and often read Cicero seated on a big stone in the cotton field while he rested his mule from plowing.

In the fall of 1881 we find him in Chapel Hill where part of the family moved in 1882. Like many other older sisters in large families, Kate, self-forgetting, threw herself into the task of helping brother through college. She kept house on Rosemary Street. Sister Nancy, not allowed to attend classes in the University, studied all her brother's courses with

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him at home and passed the examinations given privately by the professors in their homes. Though not awarded a degree, she won high distinction in Latin and the special commendation of Professor George Taylor Winston, later President of Carolina, Texas and State College in Raleigh. Father weekly brought supplies to his son and daughters in Chapel Hill from the farm in Moore County. The Seawell sisters helped to keep brother in the University for three years, where he excelled in the classics, the sciences, and in debate in the old Dialectic Literary Society. At the University in the early eighteen eighties were a group of students—Aycock, Alderman, McIver, Joyner, Noble, W. J. Peele, Pell, Locke Craig, Josephus Daniels, and others—who were later to lead in the renaissance which became an heroic chapter in the history of the risen South.

In the overturned civilization of the South the way of life was hard but the spirit of the people was unbroken in defeat.

Because of the hard times, Flowers had to drop out at the end of his Junior year and teach school until the fall of 1888. His first school lasted three months with sixty-five students in one room, ranging from the first grade to college preparatory years. He returned to the University and graduated in 1889 *cum laude* with special honors in Latin in a class in which Dan J. Currie and John Sprunt Hill won the highest honors in scholarship, Charles A. Webb the Mangum medal in oratory, and Shepard Bryan the prize in Greek. After graduating he taught school in Wilmington where Dr. M. C. S. Noble, a leader of statewide movement for public schools, was teaching and General Van Metts was a student. His three sisters, Kate, Nancy and Jeannette, were teaching at the same time. Flowers was thus enabled to finish his law course under Dr. John Manning in 1892, was admitted to the bar and practiced with his father in Jonesboro the year before his father died. Colonel Seawell, sister Jeannette and brother Malcolm, who had managed the farm, all three died within three weeks of typhoid fever, a dread disease in those days. Flowers then became the mainstay of the family which had been his mainstay in earlier years. With his growing law practice he supported his mother, his two widowed sisters, their children and an unmarried sister.

Three Great Loves: Family, Community and The Law

He practiced in the courts of Moore, Montgomery, Chatham and Harnett counties, was on the school board, taught a Bible class, was a ruling elder in the Presbyterian Church, wrote and directed plays, was the speaker on many causes for the church, the schools and the community. In the courtroom he impressed juries, lawyers, judges and people with his thorough preparation of his cases, clear analysis of the facts and the law, logical arrangement of his points, widely various learning

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and simple eloquence. His law partners in Sanford and opponents in the courtroom emphasize his integrity and fairness.

In 1904 he met Bertha Alma Smith of Lemon Springs in Moore County. His sensitive musical ear had been much attracted by a voice over long-distance telephone belonging to a young lady who operated the rural line switchboard in the general merchandise store. He could hardly wait to meet the owner of that voice. When he tracked her down she turned out to be a person no less attractive than her voice, the daughter of the owner of the store, who was also a farmer and lumberman. She was born in Cumberland County while the family were prospecting in the turpentine forests northwest of Fayetteville. In her blood met McIntoshes, Dixons, Shaws, Smiths and also Buies, for whom Buies Creek was named. She grew up at the old homeplace in Moore County and was educated in the public schools and the Union school near Carthage. To her, as his wife, comrade and inspiration for forty-six years, he gave his complete love and devotion.

Their marriage was blessed with four sons and two daughters. Elizabeth won an A.B. from the Woman's College in Greensboro and an A.M. from the University at Chapel Hill. Another daughter, Sarah, now Mrs. R. J. Somers of Raleigh, and the four sons, A. A. F., the third, Donald, Malcomb and Billie, won their A.B. degrees at Chapel Hill. Billie gave his life as an ensign on the U. S. heavy cruiser *Quincy* covering the landing of the U. S. Marines on Guadalcanal in some of the most decisive fighting of the Second World War. To his children he was father, teacher, philosopher, friend, and always companion. With them he read, sang, studied the flowers and trees, walked in the pine forests of Lee and over the wooded hills of Orange. Amid the wooded hills and ivied halls of Orange great traditions, teachers and books, the beauty of nature and the fresh cleanness of the outdoors became with him a part of their lives. His skillful hands, versatile mind, creative insights and universal interest in mechanisms, the sciences, history, philosophy, the fine arts and the law, caused one of his friends to call him "That Renaissance Man." Though scattered far now in Chapel Hill, Raleigh, Lumberton, Washington and New York, this family, close-knit in the common recollections of the old homes in Lee, Chapel Hill and Raleigh, is tied together across all the miles and years with the happy associations and blessed memories of him who is with them always in living spirit, ever fair and ever young.

*The Man Who Belonged to His Family and Lee County,
Soon Belonged to the People of North Carolina*

In a great love he belonged to his family, in civic devotion he belonged to the people of Lee County, and in the last decades of his life he belonged to the people of North Carolina. He served the people of the State as

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legislator, Attorney-General, and Justice of the Supreme Court in a public service which is now a distinguished part of the history of the State.

He served in the House in 1901, 1913, 1915 and 1931 and in the State Senate in 1907 and 1925. In 1901 he was in the middle of the legislative struggle over the impeachment of the members of the Supreme Court and joined in the successfully fought battle for their acquittal. In 1907 he successfully led the fight for making the new County of Lee out of parts of Moore and Chatham. In 1907 and 1913 he joined in the struggle for regulation of railroad rates and for restriction of child labor. He always fought for better public schools and better roads.

As legislator he had a vital part in the establishment of the State-wide primary, the State banking system, and the State-supported six-month school term, and in helping to save the University, the State institutions and the public schools from near destruction.

The Hot Battle for the Seawell Banking Bill

In Governor O. Max Gardner's program for the reorganization of the State government, based on the Brookings Survey, was a recommendation that a State Banking Department be created to take over from the Corporation Commission all responsibility for supervising the banks of the State. The tremendous new development of bus lines, trucks, power companies and utilities made the load of duties too heavy for the Corporation Commission to give the time and care needed for the supervision of the banks. The economic depression precipitated the collapse of banks all over the State and revealed faults and failures which cause the public to demand reform of the administration and supervision of the banks.

Representative Seawell of Lee County introduced the Bill to transfer the supervision of banks from the overloaded Corporation Commission to a State Commissioner of Banks. Seawell then had one of the toughest fights of his life. Opposing his Bill were powerful financial and political interests. The Corporation Commission, bankers in all sections of the State and many political leaders in the Legislature fought to defeat the Bill. The Speaker of the House left the chair to fight the Bill on the floor. Seawell, quiet and gentle in spirit, while accepting suggestions for the improvement of his Bill, was aroused to fight hard for essential reforms in the cause of the safety of the people's savings and took on all comers, slugging it out, toe to toe and blow for blow. Governor Gardner took the case over the air to the people. Robert M. Hanes and Gurney P. Hood, themselves masters of banking, fought valiantly for the Seawell Bill. The Seawell Bill passed after hot fights in both Houses. Much of the triumph was due to the knowledge of the subject, wisdom in strategy, clarity in analysis, fairness and valor in combat.

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The banking reforms of the Seawell Act for the specialized supervision of the banks and the responsible safeguarding of the savings of the people, necessary and timely as they were on a State scale, could not withstand the heavy blows of the depression, whose national and global impacts brought not only the banks but the American system itself to the brink of disaster. The policy of isolation, the tremendous surpluses, piled up behind our high tariff walls obstructing trade with the world, foreclosure of farm mortgages, the shut-down of factories, unemployment spiraling upward, purchasing power spiraling downward, and the great fear which seized the people all over the country, all these together continued to carry down the banks in all the states as they collapsed from sea to sea.

The valient fight for banking reforms by Gardner and Seawell in North Carolina in 1931 was to be enlarged by a bold leader of the people into a struggle in America in 1933, not only to conquer fear and repair the national banking system, but to reform and undergird American free enterprise with the more abundant energies, wider purchasing power and more equal well-being of all the people.

Nationally re-enforced by banking and other basic national reforms, and most ably administered by Gurney P. Hood, the first State Commissioner of Banks, and his successors, the North Carolina banking system as provided by the Seawell Act, with progressive improvements, is one of the best in the forty-eight states. The people gratefully have called A. A. F. Seawell "the Father of the North Carolina banking system."

*North Carolina Pioneers Among American States in
State Basis of State-wide School System*

Representative Seawell was not only a contender for the equal security of the savings of the people but he was a fighting champion of the equal educational opportunity of the children of the people. A public school system based mainly on local support through local taxation resulted in unequal opportunity for hundreds of thousands of the children of the people of North Carolina. The richer communities had better schools and the poorer communities had poorer schools for their children. The rural schools had shorter terms, fewer grades and lower salaries for teachers. The State Equalization Fund, increased over the decades, had reduced some of the inequalities in educational opportunities but the foundation of the public schools still mainly rested on local support through local taxation.

In the Legislature of 1931, A. D. McLean, the distinguished and brilliant Senator from Beaufort, introduced the then revolutionary bill to shift the basis for the annual maintenance of the six months school term from the locality to the State as a whole so that every child in North

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Carolina, regardless of locality, revenues and color, would have the minimum basis of public education. In this resolution was the shifting of the basis of the schools from local property taxes to State taxes on wealth, franchises, corporation profits and general income. Again came battle of the giants. Representative Seawell of Lee, who had in five other Legislatures fought whatever had been the pending battle for the public schools, became in the House a fighting champion of the more democratic State-wide support of the public schools of North Carolina. Since that victory, the State, by progressive steps, is providing for the annual maintenance of a nine months twelve grade public school system with free textbooks for all the children of the State and with free bus transportation for the rural children. In this shift from local to State annual maintenance of the public schools North Carolina was the pioneer of the forty-eight states. In North Carolina one of the fighting pioneers was A. A. F. Seawell. He did not live to see the hoped for day when the vast inequalities in educational opportunity of American children due to the fact that the largest proportion of children is in areas with the least proportion of wealth, will in the democratic logic of North Carolina be corrected by federal aid to the states for schools without federal control.

*The Battle for the University and
All Agencies of the People's Higher Life*

In the Legislature of 1931 the University and all State institutions and departments were under a heavy budget axe whose impending fall threatened their vital services to youth and the people. The hearings on the University came last. The institutions and departments had with protests accepted the cuts. The University decided to make a fight not for itself alone but for the public schools and all the institutions and departments, and Seawell became its spokesman in the joint committee on appropriations. He and others fought vigorously against the philosophy of the then assistant director of the budget who was intent upon balancing the budget disproportionately out of the meagre salaries of the public service. The committee stood with the University and then reopened the fight for like consideration of all the others. The resulting battle, involving the whole State budget, lasted over four months with appropriations for all above the proposed figures of near destruction. The University, the State College, and the Woman's College, whose consolidation he championed, had no better friend than A. A. F. Seawell who always fought for the schools and agencies of the people's higher life. Many legislators, including Representative John W. Umstead, Jr., in the forefront joined Seawell, and scores of thousands of people all over the State rallied in support during this long fight, whom we recall with him in grateful remembrance today. The inimitable Tom Bost, in speaking of the many able leaders in

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the General Assembly of 1931, in his report to the *Greensboro News* on April 20th, in characteristic style, made this observation about the Representative from Lee County: "When Seawell takes the floor everybody forgets everybody else and wonders how this meek, freckle-faced sorrel top of 67 years ever managed to hide himself so long in North Carolina."

*Assistant Attorney-General, Attorney-General and
The State Department of Justice*

The modest, gentle and yet fighting sorrel top was not hidden from Governor Gardner who, in July, 1931, appointed him Assistant Attorney-General. The able Attorney-General, Dennis G. Brummitt, wisely put upon his new assistant the special responsibility of interpreting the McLean Act. His knowledge of the Act and the intent of the Legislature became part of the Attorney-General rulings which enabled the prompt effectuation of this pioneering legislation by the State School Commission and the State Department of Public Instruction.

Upon the untimely death of Brummitt in 1935, Governor J. C. B. Ehringhaus, himself a distinguished lawyer, from a list of a score of able lawyers suggested for the post, appointed as Attorney-General the man whose incorruptible character and manifold abilities he deeply admired, A. A. F. Seawell. Seawell's advisory opinions and rulings as Attorney-General were characterized by forthrightness, clarity, logic and knowledge of the language, procedures and intent of law-making bodies. He also was a leader in the movement for the establishment of a State Department of Justice to reinforce the local and district agencies of justice as a necessity of this age of quick transportation and instant communication. In 1938 the University of North Carolina conferred on him the honorary degree of Doctor of Laws.

On the Supreme Court

Upon the lamented death of Associate Justice George W. Connor in 1938, Governor Clyde R. Hoey pleased the people well in appointing Attorney-General Seawell to the Supreme Court of North Carolina. Though then 73 years old, he had the vigor and spirit of youth. The nationally eminent Chief Justice Stacy, and the present able and beloved Chief Justice, have eloquently voiced the appreciation of this court for his character, his knowledge of the law, his rich and various learning and his sound judicial opinions, forever bound in Volumes 213-232 of the Supreme Court Reports.

In the famous case of *State v. Emery* the issue arose as to whether women could serve on juries in North Carolina. The majority of the Court held that they could not under Article I, section 13, which provides: "No person shall be convicted of any crime but by a unanimous

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verdict of a jury of good and lawful men in open court." Devin and Seawell dissented.

In his dissenting opinion, Justice Seawell expressed much of his philosophy of the law in general and its construction in a particular case. He was by no means in favor of the Court usurping the function of the Legislature and legislating by judicial interpretation beyond the valid meaning of the language of the Constitution and the statutes. He held that the language of the law developed rightful and lawful content with life and experience and took on the added meaning of the life and circumstances of the times in which the case arose. To him the law grew beyond the letter and logic of a past age into the meaning of the language and logic, the common sense and experience of the present time. With high respect for precedents, he yet held that construction of the law should be both in the perspective of history and in the context of the meaning of words in the living present. He argued that the word "male" was generally used if the intent was to exclude "females," and that the word "men" should be construed in the generic sense, especially in view of the recent progress of women in property rights, domestic and civil rights, and in more equal participation in the professions, business, politics and the general life. In line with the views of the people and the educational values of Seawell's agitation of the issue as Attorney-General and the Devin and Seawell dissenting opinions, the people adopted a constitutional amendment providing for the right of women to serve on juries in North Carolina.

In the life of A. A. F. Seawell we have an illustration of the value of the freedom, dignity, struggle and enterprise of the individual, the loyalties and spiritual strength of the family, the crossing of pioneer strains, the democratic fellowship of a small community in work, worship and civic association, and the struggle of a people to build a fairer State.

In him we have embodiment of the will of a people to recover from desolation on farms and in the towns, as dauntless in peace as had been their valor in war. In North Carolina the crossing of rugged strains—the pioneer English of the older East, the Highland Scot of the Cape Fear, the Scotch-Irish and German of the Piedmont and mountain West—is a part of the robust blend of people whose farms and factories, schools and churches, struggles and hopes, have built under a Southern sun, in a pleasant land between the mountains and the sea, a great commonwealth we all love and call "The Old North State."

In the commemoration of A. A. F. Seawell we refresh ourselves in the meaning of North Carolina in the making of America. We see him rise, self-reliant, clean and dedicated to the people whose cause he made his own as he recalled that the dissenters, oppressed and disinherited of many lands crossed the seas, mountains, rivers, mountains again to another sea,

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subduing a continent to their relentless wills and making America to the pattern of their restless dream.

As citizen, churchman, lawyer, legislator and judge, he helped to make the American dream more real for the people and the children of the people yet to come. In the meaning of that dream he would not have America, the haven of heretics and a great faith in the days of her infant weakness, become a stronghold of bigots and a great fear in the time of her vast power. In the evolution of States from the city states and empire states of ancient and medieval times to the nation states of modern times, A. A. F. Seawell, by his philosophy of religion, law and life, would have us stand steadfast so that the next transition shall not be from the nation states to the totalitarian world communist or fascist police state, but rather to the more effective co-operation of nation states in a more adequate United Nations for a more inclusive collective security of freedom, justice and peace.

In the spirit of Him who gave His all and suffered and died for the sins of man and the immortal hopes of the people, A. A. F. Seawell, in simple loyalty to the Christian hope and the American dream, would have the pioneer people on their great pilgrimage, share their strength, their toil and their dream with all the people under the Fatherhood of one God and the brotherhood of all people for peace on earth and good will among men.

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**REMARKS OF CHIEF JUSTICE DEVIN, UPON ACCEPTING THE
PORTRAIT OF THE LATE ASSOCIATE JUSTICE A. A. F. SEAWELL
IN THE SUPREME COURTROOM, 15 DECEMBER, 1953.**

The Court is pleased to receive this portrait of Justice A. A. F. Seawell, a former member of this Court. We have heard with interest and appreciation the thoughtful and well prepared address of presentation delivered by Dr. Frank P. Graham.

Justice Seawell served as a Justice of the Supreme Court of North Carolina for more than 12 years. The opinions which he wrote for the Court appear in Volumes 213 to 232, inclusive, of the official reports of the decisions of the Court. These are enduring monuments of his labors. These 20 volumes of our reports have been enriched by the ornate language in which he expressed the Court's decisions. These opinions reflect his legal learning, his ripe scholarship and a philosophy of constructive thinking. They evince a keen search for the ideal of human justice. His command of language, the facility with which he expressed the most delicate shades of thought and meaning have served to give both elegance and precision to the language of the Court. His opinions will be cited and quoted for many years as authoritative expositions of the principles of law and of the human approach to justice according to law. He was endowed by the Creator with unusual gifts. His mental faculties were varied, brilliant, comprehensive. To him was given by reason of strength more than four score years of life, but all of these years were filled with worthwhile tasks courageously undertaken, and illumined by an understanding mind and sympathetic heart. To those qualities which enabled him to render distinguished service to the State he added a genial friendliness which endeared him to his associates.

His labors here culminated many years of service to his generation as lawyer, Attorney-General and Judge. He was sustained by a staunch faith in the ultimate good and he fashioned his conduct in public and private life in accord with the highest standards of righteousness and truth. He contributed greatly to the ideals of citizenship and to the traditions of this Court.

The Marshal will see that this portrait is hung at an appropriate place on the walls of this building.

The proceedings of this occasion will be published in the forthcoming volume of our reports.