

# THE LATE JUDGE McCAY.

## THE ACTION TAKEN THIS MORNING IN THE FEDERAL COURT.

**Presentation of a Memorial Eulogizing the Deceased—Full Text of the Same—Interesting Addresses by Judge John Erskine and Judge Newman.**

The fall term of the United States Circuit and District courts was opened at 10 o'clock this morning, Hon. W. T. Newman, district judge, presiding. The venerable and venerated ex-Judge John Erskine being present was invited to a seat by the side of Judge Newman. Judge Erskine was warmly greeted by his numerous friends.

At a largely attended meeting of the bar of Atlanta, held the day following the death of Judge Henry K. McCay, addresses were made by several prominent members of the bar, eulogistic of the deceased, and a committee appointed, composed of lawyers throughout the district, to prepare a memorial to be presented to the court on the first day of the term. The fact that the presentation of this memorial was to take place this morning was well known, and as a result the court room was crowded with members of the bar, assembled to participate in paying to the deceased this mark of respect.

Immediately upon the opening of the court Hon. B. H. Hill, United States District Attorney, representing the committee, arose and addressed the court as follows:

May it please the Court: Judge McCay died in the city of Atlanta on July 30th, 1886. His death was not unexpected, as for several years he had been heroically struggling with great physical infirmities. The day after his death there was a large meeting of the members of the bar in this room, and many of his professional brethren made appropriate remarks expressing sincere admiration of his life and services, and deep sorrow at his departure. A committee was appointed at this meeting, consisting of lawyers throughout the district, to prepare and present to this court suitable resolutions, in order that there might be preserved on its records a memorial of his eminent legal ability and his honorable career on the bench.

Because of my official connection with the court, I was selected to present the report of the committee. I will be pardoned for saying that my own intimate personal relations with the deceased during the last years of his life, my high regard for his many virtues, and my sincere respect for his profound legal knowledge and uprightness as a judge, make the performance of this duty one of melancholy pleasure.

Henry Kent McCay was born in Northumberland Pa., on January 8th, 1810. His father was an honorable tradesman of the town, and his son aided him in his labors. Ambitious for educational advantages, he devoted the hours after work to study, and at the early age of seventeen was prepared for college. He entered the sophomore class at Princeton College in 1827, and graduated in 1831 with honors. His brother, Charles F. McCay, was then a distinguished professor in the University of Georgia, and through his solicitation his younger brother came to Georgia, locating in the town of Lexington, near Athens. Like so many of the prominent men of the country, he at first devoted himself to teaching, and was for two years the efficient and beloved principal of the Lexington Academy. He very soon attracted the attention of that great jurist, Joseph Henry Lumpkin, and at his invitation he read law in his office. In 1842, he married Miss Catharine Hanson of Lexington. There were no children the issue of this marriage, but, with that tender devotion for little children which characterized Judge McCay, he adopted, while infants, two lovely twin sisters, and while these loved ones preceded him to the spirit land, they left behind a son and seven bright and beautiful daughters to cheer and comfort as the closing years brought trouble and sickness. In 1842, Judge McCay moved to Americus, Sumter county, Georgia, and began the practice of law with George M. Dudley. He was successful from the very first, and at the beginning of the war had accumulated a handsome property. Although by birth a Northern man, and in conviction an earnest lover of the Union, he enlisted in one of the first companies that went to Virginia, and for three years served with courage and fidelity. He was in many of the battles of the great leader, Stonewall Jackson, and to recall the scenes connected with that thrilling period was one of the Judge's most constant and delightful occupations.

practice of the law in connection with Judge Willis A. Hawkins, of Americus. The firm soon acquired a State reputation and its business was large and lucrative. Judge McCay at this time took an active interest in political questions, and influenced, doubtless by his union sentiments, united with the Republican party and warmly advocated the reconstruction measures proposed by Congress. But he was so well known and esteemed in Sainter county, where he had resided for twenty-five years, that neither friend or foe ever doubted the sincerity of his convictions or the unselfish honesty of his purposes. He was elected to the legislature in 1867, and by his record showed that he was true and faithful to the welfare of his adopted State. He was one of the most active and influential members of the Constitutional Convention of 1868, and to his legal acumen and patriotic labor we are largely indebted for many of the excellent features of that fundamental law which successfully restrained the cupidity of legislatures and guided the ship of State through the troubled seas of that stormy period. We owe a debt of gratitude to Judge McCay for the constitution of 1868. His conspicuous legal abilities induced Governor Bullock to appoint him to the Supreme bench of the State in 1869. His judicial career as a member of this high tribunal forms the brightest part of his public services. The delicate relations between the Southern States and the general government, the construction and interpretation of new laws incident to the rights of the negro under the changed condition of our civil affairs, required in our judges not only great legal knowledge, but wisdom, prudence and conservatism. Judge McCay's conduct during this crucial period won the unstinted admiration of the bar. In his decisions generally, while he does not equal the brilliant and fervent eloquence of Lumpkin, the ponderous force of Warner, or the deep philosophy of Bleckley, in clearness, conciseness, correctness and acute comprehension and discrimination he stands facile princeps of the judges who have adorned the bench of the Supreme Court. Before the conclusion of his term, he resigned his seat and resumed the practice of law in Atlanta with Judge R. P. Trippe, and afterward with Col. B. F. Abbott. He was engaged in a lucrative practice when he was again called to the bench. He was strongly recommended by the bar of the district to President Arthur for the position of United States Judge for the Northern District of Georgia, and on August 4th, 1882, he was appointed to this office.

But the shadows of death had already fallen across his pathway, and Judge McCay's daily performance of duty was through great suffering and increasing physical infirmities. His clear conception and correct application of legal principles was as perfect as when it made luminous the decisions of the Supreme Court. But there was sometimes an impatience of argument and an intolerance of opposition, caused, in the opinion of those who knew him best, by his physical infirmities. His decision in the prohibition case, rendered a few months before his death, involving many difficult and profound questions of constitutional law, was conceded to be one of the ablest ever produced from any bench—conclusive, exhaustive, and irresistible. The strength of his mind rose superior to the weakness of his body, and the force and lucidity of his logic charmed and convinced.

Your committee submit this brief outline in honor of the great lawyer and upright judge. But this memorial would be incomplete did we fail to allude to Judge McCay's virtues as a man. We honor and admire the intellectual powers of the mind, but the virtues of the heart are the flowers that bloom ever fragrant in the gardens of memory. Our departed brother was the kindest of men, gentle and affectionate, warm hearted and generous, without love for money which causes so many feuds and wrongs; benevolent, even to a fault, he lived and died without ever having made an enemy. Happy the judge who can lay down his prime spotless and pure, unassailed by corruption, inscribed by injustice. Twice happy the man, who, when the days of life are closing round him hears only the soft voices of love and tender regrets.

Judge McCay was a simple, earnest Christian. For thirty years he was a consistent member of the Presbyterian church. He was another of the many great lawyers of our State whose life and death did testify to the truth of that blessed religion whose manifestation is love and whose essence is sacrifice. His weary hands and feet have laid staff and sandals down. His glorified head has received from angel's hands its crown of a garland and gold. His satisfied soul has awakened to eternal beatitude in the likeness of the Master.

Your committee respectfully ask that this memorial may be ordered placed on the minutes of this court, and that the clerk be directed to prepare and send an engrossed copy of the same to the family of the deceased.

BENJ. H. HILL,  
JAMES JACKSON,  
JOHN L. HOPKINS,  
C. D. MCCUTCHEEN,  
J. B. ESTES,  
HUGH BUCHANAN,  
POPE BARROW,  
GEORGE HILLIER,  
D. M. HAMILTON,  
T. W. MILNER,  
A. B. CULVERSON,  
E. N. BROyles,  
WM. PHILLIPS,

Committee.

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