JUSTICE GRAFTON GREEN:

Chief Justice Grafton Green died in Nashville, Tennessee, on the early morning of January 27, 1947. In his death Tennessee lost one of its first citizens, who died as he had lived, brave and unafraid. With simple resignation he bowed to the Divine decree. His death brought sorrow to the hearts of every member of the Bar, and countless other citizens of Tennessee, who admired and respected him.

A great Tennessean, Chief Justice Green was born in Lebanon, Tennessee, on August 25, 1872, of distinguished lineage. His paternal grandparents were Judge Nathan Green, Sr. and Mary Green. Judge Nathan Green, Sr. was a native of Virginia but moved to Winchester, Tennessee, when he was a young man. In 1826 he became a member of the Tennessee State Senate. Shortly thereafter he became Chancellor of the division in which he lived and practiced law, and in 1831 was elected one of the Judges of the Tennessee Supreme Court, which position he held for more than twenty years. His published opinions are found beginning in 10 Tennessee Reports (2 Yerger) and extending to and including 31 Tennessee Reports (1 Swan). His associates on the Supreme Court for many years were Justices Catron, Peck, Reese and Turley, whose able and classic opinions have been cited countless times and are continued to be quoted from and approved by the various courts of last resort.

Chief Justice Green's father was the beloved Judge Nathan Green, Jr., and his mother was Betty McClain Green. The McClain family were strong, sturdy and courageous people of Wilson County, Tennessee. Judge Nathan Green, Jr. taught in the Law School of Cumberland University for fifty-five years. Undoubtedly more young men sat at the feet of this distinguished teacher than any other teacher of law in this country. His students revered and worshipped him almosr to the point of idolatry. Inspired by his great wisdom and his lofty Christian character, his memory will be cherished and kept warm in their hearts and minds as long as they shall live.

From these noble forbears Chief Justice Grafton Green received a rich heritage of strength, dignity of character, moral courage and vigor of intellect. He possessed a magnetic and lovable personality, a noble and kind heart. When a small boy he entered a public school at Lebanon, and later the preparatory department of Cumberland University. He then entered the College of Arts and after pursuing a four year course of stody received his A. B. degree from Cumberland University in 1891. He received his L.L.B. degree from that institution in 1893. He studied law under his distinguished father and the latter's associate, that eminent law teacher and outstanding character, Dr. Andrew B. Martin. Cumberland University honored him with an L.L.D.degree in June 1919.

On December 10, 1898, Chief Justice Green married Miss Pauline Dinges, of Alexandria, Tennessee, who survives him, and who for more than forty-eight years was his loved helpmate and constant companion. To their union was born one son, Nathan Green, III, who was possessed of so many of his father's fine virtues and the sunny loveliness of his mother. He graduated with high honors from the United States Naval Academy. His death on November 15, 1925, brought great bereavement to his devoted parents and every person who knew him.

Chief Justice Green began the practice of law in Nashville, Tennessee, in 1893, and continued the active practice until the year 1910, when he and four associates were elected to the Supreme Court of Tennessee by an overwhelming majority, as a part of the historic "free and untrammeled judiciary". His service on the highest court of this State for more than thirty-six years was the longest term of office ever enjoyed by a member of that Court in the State's history; in fact it was slightly longer than the term served by the

immortal Chief Justice Marshall on the Supreme Court of the United States. Judge Green was elected Chief Justice of the Supreme Court of Tennessee on April 12, 1923. Since his elevation to the Supreme Court, no member of that Court has ever had opposition for re-election, either in political convention or before the people; and only one judge who sought to fill an unexpired term had opposition during this long period. This judge was re-elected. During this long span of almost five consecutive terms Chief Justice Green, perhaps more than any other man, contributed to the solidarity of the Supreme Court and the security of its position in the minds and hearts of Tennesseans. Always far above politics, firm in its convictions, sound and able in its opinions, the Supreme Court of Tennessee, presided over by its great Chief Justice Grafton Green, stood as a monument to all of the noble traditions of the judiciary and the legal profession.

When the Supreme Court of Tennessee moved from its historic surroundings in the State Capitol Building to the present magnificent Supreme Court Building, in the erection of which Chief Justice Green played such an important part, at the dedicatory exercises, among other things, he said: "The public realizes, as does the Bar, that some of us now on the bench are not latter-day Mansfields or Marshalls, but I think that the public does regard us all as honest and as doing the best we can with the talents God has given to us." What a simple expression of the high integrity that characterized this great man's life and his abiding and complete faith in the Great Chief Justice of the Universe. It is our earnest and fervent hope that it will be pleasing to our departed Chief Justice to know at this hour that kind and precious memories of him will remain in the hearts and minds of the members of the bar of this State, not only as one of stalwart integrity, but also that he has taken his place among the immortals of the judiciary.

Time will not permit a recital of all of Chief Justice Green's published opinions, which will live on as witnesses to the profound ability, the character, the mercy, and the inherent and fine conception of justice of this great man. Beginning with those found in Vol. 123 Tennessee Reports, and including two opinions filed January 11, 1947, which appear in 198 S. W. (2d), Chief Justice Green wrote 907 published opinions for the majority of the Court. He found it necessary to dissent only eleven times, four of which were without written opinion by him. His seven dissenting written opinions are very concise and respectful. He found it necessary to concur in result only seven times. Two of these cases were without written opinion. In the 907 published opinions which he wrote for the Court, other members dissented in only sixteen of them, and concurred in result in three of them. Of the 907 majority opinions of Chief Justice Green, 97 of them are reported in selected case series. Eleven of these appear in more than one selected case series. This is a unique, and perhaps unparalleled, record not enjoyed by any other member of a court of last resort in any State of the Union. In his long years of service on the bench Chief Justice Green decided hundreds of cases in which no opinions for publication were filed. His published opinions are models of diction and contain throughout a multitude of subjects, and concise and pointed statements of the law. A tribute to Chief Justice Green would indeed be wholly lacking if we did not mention a few of them.

The first reported case in which Chief Justice Green wrote the Supreme Court's opinion is that of Doty v. American Telephone & Telegraph Company, 123 Tenn. (15 Cates) 329, decided in Knoxville at the Court's September Term 1910, or the first term of

Court following his election in August of the same year. The Court passed upon the Telephone Company's right or power of eminent domain and held that a property owner whose land was traversed by poles of the Telephone Company was limited to a suit for the value of the land actually taken by the Company, and for incidental damages, and hence that the action of ejectment brought by Doty to recover the land occupied by the Company with its poles and wires could not be sustained.

Chief Justice Green's opinion in the case of Bonham v. Harris, 125 Tenn. (17 Cates) 469, reveals the deep religious conviction that characterized his life. This case involved a controversy between the members of a certain church. Judge Green in his short dissenting opinion held that civil courts should accept as conclusive the action of the church authorities in such controversies. He referred to the fact that it was related in the Book of Acts that when the Apostle Paul was sojourning and preaching in Corinth, the Jews, displeased with his teachings or methods, "with one accord made insurrection against him", and brought him to the judgment seat of the Roman deputy, Galliom saying "This fellow persuadeth men to worship God contrary to the law.'

"And when Paul was now about to open his mouth, Gallio said unto the Jews, 'If it were a matter of wrong or wicked lewdness, O ye Jews, reason would that I should bear with you.

"'But if it be a question of words and names and of your law, look ye to it, for I will be no judge of such matters.'"

"And he drave them from the judgment seat."

The opinion is then concluded with the following correct and sound observations:

"This church controversy, it seems to me, presents but a question of words and names. The union of these religious bodies does not deprive any communicant of his seat in the sanctuary. Only the name of one of the churches is changed. No one now doubts but that the salvation of souls, the great object of all church effort, can be as surely promoted through one donomination as another. No real rights are involved in this dispute, spiritual or legal. No real question is made of the sort secular courts were organized to determine.

"The old Roman deputy, with the bluntness of his race, announced the correct rule. He made a precedent, from which I respectfully insist no civil court should depart."

It is imteresting to note that in this same volume of the Tennessee Reports, as evidence of Judge Green's great breadth and liberality, he also dissented in the case of Motlow v. The State, page 594, in which the majority of the Court sustained as a test case a conviction under Chapter 10, Acts of 1909, which prohibited the manufacture in this State of intoxicating liquors.

The case of Dietzel v. The State, 132 Tenn. (5 Thompson) 47, involved a conviction of murder in the first degree based purely on circumstantial evidence. The jury which convicted Dietzel found mitigating circumstances, which the trial judge in his discretion, under the law at that time, had the right to accept or reject, and in the case declined to follow the recommendation of the jury and sentenced Dietzel to death. The evidence showed that following the disappearance of the deceased Wehman his body was found in a well just off a country lane seldom traveled, and that Dietzel on several occasions following the disappearance of the deceased was seen near the point where the body was later found. After an exhaustive review of the facts, referring to the plaintiff-in-error's return to the scene of the crime, Judge Green in his opinion (on page 78) said:

"Why should he have visited this remote locality on the day after George Wehman's disappearance? Why should he have been there on Monday, on Tuesday, on Wednesday, and on other days thereafter? What could have drawn the plaintiffin-error to this lonesome lane on the days following the crime, except that mysterious and proverbial force

that impels a murderer to return to the scene of his iniquity, or to the place where he has hidden his victim? Why should the prisoner have haunted this vicinity, as long as he was free, unless like that other murderer:

'All night he lay in agony,
From weary chime to chime,
With one besetting horrid hint,
That racked him all the time;
A mighty yearning like the first
Fierce impulse unto crime.

'One stern, tyrranic thought, that made
All other thoughts its slave;
Stronger and stronger every pulse
Did that temptation crave,
Still urging him to go and see
"The dead man in his grave."

However, with characteristic mercy, Judge Green's opinion concluded with these words:

"Nevertheless, since there is here, as in every case of circumstantial evidence, a possibility (a bare possibility in this case) of mistake, we prefer to heed the expression of the jury and commute this sentence to life imprisonment.

"As thus modified, the judgment below will be affirmed."

The case of Vertrees v. State Board of Elections, 141 Tenn. (14 Thompson) 645, involved the constitutionality of Chapter 139, Acts of 1919, which permitted women for the first time in Tennessee to vote for electors for President and Vice President, and to vote on all questions or propositions submitted exclusively to a vote of the electors of any municipality. This Act was the first step towards woman suffrage in Tennessee. Judge Green's opinion sustained the constitutionality of the Act.

The opinion of the Court in House v. Creveling, 147 Tenn. (20 Thompson) 589, was written by Judge Green. This opinion sustained the constitutionality of the Reorganization Act enacted during the administration of the late Governor Austin Peay. Under this Act the administrative department of the State's government was completely reorganized. In sustaining this Act Judge Green avoided any possible political implications that might have been involved by stating that "no expression from the Court as to the wisdom of the statute would be seemly." It is now generally conceded that this Act inured to the great benefit of the State in the orderly administration of its affairs.

In the case of Eastern Products Corporation v. Tennessee Coal, Iron and Railroad Company, 151 Tenn. (24 Thompson) 239, the complainant sought to recover more than a million dollars damages for breach of contract. The majority opinion of the Court held that the complainant corporation could not recover or maintain the action because only a small part of the authorized capital stock had been subscribed. Judge Green filed a short dissent, holding that, "To deny a corporation a right to sue upon its contract because all its stock has not been subscribed is to repel the corporation because a detail of its organization was omitted."

The case of Scopes v. The State, 154 Tennessee (1 Smith) 105, involved the constitutionality of a statute which prohibited the teaching of evolution in state

universities and schools. Many famous lawyers appeared in this case. Much criticism was heaped upon the people of this State, its legislature, and the courts, by newspapers published outside the State, and it was held up to ridicule. While upholding the validity or constitutionality of the statute, Judge Green, who wrote the Court's opinion, concluded it by saying: "We see nothing to be gained by prolonging the life of this bizarre case. On the contrary we think the peace and dignity of the State which all criminal prosecutions are brought to redress, will be better conserved by the entry of a nolle prosequi herein." This was accordingly done, and thus ended the case and the Act, the constitutionality of which was sustained but the Act was put at rest.

In a very clear and able opinion in the case of Shields v. Williams, 159 Tenn. (6 Smith), Judge Green sustained the constitutionality of the Hall Income Tax Law, which imposed a tax on income from certain stocks and bonds not taxed ad valorem.

For the first time in Tennessee, in the case ofDavis v. The State, 161 Tenn. (8 Smith) 23, Judge wrote the Court's opinion and reversed a conviction of murder in the second degree, announcing the important dictrine in criminal law that while "an insane delusion does not excuse from crime in Tennessee unless accompanied likewise by perceptional insanity", that nevertleless such an insane delusion reduced the offense from murder in the second degree to manslaughter. This was an important modification in the criminal law of rhat is commonly referred to as "the right and wrong test."

The case of Biggs v. Beeler, 180 Tenn. (16 Beeler) 198, involved the constitutionality of Chapters 37 and 38, Public Acts of 1943. Chapter 37 repealed Section 1082 as amended, and Sections 1558 and 1559 of the Code. These sections levy annual poll tax of one dollar, for school purposes, on every inhabitant of the State between the ages of twenty-one and fifty years, with certain exceptions, and provide for collection thereof by the county trustee. The second Act, Chapter 38, prescribed certain qualifications for voters, provided for statewide registration of voters and removal of the requirement of payment of a poll tax as a prerequisite to voting, and repealed existing laws relating thereto. By a three to two decision the majority of the Court held the two Acts unconstitutional, but with characteristic courage Chief Justice Green, being unable to agree with the majority, expressed the view o that under our constitution the repeal of the poll tax and the subject-matter of the other Act addressed themselves emtirely to the legislative branch of the government and hence the tao Acts were not unconstitutional or void.

In a learned, clear and vigorous opinion Chief Justice Green, in the case of Knox County v. Fourth and First National Bank, 181 Tenn. (17 Beeler) 569, decided several very important principles in the law of trusts, and for the first time in this State established the practice of allowing interest for a breach of trust at less than the legal rate under the equities of the particular case.

The last two published opinions delivered by Chief Justice Green were the cases of Pickett County Beer Board vs. McDowell, and Rose v. Tennessee Eastman Corporation, both filed January 11, 1947, which appear in the February 11, 1947, issue of the Southwestern Advance Sheets. In the first mentioned case Judge Green reaffirmed the rule, in an opinion of less than one page, that in an action to review by writ of certiorari a proceeding before a County Beer Board which revoked a license, "a motion for a new trial is absolutely essential to a review of the matter in this (Supreme) Court." In the latter case, in an opinion of about one-half page, the Chief Justice reaffirmed the rule that an order of a lower court removing a case from that court to the Federal Court would not be reviewed in the Supreme Court. The opinion states: "The Federal Courts are the final

judges of the propriety of such removal, and it seems best to permit them to determine this question at the outset." These two brief opinions on matters of procedure were directly to the point, like all others of the distinguished Chief Justice on any question of law he decided.

Thus we have the beginning and the end. The Supreme Court of Tennessee has adjourned for the last time for its great Chief Justice, but there will forever remain in the annals of legal and judicial history in Tennessee an unchanging record of his fidelity to duty, his simple faith and courage, his powerful and magnificent ability, and his unswerving personal and judicial honor and integrity. When Sam Houston hastened with his son to the bedside of General Andrew Jackson, arriving too late, he said to his boy as he looked upon General Jackson's still face, "You have seen the face of the Chief." Indeed those of us who through the years have had the privilege and honor of the practice of our chosen profession before this great man, can in this hour of bereavement find solace in the fact that we too have looked upon the face of the Chief of our profession. We revers his memory as a great judge, a strong man, a lovable and noble character. Future historians will record the ever shining and spotless name of Chief Justice Grafton Green at the very top of Tennessee's great judiciary. It will always live in our hearts.

On an occasion not wholly unlike this one, a distinguished member of this Bar who is now deceased, in discussing the life of one of Chief Justice Green's former associates who had passed on, at the unveiling of his portrait in the Supreme Court Room, used language expressing such beautiful sentiment, and so appropriate to the life of Chief Justice Green, and his strong belief that the souls of men are not buried with them, that we have borrowed its substance in closing our feeble tribute.

Chief Justice Green, in the discharge of his duties as a judge and citizen, was fair and strictly conscientious. He sacrificed himself on the altar of judicial service. He won an exalted place in the esteem of Tennessee's Bar and the peopleof the State. Weary from a long service to his State, suffering with a physical ailment which he fought and bore for several years without complaint, on January 27, 1947, he turned his face towards the western short. May we not indulge the abiding faith that he stood upon the bank of that river which marks the boundary line between two worlds, when the crimson curtains of evening had been drawn across the horizon to mark the passing of another day, that he was yet listening to the benedictions of a multitude of friends in the receding world when he visioned the first rays of the eternal morning in the other, and there heard the acclaim of welcome to the flories of everlasting life.

THEREFORE BE IT RESOLVED BY THE MEMBERS OF THE NASHVILLE BAR ASSOCIATION, that this organization deeply deplores the death of Chief Justice Grafton Green, and does now by these wholly inadequate and insufficient expressions pay homage and honor to his memory and good name, and acknowledge a deep sense of gratitude for his life and his long service as Associate and Chief Justice of the highest court of our State; and

BE IT FURTHER RESOLVED, that the President of the Association appoint a committee to present to each of the courts of record in Davidson County a copy thereof, with appropriate request to each judge thereof that such copy be spread or recorded upon the minutes, to the end that judges and lawyers of future generations may know the high regard, esteem and affection in which Chief Justice Grafton Green

was held by the members of this Bar in the present day; a n d

BE IT FURTHER RESOLVED, that a copy of these resolutions be made a part of the permanent records of this Association, a nd that copies hereof be furnished to Mrs. Green and the Nashville press.

Respectfully submitted,

(Signed) James A. Newman
" W, B. Marr
" W. E. Norvell, Jr.
" F. A. Berry
" Seth M. Walker,

Chairman.

COMMITTEE ON RESOLUTIONS.

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ALBERT WARREN AKERS,

ALBERT WARREN AKERS was born in Atlanta, Georgia, June 18, 1871.

His father, Cornelius Franklin Akers, graduated as an honor student at Emory University. He served with distinction as a colonel of the Confederate army and at the close of the War between the States, he engaged successfully in the practice of law in Atlanta, Georgia, for some ten or twelve years when he moved to LaGrange, Georgia, where he continued the practice of his profession. His health had become impaired because of hardships suffered during the Civil War and at the direction of his physician, he went to Orlando, Florida, to live when his son was about thirteen years of age.

Albert Warren Akers completed his academic education at Rollins College at Winter Park, Florida.

Before reaching his majority, he left Florida for Tennessee, and for a short period lived at Fayetteville, Tennessee. He moved to Nashville, Tennessee, and became private secretary to Mr. Justice Horace H. Lurton, then a United States Circuit Judge and later a member of the Supreme Court of the United States.

While so employed, Mr. Akers studied law under the tutelage of Mr. Justice Lurton and was admitted to the bar in 1895. He continued, however, Mr. Justice Lurton's secretary until 1899, when he became associated with the law firm of Champion, Head & Brown. When Mr. Head became mayor of Nashville, Mr. Akers was taken into the partnership. The firm then became Champion, Brown & Akers. This firm enjoyed a large practice and when a controversy arose involving the validity of the charters of certain street railway companies operating in and near Nashville, Tennessee, the litigation was handled by Mr. Akers. Representing the street railway companies were the outstanding lawyers of Nashville and the matter finally terminated in a compromise decree in the Supreme Court of Tennessee, whereby, among other things, the park system of this community was brought into being. Among the terms of the settlement order was a provision obligating the traction companies to pay a percentage of their gross revenues for the support and maintenance of a park system.

Albert Warren Akers gave unstintingly of his time to the promotion of the public interests of Nashville, Tennessee, and served for twenty years as a member of the Board of