

## RESOLUTION OF RESPECT FOR AND IN APPRECIATION OF HONORABLE CHARLES B. STUART<sup>1</sup>

WHEREAS, The Honorable Charles Bingley Stuart passed from this earth on the 30th day of October, 1936, and his life was so closely interwoven with the building and development of the State of Oklahoma, and so prominently connected with the courts, both State and Federal, and was regarded with such high esteem, that it is fitting that a brief sketch of his life and resolutions of respect be spread upon the records of this court.

JUDGE STUART, as he was familiarly known throughout the State, was born April 4, 1857, near the town of Boynton, in Mecklenberg County, Virginia, on the original site of Randolph-Macon College, which was afterwards removed to Ashland, Va. He died in a hospital in Oklahoma City, of which City he was a resident, and was buried in Fairlawn Cemetery. Religious services were held at the Shrine Auditorium, conducted by Rev. James Mills, Dean of the Episcopal Cathedral, and at his request Masonic services at the grave by So. McAlester Lodge No. 96, of McAlester, Okla., in which lodge he was made a Mason and in which he maintained his membership. He was also a Scottish Rite (32°) Mason and took an active part in the work—on several occasions delivered the lecture of the 32nd. degree. He was also a member of the K. C. C. H.

His grandfather, John Stuart, and grandmother, Lucy Horne, on the paternal side, were both of Scotch descent and came from England to King William County, Virginia. His grandfather and grandmother on the maternal side were Edward Toone and Mary Wilson, and came to America from Scotland. His paternal grandparents had four sons, who, in order of their birth, were: Charles Bingley, James, John William, and Ralph.

<sup>1</sup>In the District Court of the United States for the Eastern District of Oklahoma. To the Honorable Robert L. Williams, Judge, Presiding: and Honorable Alfred P. Murrah, Judge, presiding.

Judge Stuart's father, John William Stuart, was born and lived for many years in Virginia, attended Randolph-Macon College, and during the 1850's taught school in Virginia. His brother, Charles B. Stuart, uncle of Judge Stuart and for whom he was named, graduated from Randolph-Macon College and thereafter for several years taught chemistry in that college, and later was president of a girls' school at Ashland. After 1859, while Judge Stuart was yet a small boy, his father and his uncle, Charles B. Stuart (these brothers being devoted to each other, and for a while in partnership), moved to Mansfield, La., where his uncle, Charles B., was the second president of the Mansfield Female College, and Judge Stuart's father conducted a school for boys and young men. At Mansfield he was commissioned a first lieutenant in Company B., 1st, Battalion, Louisiana Infantry (State Guards), and enlisted March 5, 1863, in the Confederate Army at Mansfield, La. He served with distinction, and was promoted to Captain May 19, 1863. The Confederate Army records are incomplete and no further information as to his war record is attainable.

In 1872 the school for boys was closed, and in the summer of 1873 Judge Stuart's father went to Shreveport and engaged in the insurance business, and was quarantined during a Yellow Fever epidemic, and died there the same year. During the epidemic the two families, Judge Stuart's mother and her children and his uncle Charles B. Stuart's family, refuged from the Yellow Fever district to a plantation owned by them a few miles from Mansfield, La., close to the Battlefield of Mansfield.

About 1876 or 1877, Judge Stuart's mother married David H. James, at Marshall, Texas, where they lived. Mr. James died in 1879 or 1880. Mrs. James maintained her residence there until she moved to Gainesville, Texas; later made her home for several years with a daughter, Mrs. G. R. Smith, in Richmond, Va., and in 1919 moved to Ardmore, Okla., where she died in November, 1923.

Judge Stuart's early education was supervised by his father, and at the age of 16 years he entered Randolph-Macon College, and after his graduation in that college, about 1876, he located at Mar-

shall, Texas, just across the line from Shreveport, La., where he taught school for a while. Two prominent lawyers in Oklahoma, his cousin, H. L. Stuart, of Oklahoma City, and Senator E. P. Hill, of McAlester, were among his pupils. He also studied law there in the office of Major James Turner, one of the foremost lawyers of Texas, at which place in 1876, at the age of 21, he was admitted to the bar. The examining committee reported his examination a most brilliant one. Shortly thereafter, at Marshall, he became a member of the firm of Turner, Lipscomb and Stuart, one of the leading firms of East Texas, and represented the Texas & Pacific Railway Company. In 1881, Mr. Lipscomb died, and the firm continued as Turner & Stuart. Between 1881 and 1883, for a short time, he established an office at Waco, in partnership with A. M. Harris, a Virginian, maintaining his residence at Marshall.

While engaged in the practice of law at Waco, in 1883 he received a telegram from his brother, G. W. Stuart, at Marshall, that his oldest brother, John, to whom he was most affectionately attached, was seriously ill and to come on first train. The telegram was not delivered until after his brother's death. Judge Stuart notified the Western Union Telegraph Company that if it would discharge the employee responsible for the delay, no claim for damages would be made. The company declined to discharge the employee, and Judge Stuart, against the advice of older lawyers, brought suit against the company. The case was tried to a jury and he obtained a verdict and judgment for \$2500.00. The trial court set the judgment aside and sustained exceptions to the petition for the reason it did not state a cause of action, and Judge Stuart appealed. The Supreme Court of Texas reversed the trial court and remanded the action with directions to re-instate the original judgment rendered in the trial court, establishing the doctrine for the first time in Texas, contrary to the doctrine in most States, that damages could be recovered for mental suffering without accompanying physical injury. The petition in this case is a gem of definite and concise pleading. This case brought Judge Stuart his first legal prominence. (*Stuart vs. Union Telegraph Co.*, 18 S. W. 251.)

Judge Stuart was married January 1, 1884, and in August of that year located at Gainesville, Texas, in the practice of law. Gainesville was then at the terminus of a new railroad (now the Missouri-Kansas & Texas Railway) and a very promising and flourishing young city. In the fall of that year, he made a speech at the court house for Cleveland and Hendricks, Candidates for President and Vice-President of the United States, respectively, which distinguished him, though a young man, as one of the great orators of the country.

The latter part of that year he formed a partnership with Patrick Henry Lanus, and in the Spring of 1886 this firm dissolved; and in 1887 Judge Stuart formed a partnership with Joseph W. Bailey, who came from Mississippi, where he had served as an elector for the election of Cleveland and Hendricks, and located at Gainesville in the practice of law, first in partnership with George L. Hill, father of E. P. Hill, the latter now a State Senator from Pittsburg County, Oklahoma, the son also being a member of the firm. In 1890 Bailey was elected to Congress from the 5th district of Texas, and later, while yet a young man, became United States Senator, and one of the great orators and constitutional lawyers of that body.

In 1887, some time after the formation of the partnership of Stuart & Bailey, J. L. Harris, a Mississippian, came from Coleman, Texas, to Gainesville and joined the partnership, under the firm name of Stuart, Bailey & Harris. Harris had been private secretary of Governor Lowrey, of Mississippi, and married his daughter. The latter part of the year 1888, he severed his relations with the firm of Stuart, Bailey & Harris, and on January 1, 1889, formed a partnership with W. O. Davis, who still lives at Gainesville and is in the active practice of law there, although ninety years of age. In the year of 1890 Harris moved to Dallas, Texas, and established the law firm of Harris & Knight, afterwards Harris, Etheridge and Knight, one of the great law firms of that State, and the clientele acquired by that firm was outstanding evidence of the great ability and integrity of J. L. Harris.

During the time of the partnership of Stuart & Bailey, McCans was a partner for a short time.

After Bailey was elected to Congress and Harris moved to Dallas, Judge Stuart formed a partnership at Gainesville with Yancey Lewis in the practice of law, the firm name being Stuart & Lewis.

The splendid record of these men as lawyers and statesmen cannot but be most gratifying to the friends and relatives of that brilliant coterie of young men who pioneered to Gainesville during the time Judge Stuart was there.

In the Spring of 1893 Judge Stuart was appointed by President Cleveland, Judge of the United States Court for the Indian Territory, the Indian Territory at that time having only one Judge. An Act of Congress of March 2, 1895, divided the Indian Territory into three judicial districts, Northern, Central and Southern, and provided for a judge of each district, and established the Court of Appeals for the Indian Territory, making the three Judges of the three districts, judges of the Appellate Court, and by the Act Judge Stuart became Judge of the United States Court for the Central District of the Indian Territory, and the first Chief Justice of the Court of Appeals of the old Indian Territory. He presided at the organization of the Court of Appeals, but resigned before any cases were decided by that Court. While he was on the bench, because of the conditions prevailing in the Indian Territory, many new and heretofore unsolved questions came before him for solution. Without precedent to follow, he met these questions with fortitude and determination, and rendered invaluable service to this country, by his able, just and far-sighted decisions.

No judge ever sat upon the bench with a greater legal mind. His quick and wonderful grasp of the law and the facts was surprisingly accurate. His conduct of the court was not with that military bearing of his predecessor, Judge James M. Shackelford, a noted Union General in the Civil War, but he presided with ease and tranquility, and was always eminently fair, just and courteous, winning the respect and admiration of all. His great

reasoning powers, his ability to correctly interpret the law and analyze the facts, well fitted him for the Judiciary, but he never sought political preferment. He was more of an advocate, a practitioner, a debater, a lawyer who enjoyed the brilliant contests in lawsuits with eminent lawyers carried on upon a high plane, with courtesy and respect to the court and to his opponent. He was a master diplomat before the courts and juries, winning their undivided attention and esteem.

Some time after his appointment to the United States Court for the Indian Territory, Yancey Lewis moved to McAlester, and was appointed by Judge Stuart as Special Master in Chancery for the Choctaw Coal & Railway Company; and when Judge Stuart resigned as Judge of the United States Court for the Indian Territory, in October, 1895, Yancey Lewis was appointed to succeed him. In 1897, after William McKinley became President of the United States, Judge Yancey Lewis resigned from the United State Court for the Central District of the Indian Territory, and returned to Texas to engage in the practice of law at Dallas, and while in Dallas he was appointed to serve as Special Judge in the place of one of the judges of the Court of Civil Appeals at Dallas, in a case in which all three of the judges disqualified. He was afterwards professor of law and Dean of the Law Department of the University of Texas.

Judge Stuart, upon retiring from the Federal bench, was employed as general attorney for the Choctaw, Oklahoma and Gulf Railroad Company, with offices at McAlester, and shortly thereafter formed a partnership with James H. Gordon and W. E. Hailey for the general practice of law, the firm name being Stuart, Gordon & Hailey. Mr. Gordon soon retired from the firm, and the firm continued as Stuart & Gordon until about 1909, when Fielding Lewis became the junior member of the firm. Lewis lived only a short time thereafter. About the year 1911, William C. Liedtke, attorney of Eufaula, Oklahoma, became a junior member of the firm.

During the year of 1911, Judge Stuart retired from the firm and moved to Oklahoma City and formed a partnership with A. C. Cruce, and in April of that year, A. C. Cruce's son, M. W. Cruce, was made a member of the firm, and in the fall of that year the firm was consolidated with the firm of Gilbert & Bond, composed of W. O. Gilbert and E. H. Bond, under the name of Stuart, Cruce & Gilbert, with E. H. Bond and M. K. Cruce associated. This firm continued until 1913, at which time it was dissolved, Mr. Gilbert going to Los Angeles, where he became a famous lawyer of that City, and Mr. Bond moved to Duncan. The firm then became Stuart, Cruce & Cruce, M. K. Cruce, son of A. C. Cruce, being associated with the firm. A. C. Cruce died in 1919, and J. F. Sharp, who had been an able member of the Supreme Court of the State of Oklahoma, joined the firm, under the firm name of Stuart, Sharp & Cruce. About 1925, or 1927, Judge Sharp withdrew from the firm, and Ben Franklin became a member, under the firm name of Stuart, Cruce and Franklin. In 1927, Judge Stuart retired from the firm establishing a partnership and an office in Tulsa, with the designation of Stuart, Coakley & Doerner, and devoted the principal part of his attention to the Tulsa office, although maintaining an office at Oklahoma City until the date of his death.

Judge Stuart was the second president of the Indian Territory Bar Association, and first president of the Oklahoma State Bar Association, and in his latter years was affectionately referred to by lawyers as the "Grand Old Man" of the Oklahoma Bar.

As to Judge Stuart's associates at McAlester, Fielding Lewis was a direct descendant of Betty Lewis, nee Washington, a sister of President George Washington. Judge Liedtke was a member of the Constitutional Convention, was appointed Superior Judge of Pittsburg County by Governor Lee Cruce, which office he resigned and became a member of the firm of Andrews and Liedtke, at McAlester, retiring from this firm upon being appointed attorney for the Gypsey Oil Company, and located at Tulsa. James H. Gordon, who was associated with Judge Stuart from 1895 to

1911, upon the removal of Judge Stuart from McAlester, to Oklahoma City, continued the practice of law at McAlester, except that he served a short term as Justice of the Supreme Court of the State of Oklahoma. Strange to say, Judge Gordon and his old partner at law, Judge Stuart, died within a few days of each other.

When Judge Stuart retired from the Federal bench, in addition to being attorney for the Choctaw, Oklahoma & Gulf Railroad Company, now a part of the Rock Island system, he was also attorney for several large coal companies operating in the McAlester field, viz., The Rock Island Coal Company, Osage Coal Company, Degnon-McConnell Coal Company, and Hailey-Ola Coal Company. He was the personal attorney for Chas. M. Page, of Tulsa, Okla., the philanthropist, during his lifetime, and also the attorney for the executors of his estate, and conducted very important and extensive litigation in this connection, and also in regard to the Sand Springs Home for Crippled Children, founded by Mr. Page. During his residence in Oklahoma he also engaged in the general practice of law, and was attorney for defendants in many noted murder cases in the State, as well as being engaged, on one side or the other, of many of the most important civil cases in the State, in quite a few of which decisions were rendered without precedent to guide the court, establishing landmarks for the guidance of courts and lawyers.

His ability, both as a criminal and civil lawyer, was not excelled. Many lawyers may have been strong in one branch of the law, but Judge Stuart was exceptionally strong in all of its branches.

His matchless eloquence, his convincing reasoning and logic, both to the courts and juries, his fine physique, commanding appearance, keen, sparkling, blue eyes, full, resonant voice, and forceful, respectful manner, were the admiration not only of the bar but of all who heard him.

In addition to being a man most learned in the law, he had a rich mind in literary attainments. He could repeat line after



line of both ancient and modern classics, and greatly delighted in engaging in discussions pertaining to the classics.

An evening spent with him along this line was a great treat to one whose mind was of literary train.

His diversion was hunting and fishing. He thoroughly enjoyed taking rod and gun, with a congenial crowd, and traversing the hills and mountains and spending a few weeks communing with Nature's temples and primeval forests, along the clear crystal mountain streams. Whether angling the rod from bank, or wading deep into the clear water of the mountain stream, dashing its foaming waters over rocks and precipices in a continuous rhythm of weird music; or following the trail of the wild deer through woods and heath to the entrancing strains of the music of the untiring shifting winds, as the archer's bow, across the resonant, stately pines; or sitting by the camp fire, whiffing the delicious aroma of the fruits of these sports broiling over the bright blazing embers of the pine knots, in animated discussion with his companions on the subjects of religion, history, and the classics, or in jovial flights of wit, and oratory; this son of Nature soared away from the battles of life, sometimes sad, sometimes glad, to those resplendent joys that come to him only who lives and communes with the marvelous creations of Nature and of Nature's God.

He was a man unto all men. He could fit himself gracefully and in a dignified manner, to any crowd. He enjoyed conversation with the lowly apparently as much as with those who occupied the higher positions in life. He did not walk and pass along among his fellow men with an air of superiority, but his fellow men felt at ease in every way while associating with him, regardless of rank.

His home life was congenial and pleasant. He was married Jan. 1, 1884, at Shreveport, La., to Blandie Cutliff, daughter of Dr. William Cutliff, a practicing physician of that city. Mrs. Stuart was educated in the schools in Shreveport and attended Peace Institution, a girls school, at Raleigh, North Carolina. Mrs. Stuart and their four sons and three daughters survive him. The children are: Royal C. Stuart, Charles P. Stuart, Douglas S. Stuart, and Mrs.

Agens Jones, all of Oklahoma City; Richard O. Stuart, and Mrs. Eunice Jones, of Shreveport, La., and Mrs. Janet Johnson, of Houston, Texas. To his family he was devoted and indulgent husband and father.

NOW, THEREFORE, BE IT RESOLVED, That we, the Bar of the United States Court for the Eastern District of Oklahoma, here and now, by these presents, testify as to the wonderful character and achievements of Judge Stuart, and feel deeply our loss by his death; and

BE IT FURTHER RESOLVED, That in honor of his memory, and in appreciation of his fine personality, and splendid record, both as a lawyer and man, these resolutions be spread upon the minutes of this Court, and a copy thereof be sent to each member of his bereaved family.

Respectfully submitted this 26th day of April, 1937.

(Signed) S. J. Norton  
J. S. Arnote  
R. W. Higgins  
Wallace Wilinson  
H. H. Clayton,  
Committee on Resolutions.

McAlester, Oklahoma