

## HORACE HARMON LURTON.

Upon the death of the lamented Justice Peckham the selection of his successor devolved on the President. He selected Mr. Horace Harmon Lurton, of Tennessee. Mr. Lurton is a Democrat and an ex-Confederate soldier. He is sixty-five years of age—the oldest man ever nominated to the Supreme Bench. It was well known that the President's personal knowledge and favorable opinion of Mr. Lurton were the result of years of official association, but it would seem that something more than confidence in the President's judgment, profound as it was and is, must be taken into consideration in order to determine why it was that the selection of Mr. Justice Lurton was so favorably accepted by the Bench and Bar of the United States. There must be something in his career that strongly commends him; and so there is.

He was born at Newport, Kentucky, on the 26th day of February, 1844, but when he was a mere boy his parents moved to Clarksville, Tennessee—and Tennessean he has been ever since. He was a student at college in Chicago when the Civil War began. He promptly returned to his home and enlisted in the Thirty-fifth Tennessee Infantry, C. S. A. Later he was discharged on account of his health, but his health improving, he attached himself to the Second Kentucky Infantry as a volunteer. He was captured at Fort Donelson with that regiment and imprisoned at Camp Chase, but escaped. He then joined Morgan's Cavalry and was with him on his raid into Ohio, where all were captured. Mr. Lurton was again confined as a prisoner of war at Camp Chase, and Johnson's Island, until in 1865. On the personal appeal of his mother, he was released by special order of Mr. Lincoln because of ill health—and was sent home, as it was supposed, to die. After a while, however, his health improved, and for many years it has been perfect. He graduated in law at Cumberland University, Lebanon, Tennessee, in 1867, and entered upon the practice of law at Clarksville, Tennessee. In 1875 he became Chancellor, but

resigned in 1878 to resume practice. In 1886 he was elected to the Supreme Court of Tennessee, and later became the Chief Justice of the Court. In 1893, while Chief Justice, he was appointed by Mr. Cleveland to be United States Circuit Judge. Mr. Taft, Mr. Day and Mr. Lurton composed the United States Court of Appeals for the Sixth Circuit. One is now President and the others are Justices of the Supreme Court.

Mr. Lurton's strong sense of duty-doing was exemplified in his enlisting and re-enlisting during the Civil War. His youth was serious, by reason of the persistent menace of ill health. He has been an elective judge, where his tenure of office depended upon the continued approbation of his countrymen. He has been an appointive judge, where his tenure of office was secure for life. For twenty-five years he has been on the bench, and for many of those years it has been his fortune and opportunity to have Mr. Taft and Mr. Justice Day as his colleagues. For seventeen of these twenty-five years, he was a judge of the Sixth Circuit—a circuit of rare and singular opportunities. It stretches in an unbroken line from Georgia to the Lakes, and includes such States as Michigan and Tennessee—States wholly dissimilar in tradition, politics, population, and in Civil-War service. No conditions could be more difficult for an ordinary man; no opportunity could be greater for a really able one. The result with Judge Lurton was that after seventeen years of trial, Michigan and Ohio were as solid in commending him to the President for the position of Associate Justice as were Kentucky and Tennessee.

In these years of service as Circuit Judge, he made a record that has been preserved for him, or against him, in the books. The reports abound with his decisions, and they make the Bench and Bar of the entire Republic familiar with his capacity and his work. That record is so broad, so just and so clear that his selection met the approbation of the Bench and Bar almost everywhere.

This is a day when much is said about "persons", and "personal rights", and "property" and "wealth" and "cor-

porations". It is believed that Judge Lurton's decisions, all in all, show that he has never laid greater emphasis upon either personal or property rights than the constitution and laws, which it has been his duty to execute, require; and this fact is the basis for his universal commendation. He has rendered no sensational or startling decisions, but the plain, firm, steady-going judgments called for by the law, regardless of the fortune or misfortune of the parties to the case. Opinions such as those in the *Addystone Pipe Trust* case (85 Fed. 271); *Atlanta v. Chattanooga Foundry Works* (127 Fed. 123); *The Continental Wall Paper Co.* case (148 Fed. 939), and the *Patent Medicine and Drug Cases* (153 Fed. 24; 146 Fed. 143), may not have been approved by those who would persistently strengthen corporate rights. Upon the other hand, decisions such as *Bigelow v. Hecla Mining Co.* (167 Fed. 721), have not received the approbation of those who would ignore corporate rights. But through all his decisions, whether rendered in Michigan or in Tennessee, a controlling principle appears,—that it is for the legislature to say what the law ought to be, and for the judge to say what it is; and being able to see it and to say it, Mr. Lurton has become a Justice of the Supreme Court.

In a sense, the appointment of Mr. Justice Lurton has been a transfer rather than an elevation. His case is not that of a good man elevated from the Bar to the Bench, but that of the transfer of a ripe judge to a greater field. It was no experiment with respect to him.

After all, the chief consolation of the citizen is the confidence he has in the institutions of his country—the faith that justice will be done by the judges; not the justice which one man, however intelligent, may proclaim, but the justice which the aggregated judgment of the many has expressed as law. Such judges are always wanted, and it is believed that to this is to be ascribed the fact that in Mr. Justice Lurton, Tennessee has now her third Supreme Court Justice.

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