

called forth for their foundation, for their development, for their protection and for their defence, a group of leaders whose minds and characters and public service have placed them forever in the pantheon of human greatness.

It is not inappropriate to recall the fact that it was no less acute an observer of human nature and of human history than Voltaire who pointed out that most governments that have disappeared came to their end through suicide.

PRESENTATION OF KENT MEMORIAL TABLET

Movement to Pay Fitting Honor to Memory of Great American Jurist Consummated by Ceremony in Hall of Court of Appeals at Albany, New York—Distinguished Gathering Present—Addresses Presenting and Receiving Tablet

THE formal unveiling and presentation of the Kent Memorial Tablet by the Special Committee of the American Bar Association took place at Albany, New York, on Monday, Nov. 24, in the Hall of the Court of Appeals. This significant act in recognition of the enduring fame and influence of a great jurist is the consummation of a movement which definitely began with a resolution passed by the New Jersey Bar Association in 1918. In pursuance of that resolution Mr. Edward Q. Keasbey, of the Bar Association of New Jersey, presented this preamble and Resolution at the 1918 meeting of the American Bar Association of Cleveland, O.:

WHEREAS, the jurisprudence of this country owes a great debt to James Kent for his work as Chief Justice, Chancellor, and author of the Commentaries;

RESOLVED, that the American Bar Association take action to commemorate in 1923, the one-hundredth anniversary of his retirement from judicial life, and the beginning of his labor as commentator of American Law [to which the Executive Committee added] and that the details of the commemoration be referred to the Executive Committee, with power to act.

The resolution was adopted and in October 1922, President Davis named as a special committee for this purpose, Lindley M. Garrison of New Jersey, as Chairman, (who, before he was Secretary of War, had been a Vice Chancellor in New Jersey); Moorfield Storey of Boston, and Harrington Putnam of Brooklyn, N. Y. This committee (after conferring with a like committee from the New Jersey Bar Association), concluded to recommend the preparation of a more complete study of Kent's life and influence, and also to place a memorial tablet in Albany, where Kent presided as Chief Justice, and later as Chancellor.

After gaining the consent of Hon. Hampton L. Carson of Philadelphia to prepare such a monograph, the special committee assured Mr. Carson of ample time for this study from his extensive collection of Kent's letters, and also to examine the annotations in Kent's hand throughout many ancient law treatises now in the Columbia Law School library.

The Executive Committee approved these recommendations. On account of the state of Mr. Carson's health this biography of Kent is unavoidably delayed. For the memorial at Albany, the W. H. Jackson Co. of New York were commissioned to make a plain bronze tablet (thirty inches long and twenty-six and a half inches high), which was

cast and set in the entrance hall of the Court of Appeals Building.

The proceedings at the formal unveiling and presentation were interesting and impressive. After opening of the court the chief judge announced a recess, in which the members of the court, with a large concourse of lawyers, gathered in the hall. Mr. Armstrong, the clerk of the court, having unveiled the tablet, Judge Harrington Putnam, of New York, one of the special committee of the American Bar Association, said:

"Mr. Chief Judge and the Associate Judges of the Court of Appeals: On behalf of the Special Committee of the American Bar Association, I have the honor to present to you and to the Bar here assembled the Honorable Edward M. Colie from our sister state New Jersey, who will now present to the court this tablet."

Hon. Edward M. Colie's Address

MAY it please the court: It is a delightful privilege to present to this court on behalf of the American Bar Association the eloquent tablet just unveiled which so adequately and completely sets forth the grounds upon which rests James Kent's title to fame. It was wise to place this memorial at the portal of this hall, where it may be seen and read by all who enter here. It was the Bar of the State of New Jersey that initiated the programme consummated here today. At its meeting in 1918 a resolution was adopted providing for the appointment of a committee to take suitable action to commemorate the centennial of Chancellor Kent's retirement from judicial office. It fell to me, then the president of the association, to appoint a committee pursuant to the resolution with instructions to present the proposal to the American Bar Association at its next meeting. The executive committee of that body approved the New Jersey resolution and a special committee was appointed by Hon. John W. Davis, consisting of Hon. Lindley M. Garrison, Mr. Moorfield Storey and Judge Harrington Putnam, to carry it into effect. In justice I must add that the resolution of the New Jersey State Bar Association was the outcome of a suggestion made by Judge Putnam in an address delivered at the annual meeting of 1918 on "The Early Administration of Equity in this Country" that the centennial of Chancellor Kent's retirement from the Bench would be a fitting occasion for the Bar of the country to

recognize in some appropriate form its debt to that great jurist.

The special committee decided to effect the purpose of the resolution by a commemorative tablet to be placed in this stately building and by a memorial study of Chancellor Kent's career and achievements to be prepared by Mr. Hampton L. Carson. The fact that this volume is to be the work of Mr. Carson not only assures us that it will in all respects be worthy and adequate, but it precludes us from any consideration at this time of Kent's great opinions or the incidents of his interesting career. He is especially appreciated and revered by the Bench and Bar of New Jersey. The reports of our Court of Chancery, which has been maintained as a separate jurisdiction during the entire history of the state and of which we think we may be somewhat proud, show by their extensive citations of Kent's decisions how high a value was placed upon them and how important was his influence upon the development of our equity jurisprudence. In the meagre libraries of the older members of our Bar, even in the more remote portions of the state, there was always to be found with our own Reports a set of Johnson's Reports and, with Blackstone's Commentaries, a copy of Kent's Commentaries.

Then, too, during the last decade of his life for a part of each year he made his home with us in the Jersey hills at Summit, a home of which he wrote on his 76th birthday: "I am in a charming country seat at my Summit Lodge, surrounded with every blessing and blest with ample competence." His name is still associated with that home, for on his estate is now located Kent Place School for Girls and the highway is known as "Kent Place Boulevard." It is therefore a special pleasure to me that in presenting this tablet I may speak not only for the American Bar Association, representing the Bar of the country, but also for the Bar of New Jersey.

On occasions when we are called upon to review the achievements and services of a distinguished man we inevitably endeavor to seek out and determine the happy combination of endowment and circumstances that made such achievements and services possible, and in the case of Kent this happy combination of endowment and circumstances has been revealed very fully in his charming, intimate and voluminous correspondence with his family and many friends. He was endowed with a studious temperament which compelled him to go to the root of every question that engaged his attention, and enabled him to do patiently a vast amount of work that to another type of mind would have been unendurable drudgery. He had the great advantage of pursuing his legal studies in the quiet of the country under the guidance of an eminent and scholarly preceptor. He read widely and acquired great familiarity with the Civil Law and the writings of the continental jurists. But his learning was not that of the mere scholar; he transmuted it and it became his own to use effectively whenever it was needed to accomplish his purposes. With such an endowment and such culture he was fortunately turned aside from a political career in which he had made some slight adventures, and found his vocation, after some experience as a master in chancery and as recorder of the City of New York, when at the age of thirty-five years he was appointed a

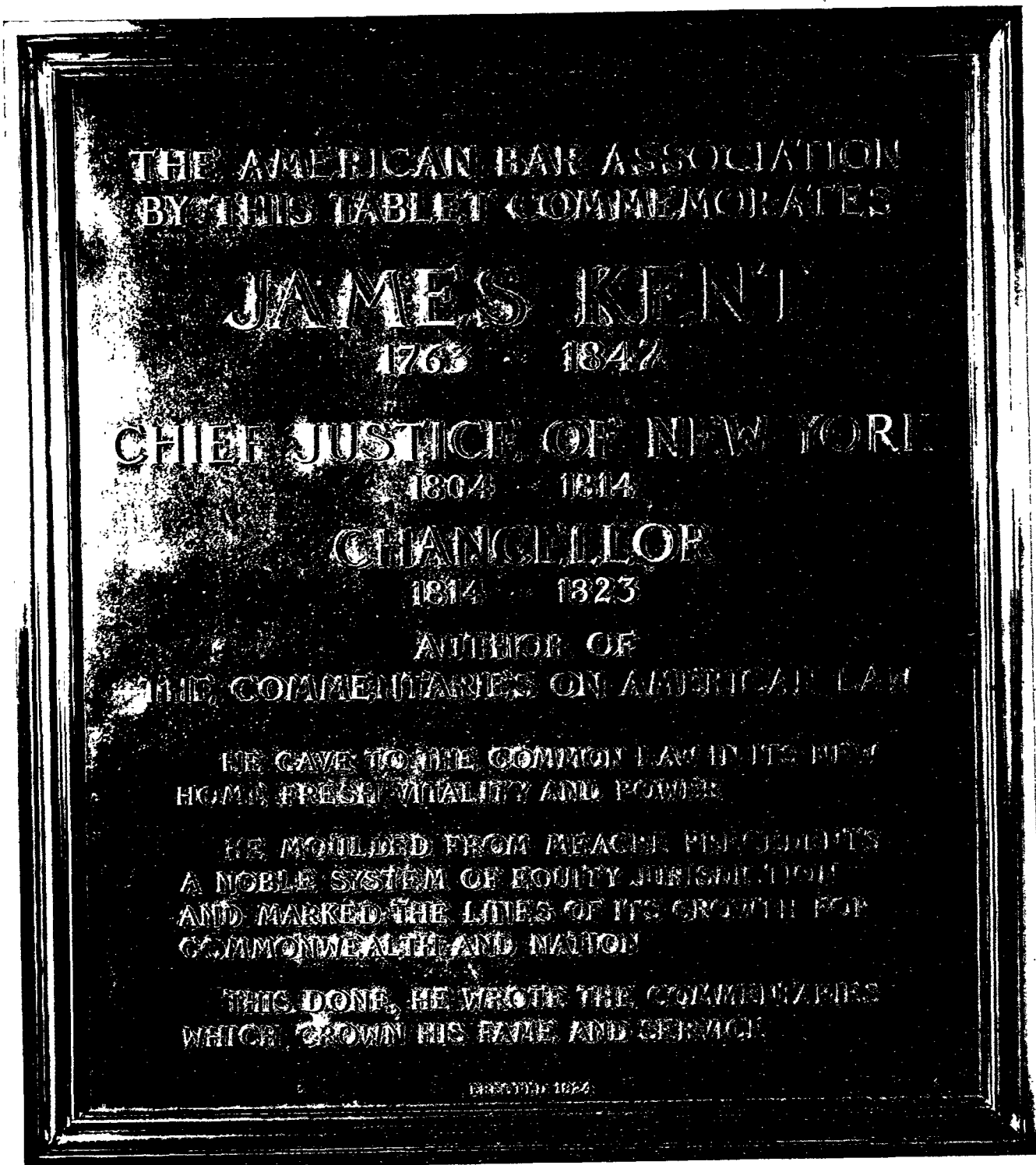
justice of the Supreme Court. Six years later he became chief justice.

It was fortunate for him and his country that thus equipped with wide general knowledge and remarkable legal acquirements, he came to this high office at a critical period in the development of the law. His own words, describing the condition of the court when he became a member of it, are: "When I came to the Bench there were no reports or state precedents. The opinions of the Bench were *ore tenus*. We had no law of our own, and nobody knew what it was." He then, of set purpose, began his struggle to establish the Common Law. This he did by his opinions while on the Common Law Bench and by his Commentaries. He had to overcome three important countercurrents: The antipathy to the Common Law, the aftermath of the Revolution; the sentiment in favor of the Civil Law as opposed to the Law of England, and the interest aroused by the adoption of the Continental Codes. He knew the power of his court; he exercised its full jurisdiction and demonstrated the flexibility and capability of the Common Law. His opinions made it the law of this state, and with his Commentaries contributed in large measure in making it also the law of the land.

Having given your Supreme Court a pre-eminent position and influence, he was called to a very different field by his appointment in 1814 to the office of chancellor. Here he had to create the Court of Chancery in the face of general sentiment against it. His own words are, "I took the court as if it had been a new institution, and never before known in the United States. I had nothing to guide me, and was left at liberty to assume all such English chancery power and jurisdiction as I thought applicable under our constitution." The soundness, wisdom and learning of his decisions placed the equity system of this state upon a firm foundation, and the influence of this great state, unsurpassed by any other at that critical period, was a potent factor in creating the equity jurisprudence of the country. To play the part Kent did in establishing the Common Law and the principles of equity jurisprudence required the skill and qualities of a statesman. This skill and these qualities he had. His opinions were in many cases treatises elaborated to overcome prejudices which he realized as obstacles to his purpose. His discussions of the Civil Law often were manifestly designed to soften the differences between the two systems.

Having done his great part as chief justice and chancellor in founding and developing our jurisprudence, at the height of his influence he, in the language of the tablet, "wrote the Commentaries which crowned his fame and service." In 1832 his friend Story wrote to him, referring to the Commentaries: "My deliberate judgment is that your work will constitute the basis of the most enviable fame—that of being the American Blackstone, a title of which you can never be robbed and which must be as enduring as our jurisprudence."

There is a fortunate group in our history—the pioneers—men who, possessing the necessary equipment, did the particular work needed at a critical time, and so made contributions of highest value to their country. Such men were Kent, Marshall and Story, pioneers in the making of the law, and each secure in his niche in the Temple of Fame. In



measuring Kent's achievements and his influence, the remarkable versatility of his strong and analytical mind must not be forgotten. His influence was great in four widely different fields of the law—the Common Law, Equity, Constitutional Law and International Law. Moreover, it must not be overlooked that his influence was not aided by the conspicuity that a great judge attains when a member of the Supreme Court of the United States. Where among all the judges who have been members of the highest state courts do we find one who has influenced the development of our law to the extent that Kent did? By this standard we may venture the opinion that he is without a peer.

On the occasion of Chancellor Kent's retire-

ment from the Bench, the Bar of the City of New York presented him with an address. That address contains an estimate of Kent's work so just and accurate that we deem it worthy of repetition in part here. "Though others may hereafter enlarge and adorn the edifice whose deep and solid foundations were laid by the wise and patriotic framers of our government in the Common Law which they claimed for the people as their noblest inheritance, your labors in this magnificent structure will forever remain eminently conspicuous, commanding the applause of the present generation and exciting the admiration and gratitude of future ages." I now, on behalf of the American Bar Association, present this tablet to this honorable court. It re-

cords the work and achievements of the great jurist of the State of New York, but he is not yours alone; his fame is the possession and pride of the nation, whereof this ceremony is witness.

Hon. Frank H. Hiscock's Reply*

MR. COLIE and Judge Putnam, of the Committee of the American Bar Association: In behalf of all those, judges, lawyers and laymen, who are interested in the accomplishments and memory of a great figure in the development and betterment of our law and jurisprudence and of our courts, we formally acknowledge the presentation of this tablet. And I assure you that it is with no merely formal or colorless thoughts that I express in their behalf, as I am sure they would want me to, our appreciation of the action of the American Bar Association in presenting this tablet in remembrance and honor of Chief Justice and Chancellor Kent. Of course it is inconceivable that so long as our present system of law continues to guide and rule our conduct his name should sink into the oblivion of forgetfulness or that the conspicuous outlines of his great work should cease to stand forth in any history which may be written of our profession, of our commonwealth, or indeed, of our nation. But nevertheless it is true that complete recognition of the full scope of such a work as he performed might become blurred with the lapse of time, especially in the midst of a feverish and rushing age, that the particular features of what he did might be dimmed or lost in the confusion of rumor and tradition and that we might cease to feel the full obligation of the debt we owe.

This tablet will stand as a substantial protection against such misfortune and injustice. Placed upon the walls of this building, which we trust will endure for many generations and become historic as the abode of our court of last resort, it will confront the gaze of every member of our profession who comes to make the last plea in behalf of those rights of life, liberty or property to which he conveys his client to be entitled. He will read its well chosen, finely expressed and comprehensive inscription: "He gave to the Common Law in its new home fresh vitality and power. He moulded from meagre precedents a noble system of equity jurisdiction and marked the lines of its growth for Commonwealth and Nation. This done, he wrote the Commentaries which crown his fame and service." Thus will he be reminded of the separate fields in which Kent labored and of the details of his enduring work. If counsel comes here relying for the success of his plea upon the great principles of the Common Law he will recall with a new freshness that as justice and chief justice of the Supreme Court Kent extricated that court from a condition of slack methods, inadequately studied and unreported decisions and inefficiency and, by unceasing study and work, made it an institution worthy of applying those great and lasting principles of conduct which had been largely brought to this country from England, and of administering the duties and responsibilities confided to it. If he comes here invoking some great and protecting principle of equity, again he will be reminded anew, and not merely in general thought, that in order to become the great chancellor Kent was obliged, with misgivings and reluctance, to enter a court suffering from neglect if not disrespect and without the assist-

ance of any precedents to construct a system of equity by painstaking and laborious selection from other sources of those principles which he might remould, amplify and apply to the conditions of this country.

And by this tablet it will be recalled that after all this work had been done and after he had reached that age when enforced retirement from official position came as a supposed signal that he had reached the limit of his capacity for active work Kent wrote those great Commentaries, which, passing through successive editions to one generation after another, now, after almost a century of study and review and analysis, stand out as the crowning consummation of his labors. And, perhaps, this tablet, leading our thoughts one step beyond the words of its inscription, will remind us of the interest which Chancellor Kent, both before and after taking his seat upon the Bench, maintained in public questions. A conspicuous illustration of this was the close and eager attention with which he followed the deliberations of the Memorable Poughkeepsie convention, called to decide whether New York should ratify the proposed federal constitution and where he was a constant attendant. This undoubtedly was productive of results which are of especial interest at the present time, for it is not too much to assume that it was partly due to the masterly exposition by Hamilton of the meaning and purposes of the New Instrument there heard by him which led Kent several years before Marshall's opinion in *Marbury v. Madison* to announce his view that the Supreme Court of the United States had the power to pass upon the constitutionality of acts of Congress. In these days when this power has been the subject of so much assault by the destructive critic and the lightly-thinking or misguided theorist, we may recall his words as a forceful and practical answer to their attacks. He said: "No question can be made with us but that the act of the legislative body, contrary to the true intent and meaning of the constitution, ought to be absolutely null and void. The only inquiry which can arise on the subject is whether the Legislature is not of itself the competent judge of its own constitutional limits . . . When powerful rivalries prevail in the community and parties become highly disciplined and hostile every measure of the major part of the Legislature is sure to receive the sanction of that party among their constituents to which they belong. Every step of the minor party it is equally certain will be approved by their immediate adherents, as well as indiscriminately misrepresented or condemned by the prevailing voice. The courts of justice, which are organized with peculiar advantages to exempt them from the baneful influence of faction and to secure at the same time a steady, firm and impartial interpretation of the law, are, therefore, the most proper power in the government to keep the Legislature within the limits of its duty and to maintain the authority of the constitution."

If, as I am sure will be the case, this tablet shall serve to suggest some such thoughts as these, and to keep alive a fresh and vigorous appreciation, not merely of the greatness of Kent's work as an entirety, but that as justice, chancellor and commentator he performed in each of three separate fields what might itself have been a great life work, it will indeed have been fruitful, and will have well repaid the wisdom and initiative of those who have placed it here.

*Chief Judge of the Court of Appeals of the State of New York.