
PROCEEDINGS ON THE DEATH OF MR. JUSTICE PECKHAM.

SUPREME COURT OF THE UNITED STATES.

MONDAY, OCTOBER 25, 1909.

Present: THE CHIEF JUSTICE, MR. JUSTICE HARLAN, MR. JUSTICE BREWER, MR. JUSTICE WHITE, MR. JUSTICE MCKENNA, MR. JUSTICE HOLMES and MR. JUSTICE DAY.

THE CHIEF JUSTICE said:

"It is with deep sorrow that I announce the passing of our eminent colleague and dear friend, MR. JUSTICE PECKHAM. He died at his summer home at Altamont yesterday evening, at quarter past 8. The court will transact no business, but will adjourn until next Monday."

Adjourned until Monday next at 12 o'clock.

The funeral of MR. JUSTICE PECKHAM was in Albany, New York, on October 27, 1909, and was attended by the Chief Justice and all the Associate Justices except MR. JUSTICE MOODY, who was detained by illness.

A meeting of the Bar of the Supreme Court of the United States was held in the Court Room on December 18, 1909. On motion of the Solicitor General, Mr. Alton B. Parker presided. Addresses were made by Mr. Alton B. Parker, Mr. Elihu Root, Mr. William A. Maury, Mr. Thomas H. Clark and Mr. Charles E. Patterson.

A committee consisting of Mr. Elihu Root, Chairman, Mr. Philander C. Knox, Mr. Lloyd W. Bowers, Mr. Jacob M. Dickinson, Mr. William A. Maury, Mr. William B. Hornblower, Mr. John G. Johnson, Mr. Nathaniel Wilson, Mr. Simon W. Rosen-

dale, Mr. Bernard Carter, Mr. DeLancey Nicoll, Mr. Frank P. Flint, Mr. Charles E. Patterson, Mr. William F. Mattingly, prepared and presented resolutions which were adopted, and the Attorney General was requested to present them to the court.

MONDAY, JANUARY 10, 1910.

Present: THE CHIEF JUSTICE, MR. JUSTICE HARLAN, MR. JUSTICE BREWER, MR. JUSTICE WHITE, MR. JUSTICE MCKENNA, MR. JUSTICE HOLMES, MR. JUSTICE DAY and MR. JUSTICE LURTON.

Mr. Attorney-General Wickersham addressed the court as follows:

May it please the court, I am requested by the members of the bar of this court to present for entry upon your records the resolutions recently adopted expressing their profound sorrow in the death of MR. JUSTICE PECKHAM and their sincere tribute to his high character and eminent service to the country. These resolutions are as follows:

Resolved, That the bar of the Supreme Court of the United States deeply deplore the death of Rufus W. Peckham, associate justice of the Supreme Court, and desire to place upon record an expression of the respect and esteem in which JUSTICE PECKHAM was held and of regret for the loss which the court, the bar and the country have suffered in his untimely death.

"For twenty-four years he was an able and successful advocate at the bar of his native State of New York. For twelve years, by the election of his people, he was a member of the highest court of original jurisdiction and of the court of last resort of that State. For fourteen years he sat upon the bench of the Supreme Court of the United States. For a full half century he served the cause of justice without fear and without reproach. His learning and strong powers of reasoning

preserved the standards of the law. His knowledge of affairs and the breadth and vigor of his sympathies with the life and men of his time saved his judgments from pedantry and made them effective instruments for the application of the old principles to new conditions. His published opinions constitute a substantial and valuable contribution to the development of American law. The virile and courageous independence of his strong character, its integrity and its purity, created and justified universal confidence in his judicial acts. The influence of his life and the effect of his work have contributed powerfully to promote that respect for law and for the courts of our country which underlies all of our institutions.

"Resolved, That the *Attorney-General* be asked to present these resolutions to the court, with the request that they be entered upon the records, and that the chairman of this meeting be directed to send to the family of the late MR. JUSTICE PECKHAM a copy of the resolutions and an expression of our sympathy for them in the loss which they have sustained."

These resolutions of the bar are intended, in some measure, to express not alone the sense of personal bereavement which is so deeply felt by the immediate friends and associates of MR. JUSTICE PECKHAM, but a just and fitting estimate of his life and labors as they are known and esteemed by his countrymen.

The extent of the contribution to the work of this court of a single member is as difficult of exact ascertainment as is his influence upon its judgments. Only as he speaks through the published opinions which he is directed to announce can the bar or the people know the extent or the character of his service. His devotion to the duties of his high place, his persuasive insistence upon the right as it is given him to see it, his painstaking industry, his aid in council, his personal characteristics—all these are attributes which intimate friends may know, and which may be revealed now and again in the convincing earnestness of some striking opinion, but which have their full, free play only among his colleagues on the bench.

Looking back with this light upon the services of Rufus Wheeler Peckham, it is not beyond the truth to say that in the period of his service on the bench no man contributed more than he to the learning and development of the law.

He came of a family of lawyers and judges. His father, his brother, his sons made this profession the work of their lives. Though the span of his own life was little beyond seventy years, more than half of it was devoted to the public administration of the law of his State or his country. Though the period of his service in this court was less than fifteen years, it is perhaps not too much to say that in no other period of our history has the jurisprudence of the country been more profoundly affected by the new conditions and the new problems that have arisen as incident to our national growth and development. It has been largely during these fifteen years that the graver questions involved in the effort of the National Government to cope with the great industrial problems arising out of our unexampled commercial expansion have found their way to this court. It has been wholly within these fifteen years that our relations with foreign possessions and the interpretation of our laws for the government of alien peoples have been here debated and determined.

In this work MR. JUSTICE PECKHAM did his full share. No one can examine, even cursorily, the deliverances of this court during the last decade and a half without being impressed by the tremendous volume of it which came from his hand and brain. In that time he wrote nearly four hundred opinions. They dealt with every aspect of the law. But more striking than the number is the fact that so many of them are to-day, and will ever remain, the leading and familiar cases upon the great questions with which they dealt. No tribute to the life and work of MR. JUSTICE PECKHAM could find a higher sanction than the mere citation of his opinions in such cases as *Maxwell v. Dow*, *Hopkins v. United States*, the *Addyston Pipe* case, the *Trans-Missouri* and the *Joint Traffic Association* cases, *Montague v. Lowry*, *Lochner v. New York*, *Ex parte Young*, which reveal his great learning and industry.

But we can not garner up his work as men would bind the

harvest of a season. It has enriched the whole field of our national jurisprudence, and for all time the yield will be the better for his labor.

If it please the court, I have the honor to move that the resolutions adopted by the bar be entered at large upon the records of this court.

THE CHIEF JUSTICE responded:

The resolutions and the remarks by which they are accompanied will be spread upon our records as deserved tributes to the memory of the brother who has so recently been taken from us. Whatsoever things are true and honest, just and of good report, these are the things which the record of the life of MR. JUSTICE PECKHAM displays. Its most striking characteristic is the singlemindedness of his devotion to judicial duty. It may be said of him as it was of MR. JUSTICE STORY that "in all his commerce with the world and in his intercourse with the circle of his friends the predominance of his judicial character was manifest." He discharged his judicial duties not as upon compulsion, but because he loved them. It ran in his blood, and he profoundly believed that justice was "the great interest of man on earth."

"As a man thinketh, so is he," and as this man was, so was his style, simple, forcible, and direct. He aimed to do substantial justice in an intelligible way, dealing in no strained inferences, nor muddling definite results by qualifying his qualifications.

His opinions from the first in volume 160 of our reports to the last in volume 214 are all lucid expositions of the matter in hand, and many of them of peculiar gravity and importance in the establishment of governing principles. He sought to avoid the curse denounced on the removal of landmarks while merit-ing the blessing accorded to their wise reënforcement. His death is a serious loss to the cause of jurisprudence, to this court, and to his country. I cannot trust myself to speak of the loss to his brethren of this lovable and beloved comrade. We cannot but be exceeding sorrowful as we recall the touch

of the vanished hand and the sound of the voice that is still. "Let us alone," sang the Lotos-Eaters, "what is it that will last?" We find the answer in the example of this distinguished, faithful, and thorough life which, "though the whole world turn to coal, then chiefly lives."

Mr. Elihu Root presented to the court the resolutions adopted at a meeting of the members of the bar of the State of New York in memory of MR. JUSTICE PECKHAM, and it was ordered that they be placed on file.

They are as follows:

NEW YORK STATE BAR ASSOCIATION.

TO THE NEW YORK STATE BAR ASSOCIATION:

The undersigned, appointed as Committee to present Resolutions to this Association with regard to the late MR. JUSTICE PECKHAM, hereby present the accompanying Resolutions.

Dated December 9, 1909.

WILLIAM B. HORNBLOWER,
Chairman.

JOSEPH H. CHOATE,
ALTON B. PARKER,
LOUIS MARSHALL,
FRANCIS LYNDE STETSON,
JOHN G. MILBURN,

Committee.

Resolutions adopted by the New York State Bar Association at a special meeting held in the city of Albany on the evening of Thursday, December 9, 1909:

Resolved, That the New York State Bar Association desires to express its profound sense of the great loss which the Judiciary, the Bar and the public at large have suffered by the death of MR. JUSTICE RUFUS W. PECKHAM, Associate Justice of the Supreme Court of the United States. The members of the Bar of this, his native State, feel that loss in a peculiar and special degree, and we adopt the following memorial to be spread upon our minutes.

Rufus W. Peckham was born in the city of Albany in 1838. He was the son of one of our most distinguished jurists, who rounded out his career by serving upon the Bench of the highest court of the State, and whose life was cut short, while still in the full vigor of his powers, by a terrible catastrophe at sea. Bearing his father's name and strongly resembling him in his physical, mental and moral characteristics, Rufus W. Peckham had an hereditary claim to the regard and esteem of his fellow-citizens of this State. His is one of the rare instances in which the honors of the father have descended naturally to the son. He and his elder brother, Wheeler H. Peckham, became eminent members of the profession, and achieved for themselves a distinction worthy of that which had been bequeathed to them by their father.

Rufus W. Peckham practised law for many years in the city of Albany with ability and success. He was a man of vigorous and forceful character; frank and outspoken and courageous in every relation of life. In the practice of his profession he won the respect and admiration of his brethren of the Bar, the members of the Bench and the public at large.

He was elected a justice of the Supreme Court of this State more than twenty-five years ago, and until his death he remained continuously in judicial office, so that to very few of the members of this Association was he known otherwise than as a judge, and for most of us it is difficult to think of him except as we remember him in the performance of his judicial functions, or as we met him personally and socially, from time to time, during his judicial career.

Elected to the Supreme Court of this State in 1883; transferred to the Court of Appeals of the State, January 1, 1887, and to the Supreme Court of the United States in January, 1896, and dying in the full vigor of his ripe manhood in 1909, while still serving on the Bench, he has been to the members of the Bar of this State for a quarter of a century our ideal of judicial character and conduct. His intellectual perceptions were keen and penetrating; his power of analysis of intricate questions of fact and law were unexcelled; his terse, forcible and vigorous expressions of his conclusions, as embodied in

the opinions which he from time to time delivered in the various courts of which he was a member, will always remain to illuminate the path of searchers for the doctrines of our jurisprudence, as set forth in judicial decisions. His absolute and unyielding impartiality and integrity were such marked characteristics that it was impossible for any one to so much as suspect that he was conscious of either fear or favoritism, no matter who were engaged in a cause before him, or what might be the interests involved. It was impossible for Rufus W. Peckham to think except in a straight line from premise to conclusion, according to the logic and reason of the case as he saw them. All must agree that the conclusions reached by JUDGE PECKHAM were the honest conclusions of an open-minded judge, and they were expressed in clear and convincing language which bespoke the sincerity and the ability of the man.

Not only was JUDGE PECKHAM our ideal of a judge in ability, character and conduct, but he had the judicial manner upon the Bench; always courteous yet dignified; his occasional colloquies with counsel arguing before the court were always with the purpose of acquiring information or obtaining the views of counsel, and not with the purpose of indulging in controversy. His keen and incisive questions to counsel left no doubt of his desire to arrive at the very truth of the case, and left no sting behind.

And now, what shall we say of JUDGE PECKHAM as a man and as a friend? As we have already said, there are few of us who can remember him in the days before he became a judge in the freedom from restraint and reserve of ordinary professional life. But, to those of us who knew him only as a judge, when he was surrounded to some extent by that undefined, but always-felt distinction between the Bench and the Bar, JUDGE PECKHAM preserved, even after he became a Justice of the Supreme Court of the United States, a geniality and a kindness which, in social intercourse, made him peculiarly attractive. We would not call him affable, for that implies a certain amount of condescension, and there was nothing of condescension about Rufus Peckham. He never seemed con-

scious of his honors, nor did he feel it necessary to maintain an attitude of judicial reserve, but to his dying day he was the same hearty, outspoken, warm-hearted Rufus Peckham that some of us knew in our earlier days.

It is hard for us to realize that the life and the judicial career of this eminent son of New York State are at an end. His sturdy intellectual honesty, his absolute and exclusive devotion to judicial duty, and his sterling common sense, made him an invaluable member of the great tribunal which he so fitly graced. The influence which he has exerted upon the jurisprudence of this State and of this country cannot be overestimated. As has been frequently remarked, it is one of the advantages which the judicial function possesses over that of the advocates of the Bar, that while the fame of the latter vanishes, with rare exceptions, with the brain and the voice which gave it life, the fame of the former is written imperishably in the volumes of official reports, which will be handed down from generation to generation. The name and the fame of Rufus W. Peckham will last as long as the decisions of the Court of Appeals of this State and of the Supreme Court of the United States are quoted as authority.

This Association extends to the bereaved widow and family our deepest and profound sympathy, and begs to assure them that the members of the Bar of this State are fellow-mourners with them in their great loss.

I hereby certify that the foregoing is a correct copy of the Resolutions adopted upon the report of the Committee, appended hereto, at the special meeting of the New York State Bar Association, called to commemorate the life and services of the late MR. JUSTICE PECKHAM, which meeting was held on Thursday, December 9, 1909, in the Assembly Chamber in the Capitol in the city of Albany, N. Y.

[SEAL.]

FREDERICK E. WADHAMS,

Secretary.

Dated Albany, N. Y., December 16, 1909.