
PROCEEDINGS ON THE DEATH OF MR. JUSTICE
LURTON.

HORACE HARMON LURTON, Associate Justice of the Supreme Court of the United States, died at the hotel Marlborough-Blenheim, Atlantic City, New Jersey, on Sunday, July 12, 1914, during vacation. He attended the closing session of the court for the October Term, 1913 on Monday June 14, 1914.

The funeral of MR. JUSTICE LURTON took place at Clarksville, Tennessee, on July 15, 1914. The interment was at Greenwood Cemetery in that city.

On Monday, October 12, 1914, at the opening of the court, the CHIEF JUSTICE said:

“It gives me pain to say that since the court adjourned at the end of the last term it has come to pass that the nation may no longer enjoy the fruitful and beneficent results to arise from the continued enlightened and devoted discharge by MR. JUSTICE LURTON of his public duties. He died at Atlantic City on the 12th day of July. In addition to the sorrow which they share with their countrymen at so great a loss, the members of the court have suffered the pang caused by the severance of the close personal ties which bound them to MR. JUSTICE LURTON; ties the strength of which cannot be fully appreciated without understanding how completely his attainments and his lovable traits of personal character commanded the respect and drew to him the warm affection of those who had the privilege of being associated with him in the performance of his judicial duties.”

SATURDAY, MARCH 27, 1915.

The Bar of the Supreme Court of the United States and the officers of the court met in the court room in the Capitol, at twelve o'clock.

On motion of MR. SOLICITOR GENERAL DAVIS, MR. WILLIAM HOWARD TAFT was elected chairman, and MR. JAMES D. MAHER was elected secretary.

On motion of MR. JACOB M. DICKINSON, the Chair appointed a Committee on Resolutions: MR. JACOB M. DICKINSON, Tennessee, Chairman; MR. JUDSON HARMON, Ohio; MR. EDMUND F. TRABUE, Kentucky; MR. JOHN J. VERTREES, Tennessee; MR. EDGAR H. FARRAR, Louisiana; MR. S. S. GREGORY, Illinois; MR. FRANCIS LYNDE STETSON, New York; MR. HENRY W. ANDERSON, Virginia; MR. LAWRENCE MAXWELL, Ohio; MR. WILLIAM MARSHALL BULLITT, Kentucky; MR. CHARLES T. CATES, Jr., Tennessee; MR. JOHN W. YERKES, District of Columbia; MR. OTTO KIRCHNER, Michigan; MR. FRANK B. KELLOGG, Minnesota; MR. FREDERICK W. LEHMANN, Missouri.

Addresses were delivered by: MR. WILLIAM HOWARD TAFT, Ex-President of the United States; MR. JACOB M. DICKINSON, Ex-Secretary of War; MR. FRANK B. KELLOGG; MR. EDMUND F. TRABUE; MR. HENRY W. ANDERSON; MR. WILLIAM C. FITTS; MR. WILLIAM MARSHALL BULLITT, Former Solicitor General, and MR. OTTO KIRCHNER.

MR. JACOB M. DICKINSON for the Committee on Resolutions, presented the following:

RESOLUTIONS

We, members of the bar of the Supreme Court of the United States, moved by our high regard for the character and public services of MR. JUSTICE HORACE H. LURTON, who departed this life on the 12th day of July, 1914, have met at Washington, this 27th day of March, 1915, for the purpose of discharging what we regard as a high public duty in honoring the memory and recording our estimate of one who as a man, a citizen, a jurist, and a judge has greatly honored our country, and adopt the following:

HORACE HARMON LURTON was born on February 26, 1844, in Newport, Ky. His early life was passed partly at Clarksville, Tenn., and partly in the city of Chicago.

When the Civil War began he was a student at the old University of Chicago. He at once returned to Tennessee, and at the age of sixteen joined the army of the Confederate States, enlisting in the Thirty-fifth Tennessee, of which he became sergeant major.

He was captured at Fort Donelson and was imprisoned at Camp Chase, from which, after a brief confinement, he escaped. He reënlisted in the Third Kentucky Cavalry, and while serving under Gen. John H. Morgan, during his raid in Ohio, was again captured in 1863 and imprisoned, where he was confined until early in 1865. At that time, on account of his health, and in response to a personal appeal made by his mother to President Lincoln, he was released on parole.

His collegiate education thus interrupted was never completed, but it was richly supplemented by constant study and copious reading.

He graduated in law at Cumberland University, Lebanon, Tenn., in 1867. There he met Miss Frances Owen, who, in the same year, became his wife, and survives him. Their married life was an uninterrupted period of mutual love and comfort.

He entered upon the practice of his profession at Clarksville, Tenn., and continued until 1875, when he became a chancellor of Tennessee.

In 1878 he resigned and returned to the bar. He was associated in partnership at various times with Gustavus A. Henry, William A. Quarles, James E. Bailey, and Charles G. Smith, who were among Tennessee's most distinguished lawyers. He was a recognized leader and enjoyed a large practice.

In 1886 he was elected as judge of the Supreme Court of Tennessee, and served continuously until April, 1893, being chief justice the last four months of his service.

In that year he was appointed United States circuit

judge by President Cleveland, and became a judge of the Court of Appeals for the Sixth Circuit.

He became professor of constitutional law at Vanderbilt University in 1898 and dean of the law school in 1905, which positions he held until 1910.

In 1899 he received the degree of doctor of civil laws from Sewanee University, and in 1912 the degree of doctor of laws from the University of Pennsylvania.

In December, 1909, he was appointed by President Taft to the Supreme Bench of the United States, and took his seat January 3, 1910, in which position he served until his death.

Upon his appointment to the Supreme Court of the United States he was sixty-five years of age, being the oldest man ever appointed to that court. There were sound reasons for such distinction. He had been upon the bench thirty years and had achieved as chancellor a high reputation as an able, learned, conscientious, industrious, and impartial jurist, which was maintained, with increased prestige, throughout his long service on the Supreme Bench of Tennessee and as United States circuit judge.

He came to the Supreme Court equipped with an experience and learning that few appointees to that court have had. His long service upon the Federal bench especially qualified him to enter at once with full efficiency upon his duties.

President Taft had collaborated with him seven years in the Circuit Court of Appeals and well knew his fitness for the high office for which he nominated him.

During a continuous service on the bench, state and National, for a period of over thirty years, he decided almost every kind of case which human affairs could give rise to. His opinions, which are to be found in Pickle's Tennessee Reports, the Federal Reporter, and the Reports of the Supreme Court of the United States, are characterized by learning, conciseness, and lucidity, are convincing witnesses of his justice, wisdom, industry,

and comprehensive grasp of legal principles, and constitute a great and enduring monument to his fame.

He was thoroughly grounded in the fundamental principles of the law, and always maintained a profound reverence for constitutional safeguards.

In an address made at a joint meeting of the Maryland and Virginia Bar Associations in 1910 he said:

“The contention that the obligation of a constitution is to be disregarded if it stands in the way of that which is deemed of public advantage, or that a valid law, under the Constitution, is to be interpreted or modified so as to accomplish that which the executive administering it or a court called upon to enforce it shall deem to the public advantage, is destructive of the whole theory upon which our American Commonwealths have been founded, to say nothing of the constitutional relation of the Union and the States to each other. It is a substitution of men for a government of law. It is against this that I raise a warning voice.”

He fully recognized the rights of persons and property, but did not hesitate to give full effect to constitutional legislation changing such rights.

He rendered no startling or sensational decisions. While this is true, he recognized fully the expanding and complex affairs of modern life and government and the necessity for the application of old principles to changed conditions. However, he never under this guise gave sanction to judicial legislation. His attitude on this vital principle is well shown by his own utterance in the case of *John D. Park & Son against Hartmann*, in which he said:

“It has been suggested that we should have regard to new commercial conditions and a tendency toward a relaxation of old common-law principles which tend to prevent development on modern lines. This is an argument better addressed to legislative bodies than to the courts. Neither is it wise for the courts to countenance the introduction of artificial distinctions dependent upon the variant economic views of individual judges. Dis-

inctions which are specious or analogies which are but apparent will but afford opportunities to whittle away broad economic principles lying at the bottom of our public policy, principles which have long received the sanction of statesmen and the approving recognition of a long line of jurists. A like argument is expected whenever some new method of circumventing freedom of commerce comes under the tests of the law.”

He was frank in expressing his views and always courageous in the performance of duty. He was quick to see and comprehend the points of argument, and clear, direct, and forceful in stating his conclusions.

He had an amiable disposition and a charming personality, which endeared him to a large circle of warm friends.

His associates loved and honored him, and the members of the bar who came before him entertained profound respect for his ability and efficiency as a judge, and hold his conduct toward them, which was always characterized by unflinching graciousness, attention, and patience, in most pleasing remembrance.

Both on and off the bench he was affable and courteous, without any appearance of seeking popularity. He was firm and impersonal in his rulings, without any touch of harshness. His manner was impressive and dignified, without show of authority.

He bore a conspicuous part in drafting the new Federal Equity Rules, and went to England for the purpose of informing himself as to the changes there in equity practice and their effect.

He left to his family the rich legacy of a stainless and unquestioned life.

He early became a member of the Episcopal Church, was constant in church duty, and for a long time preceding and at the time of his death held the position of vestryman in that church. His religion was not merely a profession, but its principles were constantly illustrated in his daily life.

In politics he was a Democrat.

Although he was a strict party man and believed that government should be administered through parties, and took a deep interest in politics and frequently was prominent and influential in political affairs, state and National, he never sought political office.

He and his colleague, MR. JUSTICE HARLAN, twice during the Civil War were opposed in battle. Notwithstanding they had fought on opposite sides in support of conflicting views as to the Constitution, they were in substantial accord in their judicial utterances on the fundamental principles of our Government.

The fact that one who had borne arms against a government and had been imprisoned by that Government, subsequently through its expressed will, sat in a tribunal which had final jurisdiction over the property, liberty, and lives of its people, and the interpretation of its Constitution, is a tribute to the qualities that found such distinguished recognition. It bears, however, for our whole Nation, for all time, and especially now, when the passions of a great war are manifesting themselves with fearful violence, a deeper lesson—that of a great people subduing in so short a time their prejudices, and following the injunction of Mr. Lincoln “with malice toward none, with charity for all,” turning their backs with magnanimity upon the strife of the past, and doing those things which reunited our country in a common destiny, based upon a reconciliation, genuine and complete, and without example in history.

Respect for those in office, because they represent the sovereign power, is essential for stability of government. It is fortunate for a people to be served by those to whom honor is rendered, not only during incumbency of office but after they have passed out of office and out of life. The record of the lives of such men is the richest heritage and the highest inspiration that a people can possess.

This meeting is not to render grateful praise to one who can show appreciation to those who are present.

It is not a perfunctory tribute to place, for we are met to solemnly record our estimate of the services of one who has passed beyond the sense of praise or censure.

Tried by the standards which constitute the just test of title to the esteem of his countrymen, we confidently say that MR. JUSTICE LURTON is worthy of lasting commemoration in the annals of the Nation: Therefore be it

Resolved, By the Bar of the Supreme Court of the United States, that in the death of MR. JUSTICE HORACE H. LURTON, the bar and the people of the United States have sustained a great loss; that we deeply sympathize with his family and friends in their bereavement; that a copy of these proceedings be sent to Mrs. Lurton, and that, through the Attorney General, it be asked that they be spread upon the minutes of the Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES.

MONDAY, JUNE 14, 1915.

Present: THE CHIEF JUSTICE, MR. JUSTICE MCKENNA, MR. JUSTICE HOLMES, MR. JUSTICE DAY, MR. JUSTICE HUGHES, MR. JUSTICE VAN DEVANTER, MR. JUSTICE LAMAR, MR. JUSTICE PITNEY, and MR. JUSTICE MC-REYNOLDS.

THE ATTORNEY GENERAL addressed the court as follows:

May it please your Honors: In presenting the resolutions adopted by the memorable meeting of the bar, held in this room on March 27, to do honor to the memory of MR. JUSTICE HORACE HARMON LURTON, I might well be contented with the observation that the resolutions show such intimate acquaintance with his eventful career and such discriminating appreciation of his character and attainments as man and judge as to demand nothing more.

With respect to JUSTICE LURTON, my lines were so cast that a measure of the personal appropriately attaches, without which the part I am performing might in a sense be regarded somewhat in the light of one of the graceful functions belonging to the official station I hold. My personal acquaintance with JUSTICE LURTON began when as a youth I attended college at Clarksville, Tennessee, where he, subsequent to his service as chancellor, was the ascendant light at an unusually strong bar. After leaving college and moving West I next saw him some ten years later in Nashville presiding as chief justice of the Supreme Court of Tennessee. My presence on this occasion was almost accidental, but I recall with interest the fact that the attorney addressing the court was the distinguished gentleman who succeeded JUSTICE LURTON upon this bench and whose former official position I now hold.¹

JUSTICE LURTON possessed a singular charm of candid affability. He took a lively interest in the aspirations and endeavors of younger men, particularly young lawyers. Whenever the opportunity offered, he encouraged them and gave them incentive to noble endeavors. I am one of the many who profited by his friendship.

That the men who strive are the men who succeed was eminently illustrated in the achievements of this life. He was denied the advantages of a completed college education. The hardships of the soldier, the privations of the prisoner, and the experience of the practitioner, quickened by a keen interest in public affairs and a studious disposition, were all utilized. The winds blew and the waters rolled to him knowledge and power, and the influences of the eventful times of his youth and early manhood so broadened him that he understood the varying phases of life and character, though he studied them to the end.

In the enchanted circle of home, around friendship's shrine, in the conflicts of the forum, in the temple of jus-

¹ MR. JUSTICE McREYNOLDS.

tice, in the sanctuaries of the living God, JUSTICE LURTON was the same open, wholesome model of uplifting human character—a Christian gentleman. As a man, he bound himself to us by the strongest and tenderest ties.

It was as a judge, who ripened and gathered strength from the period of his early chancellorship, through service in the Supreme Court of Tennessee and the seventeen years of larger vision on the Circuit Court of Appeals, culminating in, and completed by, his brief but valuable work on the Supreme Court of the United States, that the deceased won his most enduring laurels.

When he went to the Court of Appeals of the Sixth Circuit he found it established in the confidence of the profession, and he contributed to the maintenance of its high standing. Coming to this court from a section so prolific in great judges, he fulfilled the measure of the expectation thus engendered.

JUSTICE LURTON was appointed at a riper age than any other man ever elevated to this bench. The deviation from what is generally a sound and acceptable rule was justified by the scope and length of his varied judicial experience and the richness of the results which had flowed therefrom.

While death claimed him sooner than could have been reasonably contemplated, his service here was singularly useful and beneficent. Aside from the invaluable work performed in connection with the preparation and adoption of the equity rules, JUSTICE LURTON, in the four and one-half years he adorned this bench, wrote the opinion of the court in ninety-eight cases, many of them involving issues of the gravest importance. Some of these opinions are destined to stand as leading authorities. He found himself constrained to dissent from the majority of the court in eighteen cases, and with respect to two of them filed dissenting opinions ably sustaining his views.

His style was admirable because of the clear and logical way in which he illuminated the subject in hand, each step in his reasoning following steadily after that which

had gone before, with the rhythm and certainty of a soldier's tread, so that when the end was reached there was no element of uncertainty as to what he had decided or meant to decide. He systematized facts and decomposed them into their elements, applying to them the principles of law and equity with unflinching precision.

To his other great qualities JUSTICE LURTON added powers of painstaking investigation, depth of research, and an accuracy in the use of our language that must ever make his opinions models of judicial composition. The loss of such an one may indeed be rightly regarded as a public calamity.

Actuated by these sentiments, sharing the spirit of these appropriate and appreciative resolutions, I present them to the court, as I am bidden by the bar to do, and request that a befitting order be entered, directing their perpetuation on the minutes of the court.

I now read the resolutions:

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copy of these proceedings be sent to Mrs. Lurton, and that, through the Attorney General, it be asked that they be spread upon the minutes of the Supreme Court of the United States.

THE CHIEF JUSTICE responded:

Mr. Attorney General, the motion which you make gives us solace, since it affords us an opportunity, by putting of record the resolutions which you so appreciatively present, to become participants in the action of the bar and thus again to manifest our sense of sorrow at the death of MR. JUSTICE LURTON.

The attachment between MR. JUSTICE LURTON and a member of this court resulting from prior association in judicial work in another forum ¹ and between others resulting from a personal friendship of long standing, came when he took his seat upon this bench to unite him with all its members because of the resulting knowledge of his attainments and endearing character.

I asked one of my brethren not long since what was the mental quality of MR. JUSTICE LURTON which most impressed him. He said, "He was a lawyer, fully equipped by training and by experience to do the work which came to him to do." How terse and yet how comprehensive the analysis, since it embraced the developed powers of discrimination controlled by a trained and ripened intellect which enabled him intelligently to consider and clearly to understand the complex conditions and problems concerning which he was called upon as a judge to act. Accurate as was the portrayal, the inadequacy of the likeness which results is manifest unless there be added to the picture the lineaments of the man, his simplicity, his fidelity, his warmth of friendship, his tenderness to those he loved, all uniting with his intellectual qualities to make him what he was—a lovable and true man, an able and conscientious lawyer, and an intelligent, courageous, and devoted judge.

¹ MR. JUSTICE DAY.

If there were time to review his public services, it would be unnecessary, since the mere mention of the landmarks of his career will bring out in bold relief his title to the admiration and respect of his countrymen. A practicing lawyer, a chancellor, a member of the Supreme Court of Tennessee, either as an associate member or its chief justice, from 1886 to 1893, a United States circuit judge from 1893 until he became a justice of this court in 1910. Mark the progressive evolution of his career and the irresistible inference of duty faithfully done which it affords. And to add to this demonstration take into view the judgment of the bar who practiced before him and the reports of the several courts during his service. The responsibility which he thus so worthily met is indicated by considering the grave duties which have rested upon state courts of last resort and upon the circuit courts of the United States from the beginning and the services which both have rendered to the security of life, liberty, and property, to the progress of our country, and to the perpetuation of our constitutional institutions. But that view does not give a full appreciation of the value of the work of MR. JUSTICE LURTON as a United States circuit judge. Bear in mind that when he became a circuit judge the circuit courts of appeals had been relatively newly created and the necessity for their existence as well as their future usefulness was in some minds far from certain. The benefit, therefore, to the country of the work of the court of appeals of the sixth circuit during his membership can not be judged alone by the volume and character of the business which came before it and by the enlightened manner in which that business was disposed of, but by considering how its discharge of duty coöperating in its full proportion with the work of the courts of appeals of other circuits demonstrated the wisdom of having created those courts and besides made certain how much the progress and development of our judicial institutions would be benefited by their continued existence.

I do not review the work of MR. JUSTICE LURTON on

this bench. It speaks for itself, since it demonstrates the benefit to the court and country which arose and would have continued to result had it been given to him, as we had all hoped it would be, to devote his matured powers to the service of the country for a long period of time. But this was not to be vouchsafed. Illness came, and when its serious character was apparent, in company with that comrade, high courage, which had been with him all the days of his life, comforted by the care and tenderness of those he so much loved and sustained by Christian faith and hope, he passed beyond our mortal vision. The unbidden thought which comes as to the fleeting result of all human effort, its perishability and the resulting despondency, is natural from such a loss, and the miasma of pessimism which they produce enveloped me as with those of my brethren who could do so we journeyed to Clarksville, Tenn., where he began his active career after the Civil War, there to lay him to rest. But as I stood by the open grave, surrounded by the kindly faces of so many of the warm-hearted people of Clarksville, who had gathered to pay their tribute of respect and affection, and heard the plaintive melodies of the old hymns telling of Christian faith and hope, pessimism vanished, and I came to feel death is not forever, and good works do not perish, but remain. Yes; it was given to me to think, as the waving wheat field in sunshine and in rain conserves its energy in the grain which long after the stem has been cut down and perished, pressed under the millstone, gives forth the nutriment of our material existence, why may we not believe that in the vast reservoir of Divine Providence the energy of our good deeds is conserved, so that they may continue when we have gone to aid and bless our country and our countrymen? What can better illustrate this truth than the work of the lawyer and the judge, since the rule of justice which solves the controversy of to-day becomes the rule of conduct preventing the arising of contention in the years to come? Can we doubt if we listen to the voices of Ulpian and Trebonian calling us


through the turmoil and dust of ages to the regions where reason dominates and hence justice prevails? But so distant an example need not be sought. Who of us has not known controversies as to powers of government whose complexities and difficulties were so great that their solution threatened the destruction of our constitutional system either by the disregard of national power or the overthrow of local authority? Insoluble, indeed, they have seemed when from out the past the voice of Marshall spoke and order prevailed, and State and Nation continued to move in harmony and majesty in their allotted orbits to the safety and blessing of our country and mankind.

Indeed, the truth of which I am speaking is illustrated in an episode in the life of MR. JUSTICE LURTON. We all recall that when he was in his youth a private in the southern army he was a prisoner of war, confined, I believe, on Johnsons Island, enduring the hardships of prison life and suffering from the intense rigor of the northern winter climate, to which he was not habituated. The youth's health failed and the fear came that his end was not far off. His mother, learning of the situation, pleaded from person to person until she came into the presence of President Lincoln to state her sorrow and out of the depths of her anguish to make her prayer for relief. Let us transport ourselves in imagination to the scene and listen to the mother's supplication and hear the answer from the lips of President Lincoln, springing from that well of compassion which was one of the supremest attributes of his nature: "Yes; let the mother have her boy." Ah! If it had been given to us to stand in reality where we have stood in fancy to-day, who of us would have thought when the storm of war which was then raging had ceased it would come to pass through the enduring power of the influence of the patriotism of our forefathers and of the wise institutions they had established that on the very dawn of peace one would seek in vain to find the erstwhile embattled armies, for they had vanished, leaving only a great host of devoted citizens seeking to serve their united

country in peace with the devotion with which, as they had understood it, they had sought to serve it in war? And who of us would have thought that it would soon be seen that the giving of the youth to the mother was the giving to the country of an enlightened and faithful public servant who, when the storm of war had passed, having been freed from imprisonment himself, would yet seek by a devoted discharge of his public duties to imprison his country men by binding them with enduring ties of respect and affection for the institutions of our forefathers, and who would be found dedicating his life to such work when the voice of the Father called him from the highest judgment seat in the land to what we would fain believe was his reward eternal.

These thoughts, while they afford consolation for our loss, should stimulate our endeavors. In this latter aspect let us, both judge and lawyer, before we leave these hallowed precincts to-day—hallowed because here justice is administered and here we each and all have avowed our fealty to the Constitution and our purpose to maintain it—resolve to seek more devotedly to discharge the duties which are upon us, to the end that, following in the footsteps of our brother whose life we to-day recall and of all those noble souls who have gone before, we may live by our good works; yes, continue to live when we are gone.

The resolutions of the bar and your remarks, Mr. Attorney General, will be spread upon the minutes, and any other tributes that may be received will be placed upon the files.



The history of the United States is a story of growth and change. From the first European settlements to the present day, the nation has expanded its territory and diversified its economy. The early years were marked by the struggle for independence and the establishment of a new government. The middle years saw the westward expansion and the development of a strong industrial base. The late years have been characterized by the challenges of a global economy and the pursuit of social justice. The United States has always been a land of opportunity and innovation, and its history continues to shape the world today.