

SUPREME COURT OF THE UNITED STATES

TUESDAY, MAY 31, 1921.

PRESENT: MR. JUSTICE MCKENNA, MR. JUSTICE HOLMES, MR. JUSTICE DAY, MR. JUSTICE VAN DEVANTER, MR. JUSTICE PITNEY, MR. JUSTICE McREYNOLDS, MR. JUSTICE BRANDEIS, and MR. JUSTICE CLARKE.

MR. JUSTICE MCKENNA said:

“GENTLEMEN OF THE BAR: This empty chair, and the sombre drapery upon it, announce that since the last sitting of the Court a grievous affliction has come to the country and to us, an affliction which to some of us and, it may be, to all of us, can never have complete solace. A great life has ceased to exist, one replete with achievements—achievements in many fields of endeavor, all typical and demonstrative of ability and merit, of which, to adopt the words of another, ‘it would be difficult to say anything that would transcend the bounds of a just and decorous eulogy.’ Eulogy, however, will be the purpose and appointment of another time, and of other lips than mine. To mine now is the humbler and sadder deputation to express the sorrow of my brethren and myself at the death of our Chief Justice. But, expressing a more poignant and personal sorrow, may I not say, at the death of our associate in duties, our companion in council, our friend and intimate? He was all of these to us, and by them animated and directed our work; his precedence veiled under a considerate courtesy, our intercourse with him made a real enjoyment. I use the word ‘enjoyment’ because I speak in retrospection—speak of a time upon which sorrow had not cast its shadow.

"I hope I shall be pardoned these personal considerations. I do not overlook or underestimate the greater abilities that attracted the Nation's commendation in his life, and have caused the Nation's sorrow in his death—a sorrow in which we participate. But his faculties need not be distinguished; they were comprehensive in their action, had connection and purpose, were as manifest in private life as in official life.

"In private life he was a gentleman in the best sense of that much-abused word. He was considerably kind and courteous, and not in passing show, for he was incapable of artifice or dissimulation.

"In official life he had a high and earnest sense of duty; and duty to a judge has a special incentive, its object is justice and justice to the fullness of its definition: 'The constant and perpetual wish to render to every man his rights.' This wish was ever in the Chief Justice's mind, its insistent motive and animation. And in this duty to the individual serious questions came—questions of the validity of laws and executive acts, and the ordination of the powers of the United States and the States, granted or reserved to them, respectively, by the Constitution. To the questions thus presented the Chief Justice directed a consideration proportioned to their immediate and ultimate effect, the public welfare depending upon them. He realized, as all of us must realize, that the necessity of passing upon them marks the place and power of the Federal Judiciary in our scheme of government, the condition, it may be, of its stability and permanence, preserving always the splendid conception of the Constitution—one sovereignty constituted of many, it being supreme within the sphere of its powers, they being supreme within the sphere of their powers, resulting in governments, national and state, competent to encounter and resolve the problems incident to or emergent in the lives and affairs of a people.

"This is of the past in barest outline. What of the

future? Anticipating it, I see no shadow on his fame, no lessening of his example nor of the impression his life and services have made upon the country. I venture comparisons. I make full concession of the recognized and illustrious merit of those who have preceded him. I make full admission, in assured prophecy, of the abilities of those who will succeed him; yet, considering his qualities and their exercises, I dare to say that, as he has attained, he will forever keep, a distinct eminence among the Chief Justices of the United States.

“In testimony of his worth, in tribute and respect to his memory, the Court will adjourn until to-morrow at 12 o'clock.”

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