

Judge Jenkins

Presentation

April Tenth, One Thousand Nine
Hundred and Six

United States Circuit Court of Appeals
for the Seventh Circuit

Presentation of the Portrait
of the Honorable James G.
Jenkins, to the United States
Circuit Court of Appeals
for the Seventh Circuit

And of *New Settings*
to the *Portraits* of the

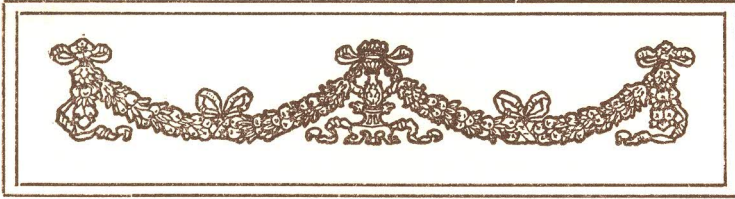
Honorable Walter Q. Gresham

Honorable John W. Showalter

Honorable William A. Woods

Proceedings had on the Tenth Day of April,
One Thousand Nine Hundred and Six

Tuesday, April 10, 1906



*T*a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms, in the City of Chicago in said Seventh Circuit, on the third day of October, 1905, of the October Term in the year of our Lord one thousand nine hundred and five and of our Independence the one hundred and thirtieth.

On Tuesday, April 10, 1906, the court met pursuant to adjournment in the court room of the United States Circuit Court of Appeals in the Federal Building in the City of Chicago, and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge presiding;
Hon. Francis E. Baker, Circuit Judge;
Hon. William H. Seaman, Circuit Judge;
Edward M. Holloway, Clerk;
John C. Ames, Marshal;

There were also present and sitting with the court:

Hon. J. Otis Humphrey, United States District Judge for the Southern District of Illinois;
Hon. Solomon H. Bethea, United States District Judge for the Northern District of Illinois;
Hon. Kenesaw M. Landis, United States District Judge for the Northern District of Illinois.

Committees and Contributors

Present among the members of the Bar were Mr. Horace Kent Tenney, President of the Chicago Bar Association, Mr. George P. Fisher, Jr., President of the Chicago Patent Law Association, and the members of the committee making the presentation.

On behalf of the following members of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit, the Committee, consisting of:

Mr. Joseph H. Defrees, *Chairman*.

Mr. Francis A. Lackner,	Mr. John Barton Payne,
Mr. Frank O. Lowden,	Mr. Edward Rector,
Mr. James H. Peirce,	Mr. Moritz Rosenthal,
Mr. Frank F. Reed,	Mr. Edgar B. Tolman,

presented to the court a portrait of the Honorable James G. Jenkins and frames for the portraits of the Honorable Walter Q. Gresham, Honorable John W. Showalter and Honorable William A. Woods:

Adams, A. H.	Burry, William
Allen, Charles C.	Butz, Otto C.
Barnett, Otto	Campbell, John G.
Beale, William G.	Catherwood, R. K.
Becker, B. J.	Chancellor, Justus
Booth, Hervey W.	Cheever, Dwight B.
Boyden, William C.	Clarke, Henry Love
Bentley, Cyrus	Cleveland, C. E.
Bishop, Henry W.	Copeland, William M.
Brace, William	Cox, Howard M.
Bradley, Ralph	Custer, Jacob R.
Brown, Charles A.	Defrees, Joseph H.
Brown, Frank T.	Duffy, John M.
Brown, John A.	Dyrenforth, Arthur

Contributors

Dyrenforth, Douglas
Dyrenforth, J. W.
Dyrenforth, P. C.
Dyrenforth, W. H.
Eastman, Albert N.
Eastman, Edward P.
Eastman, Sidney C.
Eckhart, Percy B.
Eddy, Alfred D.
Fisher, George P., Jr.
Fisher, Walter L.
Follansbee, George A.
Forrest, William S.
Gillson, Louis K.
Goodman, Harry
Gregory, S. S.
Gurley, W. W.
Guthman, Max
Harding, Charles F.
Harlan, James S.
Harlan, John M.
Hart, Louis E.
Helmer, Frank A.
Herrick, John J.
Hill, John W.
Holt, Charles S.
Hopkins, Francis A.
Hopkins, James S.
Isaacs, Martin J.
Jackson, J. L.
Jones, Clyde W.
Judah, Noble B.
Keeler, Charles B.
Kennedy, Henry H.
Knapp, K. K.
Kremer, Charles E.
Lackner, Francis
Lee, John
Lee, John H. S.
Levinson, S. O.
Linthicum, Charles C.
Loesch, F. J.
Lowden, Frank O.
Lyford, W. H.
Martin, H. M.
Mather, Robert
Matz, Rudolph
Mayer, Levy
McIlvaine, William B.
McKeever, Buel
McNab, J. L.
McShane, James C.
Meagher, James T.
Merrick, George P.
Meyer, Carl
Miller, Amos C.
Miller, John S.
Montgomery, John R.
Moore, N. G.
More, C. E.
Morrison, C. B.
Moses, Adolph
Moulton, Frank I.
Musgrave, Harrison
Newman, Jacob
Offield, Charles K.

Contributors

Pain, Max	Silber, Frederick D.
Payne, John Barton	Smith, Pliny B.
Payson, George S.	Starr, Merritt
Peckham, Orville	Stone, H. G.
Peirce, James H.	Strawn, Silas H.
Pickard, C. E.	Synnestvedt, Paul
Poppenhusen, C. H.	Tanner, DeWitt C.
Porter, Gilbert E.	Taylor, Clayton R.
Raymond, James H.	Tenney, Horace Kent
Rector, Edward	Thornton, Charles S.
Reed, Frank F.	Tolman, Edgar B.
Ritsher, Edward C.	Towle, Henry S.
Ritter, Henry A.	Ullmann, Frederick
Robbins, Henry S.	Vroman, Charles E.
Rogers, Edward S.	Walker, Edwin
Rosenthal, Moritz	Wean, Frank L.
Rothschild, Jacob	West, Roy O.
Rubens, Harry	Wheeler, Arthur D.
Runnells, John S.	Wheeler, Frank W.
Scanlan, D. W.	Whitman, Roland D.
Sheriff, Andrew R.	Wilson, John P.
Sheridan, Thomas F.	Winston, F. S.
Sherman, E. B.	Wolf, Henry M.
Sidley, William P.	



Mr. Joseph H. Defrees, on behalf of the Committee and the members of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit addressed the court as follows:

May it Please the Court :

I arise on behalf of the members of the bar to move that the court accept from them a portrait which they have caused to be painted of the Hon. James G. Jenkins, who lately graced this bench, also to ask that the court accept the portraits of Judges Gresham, Woods and Showalter in new frames, which have been prepared preliminary to having them rehung in this court room.

The portrait of Judge Jenkins is thought by his friends to be an excellent likeness. It was painted by Mr. Carl Tremohlen, a Norwegian gentleman of considerable reputation as an artist in this direction.

The custom of presenting portraits of members of this bench upon their retirement is one which has been in vogue for many years, and is of great value. The memories of the judges who have aided us in the past of course will remain vividly with us who have had the privilege of a personal acquaintance, but for the coming generations no such privilege will exist. A great interest will always attach to their decisions, and the record of them will never fade, but it is fitting and important that their faces should also be known to those who will come after us. Out of this idea came the custom which we are observing to-day—we may well say more happily than upon any past occasion, for if my information is correct, this is the

Presentation by Mr. Defrees

first presentation during the life of the judge who was the subject of the portrait.

Judge Jenkins retired last year, hale and hearty, and it is the wish and expectation of all of his friends upon the bench and at the bar that he may remain with us many years.

The committee in charge of these exercises have selected Mr. Frank O. Lowden and Mr. John S. Miller to speak upon this occasion.



*In presenting the portrait of Judge Jenkins, Mr. Frank
O. Lowden said:*

I desire to make a few observations in support of this motion. At the time of Judge Jenkins' appointment to the District bench, he was an excellent lawyer, and had already had a great career at the bar. I think I may say without reservation that he was as nearly the idol of the Wisconsin bar as any member of the profession has been in the history of that state. And, as a general proposition, the best training in the world for the bench is an active career at the bar. The greatest qualification of a lawyer is not the ability to answer all legal questions, but the ability to ask *the* question. Judge Jenkins was not only learned in the law, but he possessed this higher form of excellence in a marked degree.

Judge Jenkins at once gained the confidence and respect of the bar of this circuit. His intellectual attainments won the admiration, his courtesy and gentleness the affections of the bar.

Among other great qualities of Judge Jenkins, was absolute independence. More than a century of sublime national life lies stretched out behind us, because the judge has been able to turn for his warrant from the clamor of the hour to the unimpassioned language of the law, long before written in calm. It is to the everlasting honor of the bench of America, that when all other functions of government have been suspected and assailed, its courageous allegiance to the law, let it lead where it

Address of Mr. Lowden

might, has rarely been questioned. Someone has said that the world's last and best hope for the success of the democratic government turns to America. May it not with equal truth be said that America's last and best hope for a continuance of its splendid mission rests upon an independent judiciary?

We often hear justice exalted at the same time that the law is decried, as though they were opposed to each other. Is it not true that for the purposes of civil society they are one? The law may fall heavily upon the *individual*, but it is that justice may be done to *all*. A law may even be unjust in its general results, and yet justice be obtained by obedience to that law, because of the principles *that the supremacy of the law is the indispensable condition of all justice.*

The Federal judge is more than a judge; he has been the custodian of the Constitution ever since the time of Marshall.

There is no more significant event in the history of America than the appointment of John Marshall to the Chief Justiceship of the Supreme Court of the United States. Never probably in the history of the world has a judge received such homage as a great people and a great profession paid to the memory of this illustrious man but a short time ago. In the last year of the eighteenth century, the Federalist party had been absolutely crushed. While its rival was still celebrating the victory over that party, John Adams, its defeated candidate, as one of the last acts of his administration, affixed his signature to Marshall's commission.

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This deed of a dying party exercised more influence over the destiny of America, as I believe, than did all the achievements of its successful adversaries for a full quarter of a century—and I do not detract from the great Presidents of that time. When Marshall became Chief Justice, the Constitution was but an essay on Government. When, at the end of his career, Liberty Bell in Independence Hall tolled out his death—and then became silent forever—the Constitution had become the organic life of a great republic. From that day until this, the Federal Judiciary have kept aflame the torch of Liberty under law transmitted by John Marshall. Of this distinguished body, none has been truer to the example of that great man than Judge Jenkins.

What the years shall bring to us or to this little globe of ours which floats bubble-like on the bosom of the Infinite—God knows. Justice, greatest of all words expressing human virtue because it merges all, a word which prescribes present duty presently—Justice is the fixed star by which we must sail our course. It may be at times we shall find ourselves upon storm-tossed waves, with the blackness of night all about us. We cannot foresee the events which shall rise like coral reefs in those uncharted seas. But so long as the Star of Justice burns above to lighten and to guide us, we may have faith to believe that we will always reach a haven under that power which makes “this everchanging world of circumstances, in changing, chime with neverchanging law.”

And for the reason, if the Court please, that Judge Jenkins illustrated these great principles ably

Address of Mr. Louden

and fearlessly, and because of the affection in which we hold him, I support the motion of my brother Defrees in order that those who come after us may associate his judgments with the charming, kindly lineaments of his noble face.



Mr. John S. Miller addressed the court as follows:

May it Please Your Honors:

I too am honored by the bar in being asked to add a word on this occasion, and I am permitted to speak of all the justices who formerly graced this bench, and who are now recalled to us by their portraits upon the walls of this beautiful court room.

No more need be said than has already here to-day been so fitly said, to show, and no words could fully express, the esteem and regard in which Judge Jenkins is justly held by the bar of Chicago. Now ripe in years and wisdom, he will spend what remains to him of this life—and may it be prolonged yet for many years—with that dignity and philosophy which distinguish him, and with the gratitude of the people he has so well served.

The judicial life of the present presiding justice of this court runs back into the period when Judge Gresham presided over its deliberations, which he did for the first year and a half of its existence. He had previously served many years upon the Federal bench, first as District Judge for the District of Indiana, and for about six years as the only Circuit Judge for this district. Judge Gresham brought to the work of the judge, the directness of aim which marked his training as a soldier. He went straight to the mark,—to the truth of the matter of fact, and to the controlling principle of law which determined the right of recovery. I should think Judge Gresham's method was to use precedent to deduce therefrom the living principles, and, making them

Address of Mr. Miller

his own, to solve the case before him by the exercise of his own trained and experienced legal judgment of its real merits. To apply a particular precedent to the working out of a palpable wrong would be to his mind either to misuse or to condemn the precedent. Judge Gresham was an able, fearless, upright judge, and a chivalrous, gentle, lovable man. He was masterly as judge and as man.

Most of the professional life of William A. Woods—some twenty-eight years—was spent upon the bench, first as Circuit Judge in the State of Indiana, then, in succession, as judge of the Supreme Court of that state, United States District Judge for that District; and then Circuit Judge for this Seventh Circuit, and a member of this court for nine years. With great qualifications for it, Judge Woods had a keen zest for judicial work; and he had, and he achieved, a very high standard for its accomplishment. He was able, honest minded, direct, clear and decisive. I know of no better evidence of clearness in a man's thinking, than clearness in the expression of his thoughts; and the opinions of Judge Woods are models of clear, terse and strong expression.

The appointment of John W. Showalter as Circuit Judge in 1895, was, as well, highly creditable to the president who selected him, as, under the circumstances, a great tribute to the man chosen. While Showalter's qualifications were known and appreciated by those who knew him at the bar, he was not widely known even among the lawyers of Chicago at the time of his appointment. His professional work had been quiet, studious, unpretending, but marked by great research, thoroughness and acumen.

Address of Mr. Miller

He had been looked to and relied on for counsel and assistance by lawyers of more repute than himself. Those who knew him looked for great things from Judge Showalter, and he was fully meeting their just expectations, when his untimely death in December, 1898, cut short what promised to be an eminent judicial career.

Each of these men measured up to the high standards of the Federal judiciary. Neither fear nor favor affected their judicial action. They served no turns, great or small. They removed no landmarks. With them "the rule of justice was the laws of the land." Their judgments are monuments of their great ability and of their faithful, excellent judicial service. May their portraits here remain, and, with the record of their accomplishment, continue to inspire and guide judges and lawyers who minister here. May our Federal bench continue to be occupied by men of the same high standard; and may the prayer of Coriolanus for Rome be realized by us of America:

"The honor'd gods
Keep Rome in safety and the chairs of justice
Supplied with worthy men."



Response by Judge Landis

*Response to the Addresses on behalf of the Committee
and members of the Bar by Judge Landis.*

While we all agree respecting Judge Showalter's eminent qualifications for judicial service from the standpoint of brain and conscience, I recall particularly that other splendid quality which he possessed in such rare measure—absolute simplicity of character. This element is usually observable in truly great men and women. Pomp and ceremony seem not to be conducive to the highest development of the faculties, and yet, as a rule, their presence does serve the useful purpose of obscuring deficiencies of character which otherwise might be painfully apparent. Inasmuch as Judge Showalter had no such concealments to make, he had no use for strained conventionalities. He affected nothing. He was a natural man. He had the sense of justice, and he knew there was no higher obligation among men than that discharged in the proper exercise of judicial power. He did not esteem a court-room to be merely an arena of the exhibition of forensic skill, nor did he regard the administration of justice as a game wherein the stakes were to go to him who took or played the greater number of tricks. To him there was no more solemn thing than the entry of a judgment taking from a citizen his life, liberty, or property.

The judge who sees and hears only the cause before him may hope thereby to render real public service. It will not impair his usefulness if, in his daily work, he exhibits a just regard for the rights, responsibilities, and dignity of the bar, who, like himself, are sworn officers of the court. If he give

Response by Judge Landis

to each question the best of his judgment, he will merit and receive the confidence and respect of lawyers, with whom rests largely the question of whether a judge shall stand in good or ill repute. The affectionate esteem in which Judge Showalter's memory is held by the bench and bar of the seventh circuit is the best evidence that he was fit for judicial place, and that his discharge of official duty was first and always in strict conformity with the highest standards.



Response by Judge Seaman

Response to the Addresses on behalf of the Committee and members of the Bar by Judge Seaman.

The portrait of Judge Woods has fitting place upon the walls of this court-room. When his great service on the bench terminated with his untimely death, June 29, 1901, the Circuit Court of Appeals had passed the tenth year of its organization, and Judge Woods had entered upon the ninth year of incumbency as its presiding judge. As the opinions of an appellate court form the record upon which the judicial qualities of its members must be estimated, so are the opinions handed down by Judge Woods, during that important decade, an enduring monument of his eminence in the wide fields of jurisprudence through which they extend. In the acumen, grasp of essentials and clearness of thought and expression which mark the judge, his equals are rare in any forum. His contributions to the reports are inestimable in value for instruction and precedent and have excellent literary quality, as well, in their Anglo-Saxon simplicity of language.

Beyond the evidence of judicial worth which is borne in the opinions prepared by Judge Woods, his constant helpfulness in the conference to just conclusions is attested by all who were his associates upon the appellate bench. It was my fortune, as district judge, to commence service in this court during the first session at which he presided and to serve with him at frequent intervals throughout his incumbency, and I am confident that I voice the sentiment of all who were so associated in thus referring to his support in the consultation room. The conference and discussion, so essential in the appellate system

Response by Judge Seaman

of several judges, were carried to the heart of the issues under review, with enlightenment and the utmost fairness on his part, and with singleness of purpose for the right of the matter in litigation. Earnestly seeking a judgment to that end under rules which were settled, he delighted in intelligent discussion. If impatient over precedents which impressed him as not well considered, he was not impatient in the exchange of views, was ever helpful in the consideration of the causes, and his aid to the bench in that respect was remarkable.

Under the organization of the Circuit Court of Appeals, the galaxy of great American judges has extended widely, and Judge Woods surely ranks with the leaders in that array, honoring the seventh circuit through his achievements.

Of Judge Woods' personality suffice it to say that he was beloved by his associates and his memory is cherished by all who knew him.



Response by Judge Baker

*Response to presentation of Judge Jenkins' Portrait by
Judge Baker.*

If all the world's a stage and men and women merely players, the part of judge may not be an enviable one. He is never brought before the curtain to receive the plaudits of the multitude. He may never hope for the approval at any one time of more than half of those who listen to his judgments. His work is subjected not only to the criticism of the defeated and disappointed, but also to the cold scrutiny of the keenly trained intelligences who advise the course of the business world. And to criticism his only reply can be the calm continuance of his labors with a steadfast, yet open, mind.

But if this view ever came to the consciousness of Judge Jenkins, it weighed not a feather in the balance in whose other scale was the belief that a judge's work is the most worth while because it not only conserves the gains of the past but also indicates the lines of development for the future, that the authority to interpret, limit and nullify legislation is the highest that can be conferred in a constitutional government, and that the judicial power, unobtrusive as gravity, holds all bodies to their proper courses in the social universe.

Judge Jenkins' high conception of the powers and responsibilities of the office did not exceed his qualifications to fill it. Ample training and experience, patience to hear with fullness and impartiality, capacity to take in the issues in all their bearings, wisdom to find the right, and fearless honesty to declare and enforce it—these essential attributes of a great and just judge were his in an eminent degree.

To them he joined the grace of felicitous expression, so that his opinions, terse, clear, luminous, have the added value of literary charm.

Two qualities, however, I would emphasize. One was his just valuation of the authority of precedents. The function of courts is to decide actual controversies. Too frequently judicial opinions are not confined to a statement of the controversy and the grounds of the decision, but contain generalizations which may be true with reference to the particular facts of that case and wholly or partially untrue in relation to other facts; or are loaded with discussions of matters that should have been eliminated in defining the controversy; or are cumbered with pure dictum. With unerring precision Judge Jenkins discovered in any precedent the scope of the controversy and the grounds of the decision. And of course a principle, but not broader than the facts, was found to be involved. If the principle did not accord with the result to which his independent thinking had already led him, he was inclined to believe that the composite of hundreds of trained minds through scores of years probably expressed the truth and that his own judgment was wrong. But there remained the possibility that his own conclusion was correct. And questions of principle were not to be considered settled until settled right. So back the question would go into the hottest crucible of critical examination. Precedents that stood the test were gladly accepted. In cases where precedents were uncontrolling or were wanting, his constructive abilities marked out new paths, but only after surveys repeatedly checked.

Response by Judge Baker

The other quality was his impersonality. With him no question was closed to further investigation and debate. And in that investigation his preconceptions, his opinions, his carefully formulated judgments, were held off and viewed with the impartial eye of a stranger. To say of an appellate tribunal that it is unwilling to rectify its own mistakes means either that its members deem themselves infallible or that a court organized to correct errors deliberately shuts its eyes to its own; both assumptions seem preposterous. But, though all judges think themselves impartial, with minds open to conviction, there is an unconscious pride of opinion, or a lurking obstinacy, or a rigidity of mental process, which prevents the self-estimate from being true; and rare indeed is the faculty of taking up again one's deliberate opinion under vigorous assault and re-examining it with absolute unconcern except for truth and with the interested attention of unacquaintance. In the highest degree that faculty was Judge Jenkins's.

Of the man, clean and fine in body, mind and soul, the courtly and gracious gentleman, the traveled and cultured scholar, the loyal and disinterested friend, I do not speak. Three years of most intimate association grew in me a love I can not word.

Though he has gone from this bench, as long as this court, not these walls and his portrait upon them, shall endure, so long shall his spirit, like a living presence, be an uplifting influence to the bench and bar of this circuit.

I have been using the past tense. That is true respecting the burden and heat of the day; but we all hope for him many hours of happiness and peace in the soft light of the evening.

Acceptance on behalf of the Court by Judge Grosscup.

In everything that has been said I heartily concur. I want to add but one word in accepting the portrait of Judge Gresham. Judge Gresham in some respects was a unique character, both as a man and a judge. I know of nobody to compare with him. I know nobody that I would compare to him. He is out of the ordinary mind and I hardly know how to phrase that thing which made him extraordinary. I remember once being up in a mountainous country filled with many springs. Some of the springs gave out water with much more volume than others, some with much more force than others, but I observed this, that they rose and fell in a sort of unison, indicating that behind them all, isolated as each one was from the other, was the great pulse of the ocean. And behind every great judge, layman, citizen, is the pulse of the great soul of the universe. We sometimes call it, when we see it exhibited in the case of an individual, the work of the sub-consciousness, conscience, the sense of right and wrong. With the lawyer we call it the legal bent; with the judge we call it the judicial temper. In a way it is intuitive, but it marks the just man and the just judge away from all his fellows. The building up of the law in precedent and books is the brick and mortar work of the mechanics of the profession. The apprehension of right and wrong that must precede any of that work is the flash of thought of the architect that comes from the great soul of things,—justice. And I know of nobody who has exhibited this quality to a more marked degree than Judge Gresham. He

Acceptance by the Court

not only knew what was right, he had the equipment immensely of feeling the right. He not only knew what was wrong, he felt what was wrong. No man is great whose intellect alone is relied upon. Only that man becomes a great lawyer or a great judge who has within him, stirring somewhere, the sense that this thing is wrong and that thing is right, and then goes to work in the workhouse of conscience to formulate this preception into a decision. Judge Gresham had that to a very marked degree.

It is with great pleasure that the court accepts the portraits with thanks to the bar for presenting them. It is another evidence of the close harmony between the bar and the court,—of that feeling of the bar in preserving to the court and the environment in which the court sits the portraits and characters of those who preceded it.

This court accepts these portraits with great thanks to the bar.

