

The Honorable,
Louis FitzHenry

January 28, 1936

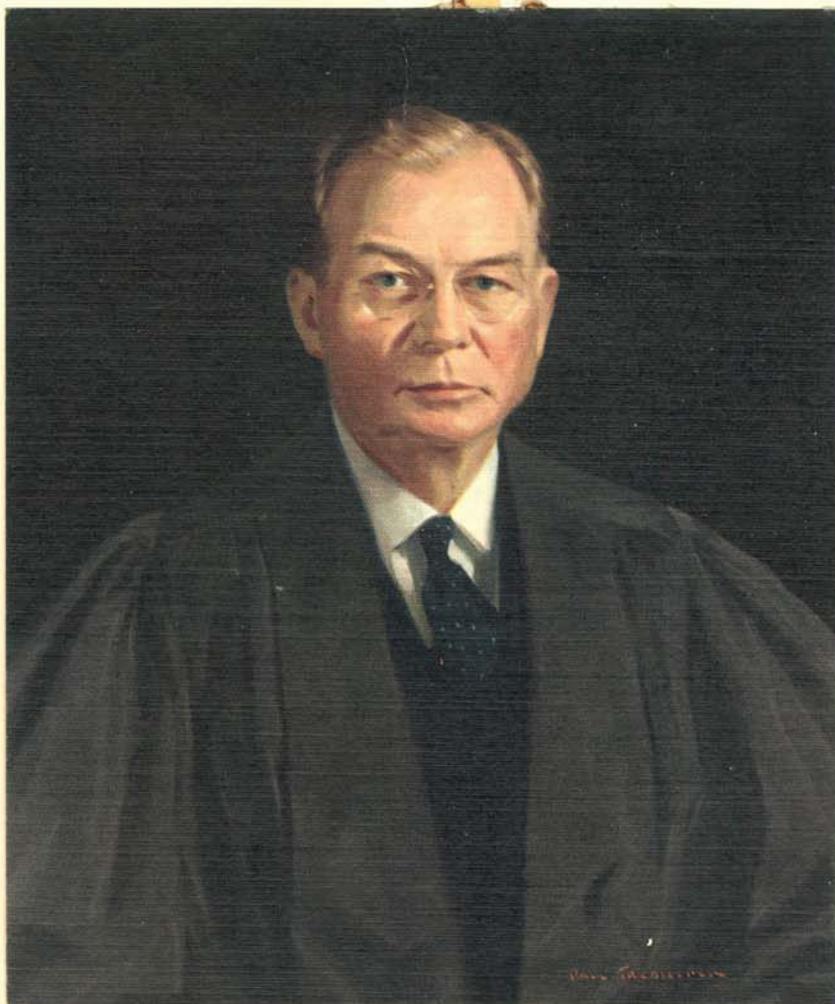
Memorial Proceedings
and
Presentation of Portrait

January Twenty-eighth and June Twenty-third
One Thousand Nine Hundred and
Thirty-six

The Honorable,
Louis FitzHenry



United States Circuit Court of Appeals
for the Seventh Circuit



Judge Louis FitzHenry
Painted by Paul Trebilcock

Memorial Proceedings



AT a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago in said Seventh Circuit, on the first day of October, 1935, of the October Term, in the year of our Lord one thousand nine hundred and thirty-six and of our Independence the one hundred and sixty-first year.

On Tuesday, January 28, 1936, the Court met pursuant to adjournment in the court room of the United States Circuit Court of Appeals for the Seventh Circuit, in the City of Chicago, and was opened by proclamation of the crier.

Present, The Honorable:

Evan A. Evans, Circuit Judge, presiding;
William M. Sparks, Circuit Judge;
Samuel Alschuler, Circuit Judge;
James H. Wilkerson, District Judge;
Charles E. Woodward, District Judge;
John P. Barnes, District Judge;
Charles G. Briggles, District Judge;
William H. Holly, District Judge;
Phillip L. Sullivan, District Judge.

On behalf of the Illinois State Bar Association, represented by Mr. Lott R. Herrick, the Chicago Bar Association, represented by Mr. James G. Condon, and The Patent Law Association of Chicago, represented by Mr. George I. Haight, Mr. James G. Condon presented the following resolution:

MAY IT PLEASE THE COURT:

The Illinois State Bar Association, the Chicago Bar Association and The Chicago Patent Law Association ask leave to present the following:

RESOLVED, That the members of the Illinois State Bar Association, the Chicago Bar Association and The Chicago Patent Law Association desire to express their deep regret at the death of Louis FitzHenry, late Judge of the United States Circuit Court of Appeals for the Seventh Circuit, and to record their high appreciation of his character and of his distinguished service to his State and Country.

Judge FitzHenry was born in Bloomington, Illinois, on June 13, 1870, the son of Hiram and Elizabeth Johnson FitzHenry, who came to Illinois from Franklin County, Ohio. In his early youth he learned the value of regular work and of the meeting of responsibilities. While in the grade schools, one of his tasks was the lighting of the gas street lamps in a section of Bloomington at sundown and turning them off at midnight; also he delivered newspapers on a daily route. Following his graduation from the Bloomington High School in 1888, he turned to newspaper work. He became

successively office boy, reporter and advertising manager with Bloomington newspapers. These few years gave him a wide and useful practical experience. In 1895, he decided to study law and entered the Law School of Illinois Wesleyan University. He enjoyed the advantage of working his way through college. He graduated in 1897, was admitted to the Illinois Bar in the same year, and then began the practice of law in Bloomington. His first case brought him into local prominence. It was a personal injury suit against a Railroad Company. His client, the plaintiff, was a train conductor who had sustained a serious accidental injury. The judgment won in the trial court was sustained by him successively in the Appellate and Supreme Courts of Illinois. He entered public service early. From 1907 to 1911 he was City Attorney of Bloomington. In this office he established a high reputation for capable attention to his duties. In 1912 he was elected to represent the Seventeenth District of Illinois in the Sixty-third Congress. In that body he was at once appointed to the important Judiciary Committee. Among the Bills with which he had to do were the Clayton Anti-Trust Act, the Bill Creating the Bureau of Mediation and Conciliation, and the Bill Establishing the Federal Trade Commission. While he was not a member of the Committee that reported out the Federal Reserve Bill, he gave it his ardent and able support and sponsored several amendments to it. During his service at Washington he was an adviser and close confidant of President Wilson. He retired from Congress in 1915 and returned to Bloomington to resume the practice of law. For

three years his practice grew, until he again answered the call to public service.

On July 6, 1918, Judge FitzHenry was appointed to the United States District Court, for the Southern District of Illinois, by President Wilson. On this Bench he performed his duties with high honor and ability. Soon after he ascended the Bench, the Prohibition Law went into effect. The sufficiently crowded docket became jammed. He decided as many as five hundred cases annually over a period of ten years. In 1922, considerable litigation incident to the great railroad strike of that year came before him. Important general railroad shops and terminal repair shops were located in his District. It has been said that there were more men on strike in his District than in any other troubled area. Judge FitzHenry was highly commended throughout the country for the wisdom of his decisions during this difficult period.

At the end of Judge FitzHenry's fifteen years on the United States District Bench, he was nominated by President Roosevelt to the United States Circuit Court of Appeals for the Seventh Circuit. The Senate confirmed the nomination and he was inducted into office in Chicago on October 3, 1933. He served as a member of this Court with marked ability until his untimely death on November 18, 1935.

Judge FitzHenry's opinions, rendered in the District Court, are contained in Volumes 253 to 300 of the Federal Reporter, Volumes 1 to 60 of the Federal Reporter, Second Series, and Volumes 1 to 4 of the Federal Supplement. Those written

by him for the Court while sitting in the Circuit Court of Appeals are found in Volumes 67 to 79 of the Federal Reporter, Second Series.

These opinions relate to very many fields of law. Among them are patent cases and criminal cases of many varieties; personal injury and bankruptcy cases; cases involving contracts; torts; trade-mark and unfair competition; cases relating to banks and banking; insurance; railroads; shipping; agency; bills and notes; taxation; and many fields of constitutional law. A mere recital of the character of these causes illustrates the breadth of knowledge and of experience that service in the Federal Courts requires.

To a degree, the printed labors of Judge FitzHenry are his monument. However, they only partially reveal his real usefulness. They do not fully reveal his courtesy and kindness, his amiable temper and sound patience. Also, they only partly disclose his dignity—one that was unassumed—and his real decorum and practical sense in approaching the problems with which he had to deal.

Judge FitzHenry was an able, practical, lawyer and jurist. His high scholarship was to him merely a useful tool. There are some lawyers who, well grounded in principles, and able in deductive reasoning, too little heed the learning afforded by the labors of others. Then there are those whose main reliance is cases, and who come to those conclusions that seem to be sustained by what is called authority. To such the reported decision of a court can be answered only by the counter decision of another court. Judge FitzHenry belonged to

neither of these classes. He took the sound middle ground. As a result, never was he brought "by learned reasons to absurd decrees." The isolated case did not serve to lead him astray. He rather regarded the general current of decision and the results, when translated into realities. While he followed authority, he did not fear that which led to unsatisfactory results. He had that common sense which springs jointly from reason and judgment. To him the law was not an accumulation of arbitrary rules; it was a vital science concerned with the practical affairs of life. These qualities, combined with his discriminating sense of justice and his fearlessness, gave him high rank as a jurist.

Judge FitzHenry was an agreeable companion. He had a high capacity for friendship. He was neighborly. He was interested and highly helpful in the life and the society about him. He was an active member of the Presbyterian Church. He had a deep appreciation of spiritual values, and revealed their inner fires in his every-day activities.

In 1909 he was married to Lottie B. Rankin. She and two daughters, Mildred Elizabeth and Charlotte Louise, survive him.

Judge FitzHenry's death is a profound loss to both State and Nation. He is mourned by all who knew him. He is and will be greatly missed by his friends and associates—both upon the Bench and at the Bar.

RESOLVED FURTHER, That these resolutions be presented to the Court, with the request that they

be inscribed upon its permanent records, and that the Chairman of this meeting be requested to transmit a copy of these resolutions to the family of Judge FitzHenry, with an expression of our sincere sympathy in their loss.

Submitted by the Committee:

LOTT R. HERRICK,
for the Illinois State Bar Association

JAMES G. CONDON,
for the Chicago Bar Association

GEO. I. HAIGHT,
for The Patent Law Association of Chicago.

On behalf of the Court, The Honorable, Evan A. Evans, Presiding Judge, responded as follows:

Members of the Bar and Fellow Members of the Court:

The memorial and the testimonials to which we have just listened are deeply appreciated. They will be filed and permanently transcribed in the records of this court.

It is as distressing as it is difficult for me to realize that these services are in memory of an associate whose name, even now, instantly suggests warm and friendly greetings from a warm-hearted friend.

Yet Judge FitzHenry has left us—gone forever. And it is fitting and appropriate that we yield to the urge of the hour to speak the word of appreciation which the tongue begs leave to utter.

In responding on this occasion, upon behalf of the court, I have no hesitancy in selecting my theme—in stressing the quality for which we knew him best and loved him most. To his fellow members on the bench he was always the personification of the devoted fellow-worker and loyal friend. He was ever willing—aye, eager to serve. His was a passion for public service. Doubly joyful was he if he could render judicial services and at the same time relieve an associate who was laboring under the handicap of illness or an over-loaded trial calendar. For many years he performed all the work in his own district and yet, never to my knowledge failed to respond to any call from another district. Even more important, he responded *eagerly*, though ever modestly, disparaging his ability to render service as satisfactory as he wished.

Judge FitzHenry could not do otherwise. For a dominant trait of his life was loyalty. He didn't know how to be other than loyal to his work and his fellow-workers.

Happy is the man who loves his work. Twice fortunate is it if he be a public official. I don't believe there ever was a day of judicial work which Judge FitzHenry did not enjoy. He liked the lawyers. He noted their strength, manifested by their loyalty to clients, and observed their weaknesses in doing for clients what they would not do for themselves. The blindness of partisan views, persuasively advanced, of course intrigued him as it doubtless puzzled him. Yet as the most brilliant and interesting group of men in the land, follow-

ing the most fascinating career known to man, he admired them all.

He loved his associates on the bench, perhaps too well and partially. He sturdily defended them individually against unfair criticism and sympathetically spoke words of encouragement when their work aroused his admiration. Even in the litigants, thousands of whom were defendants charged with violations of the Volstead Act, he had a keen, a sympathetic and a continuing interest.

In speaking of his loyalty one is reminded of his faculty for friendship. His was a most cordial and affectionate nature which disarmed formality in all his associations and immediately served to establish a genuine and lasting friendship. Nor was his friendliness of mien, variable. Harsh words or unfeeling conduct were foreign to him. (The Judges' Secretaries asked me to add this paragraph as expressing their sentiment.)

This occasion awakens memories. The paintings on the wall recall the personalities of others who have departed. The number of individuals with whom I have had close personal contacts grows ever larger. Their spirits seem to hover over us. Somehow my mind and my eye turn to Judge Kohlsaat. There is something akin in the spirits of Judge FitzHenry and Judge Kohlsaat, which draws them together. Both were gentle, sweet, sincere, simple. They were true, kindly gentlemen, courtly in manner, genuine in their relations with their fellowmen, sympathetic in trouble, earnest and firm in their religious faiths.

They were devoted to service. They served to honor—both their work and their positions.

May their faith in humanity; in the future, find reward!

Out of respect to the memory of Judge Fitz-Henry, the Court adjourned.

PRESENTATION OF PORTRAIT

Proceedings upon the presentation of a portrait of The Honorable Louis FitzHenry, United States Circuit Judge, by the members of the Illinois State Bar Association, the Chicago Bar Association and The Patent Law Association of Chicago.

On Tuesday, June 23, 1936, the Court met pursuant to adjournment in the court room of the United States Circuit Court of Appeals for the Seventh Circuit, in the City of Chicago, and was opened by proclamation of the crier.

Present, The Honorable:

Evan A. Evans, Circuit Judge, presiding;
William M. Sparks, Circuit Judge;
Samuel Alschuler, Circuit Judge;
George T. Page, Circuit Judge;
James H. Wilkerson, District Judge;
Charles E. Woodward, District Judge;
John P. Barnes, District Judge;
Phillip L. Sullivan, District Judge.

Mr. Frank T. Miller, of Peoria, Illinois, addressed the Court as follows:

MAY IT PLEASE THE COURT:

The honor and privilege has fallen upon me to submit to this Honorable Court a resolution presented by the undersigned Committee, with the