

United States Circuit Court of Appeals  
for the Seventh Circuit

**Presentation**  
of  
**Portrait and Resolutions**  
in respect to the memory of the  
**Honorable Francis E. Baker**

June Tenth  
One Thousand, Nine Hundred and  
Twenty-four

Resolutions and Memorials  
presented in respect to the memory  
of the  
Honorable Francis E. Baker

by

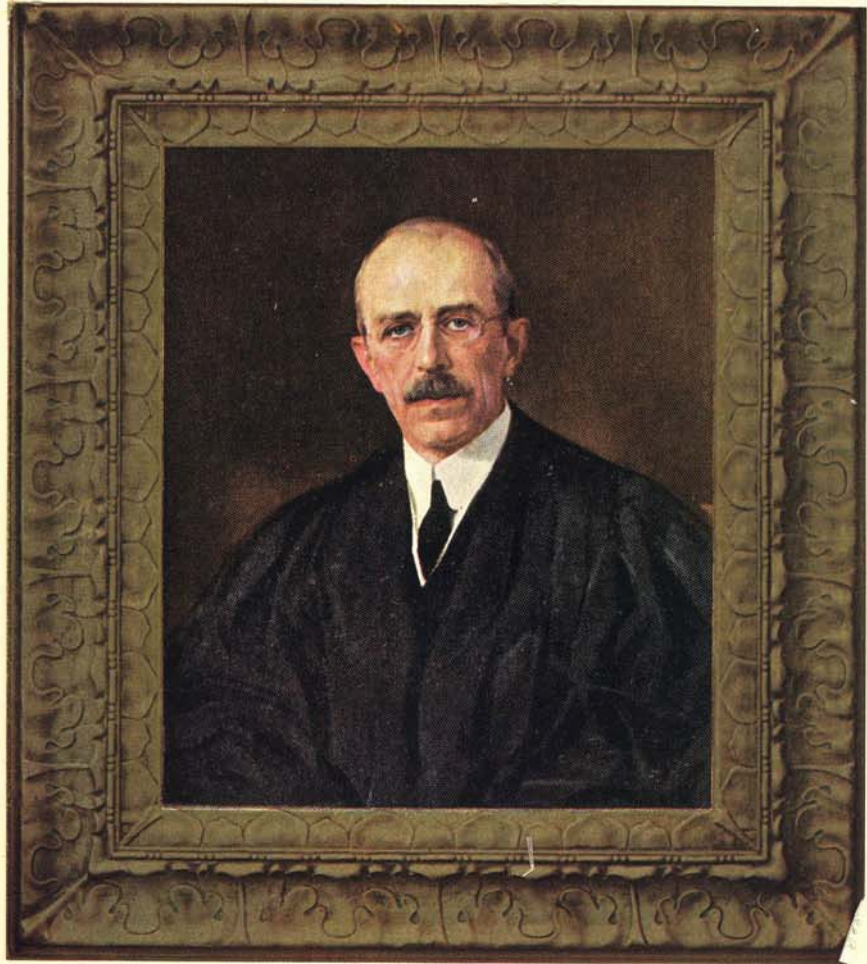
The Chicago Bar Association  
The Indiana State Bar Association  
The Wisconsin State Bar Association  
The Illinois State Bar Association  
The Lawyers' Association of Illinois  
The Patent Law Association

and

Presentation of Portrait  
of the  
Honorable Francis E. Baker

by the members of the bar of the United  
States Circuit Court of Appeals for the  
Seventh Circuit.

Proceedings had on the tenth  
day of June, one thousand,  
nine hundred and twenty-four.





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 second day of October, 1923, of the October Term, in the year of our Lord one thousand, nine hundred and twenty-three and of our Independence the one hundred and forty-eighth.

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On Tuesday, June 10, 1924, 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 crier.

Tuesday,  
June 10th,  
1924

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding;  
Hon. Evan A. Evans, Circuit Judge;  
Hon. George T. Page, Circuit Judge;  
Edward M. Holloway, Clerk;  
Robert R. Levy, Marshal.

There were also present and sitting with the court:

Hon. Louis FitzHenry, United States District Judge for the Southern District of Illinois;  
Hon. James H. Wilkerson, United States District Judge for the Northern District of Illinois;  
Hon. Walter C. Lindley, United States District Judge for the Eastern District of Illinois;  
Hon. Adam C. Cliffe, United States District Judge For the Northern District of Illinois.

[3]

**Resolution by** *Mr. Russell Whitman presented the following*  
**Mr. Russell** *resolutions and moved their entry upon the*  
**Whitman** *record of the Court:*

At a meeting of the Board of Managers of The Chicago Bar Association held on Monday, March 17, 1924, the following resolution in regard to the death of Judge Francis E. Baker of the United States Circuit Court of Appeals was moved and adopted:

With deep sorrow we record the death of Francis E. Baker, one of the Justices of the United States Circuit Court of Appeals for the Seventh Circuit. He was appointed to that bench in January 1902, resigning from the Supreme Court of Indiana where he had served since 1899.

Added to unquestioned integrity and judicial ability of a high order, our bar discerned in Judge Baker a man of broad culture and scholarly attainment. His occasional addresses, delivered without notes but in finished form, as well as his written opinions, reflect a mind disciplined and informed by wide reading and clear thinking. And at times of relaxation, when we met him as a brother lawyer, his rare sense of humor, his zest in the recreation of the hour, his genial welcome to ideas and to friends new and old, made him our comrade while still our leader.

He has been taken from us at an hour when the full measure of ripe experience was united with a mind vigorous and alert. Yet we may solace ourselves with the thought that his vision of the law, which while just and sound, still takes note of progress and the requirements of our time, is to be found in the records of his work upon the bench. His was an instinct which unerringly seized upon and retained what is of value in the precedents of the past, but interpreted and moulded them to fit our present needs.

*Mr. John M. Zane addressed the court as follows:* **Address  
by Mr. John  
M. Zane**

May it please the court: The Chicago Bar Association, in addition to the Resolutions, desires to present for recording a memorial of the character and work of a great judge of this Court with the request that it be placed in the record as the last honor that the Bar can pay to departed worth.

FRANCIS ELISHA BAKER sat in high appellate courts for precisely a quarter of a century, three years in the Supreme Court of Indiana and twenty-two years in this Court of Appeals. The bare facts of his life are that he was born at Goshen, Indiana, on October 20, 1860, and died at Chicago on March 14, 1924. Twenty-four years of his life were absorbed by education, academic training and preparation for the Bar. Fifteen years were devoted to the practice of law. Twenty-five years were given to the highest type of judicial work. Such work does not appeal to the mass of citizens. It has been best described in a poet's words as a calling which, amid man's fitful uproar, teaches, by its sleepless ministers, the lesson

“Of toil unsevered from tranquility!  
Of labor, that in lasting fruit outgrows  
Far noisier schemes, accomplished in repose,  
Too great for haste, too high for rivalry.”

Judge Baker had the usual training in the Goshen City schools, and entered Indiana University at sixteen. After two years there, he matriculated at the University of Michigan for the full college course. In 1882 he finished his liberal

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education with the Bachelor of Arts degree from the University of Michigan. During his attendance at the University he gave great promise. Those who knew him in college remember a young man, rather more mature than the generality of students. He was tall, slim and sinewy, dark complexioned, with a fine intelligent face, a splendid broad forehead and large brain. He retained until his death almost the same appearance. He was by far the wittiest man of his time, the readiest coiner of those *jeux d'esprit* that circulated through the college world. When a song or a lively skit of poetry to set off an occasion was needed, he was in demand and never failed. He devoted himself especially to the languages, history and English literature.

In after life he sometimes spoke of his enjoyment of his service on the college paper. His remarkable work as literary editor could easily be exhumed from those forgotten files. Some men have still in their memories scraps of his lively occasional verse which had some unique haunting quality. He had as a student a winning personality and a wonderful charm. Even then he had the ease, the air of cultivation and refinement that we knew. It was joined to something reserved and retiring in his manner that suited well the high judicial office he later enjoyed. He gave the impression of one of nature's own aristocrats. Sadly enough, even at that early age, he had warnings of a delicacy of health that he was to suffer from in after years.

He was unquestionably the head of his class. He wore the Phi Beta Kappa key that is the one college honor reserved for scholarship alone. It was supposed that he was to be our University's contribution to literature, but the fairy queen who ruled his birth had marked him for the law. He was destined for the law both by choice and by heredity. It could not have been otherwise. He had a natural taste and bent for law. The service of Themis is a most miserable servitude for those who worship her for business success, but to those who love her for herself alone and have the legal stamp of mind that she demands from her followers, she repays their devotion with a gladsome light that cheers all the darkness of professional toil.

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Legal problems interested Judge Baker, from the smallest to the greatest. Unlike some judges, taking interest only in very important cases, who make the rest of their work careless and slipshod, he was equally aroused by all questions for decision. The operations of his mind were like the fairy's tent in the Arabian Nights, so small that its perfect proportions could be held in the hollow of the hand and so large that when spread in the plain it would shelter a whole army.

His father was Judge John H. Baker of Indiana, and when Francis Baker was graduated in 1882 his father was in the practice, one of the leading lawyers of Northern Indiana. The son read law with his father and was admitted to the Bar in 1884. It will always be a question whether attendance at a law school is a better preparation for the Bar than private reading. Judge Baker



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considered the training that is gained by close reading in the practical atmosphere of an office a very fine training. Perhaps the answer is that for the great majority the law school is indispensable, but for the few, who are liberally educated, with trained minds, habits of application and special aptitude for the law, with the searching intellect that digests and assorts legal acquisitions, classifying acquired knowledge under proper heads, private reading will reach better results. The willing, trained mind that works with great celerity should not be hampered by the slower progress of companions. This sort of training and special aptitude Judge Baker had and he came to the Bar with an acquired fund of carefully arranged knowledge under appropriate general principles that grew with his growth. His wide reading in the law we have probably never seen surpassed. He had not only wide knowledge of the law but he had exactness and readiness in the ability to summon it instantly from a capacious memory.

John H. Baker became Federal District Judge of Indiana in 1892 and the son at once succeeded to the onerous duties of a large practice. At that time he showed those habits of carefulness and thorough preparation which went with his nature. The ability, after reading the available decisions, to digest and express them in a few general observations, is a great advantage in a lawyer; it is of inestimable importance in a judge. Accuracy first, as to the facts and circumstances, next, as to the legal principles applicable, finally, as to the preservation of all in the record, was his dominant

characteristic as a practitioner. In his fifteen years of practice he had an unusually wide experience in the courts, for he was sought for by lawyers who brought him prepared cases for trial, all over Northern Indiana. A man with his accuracy and application, with a mind stored with an orderly classified arrangement of legal principles, with remarkable acuteness of mind and fleetness of thought, set off by pronounced gifts of speech, could not have been other than a leader at the Bar.

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It may occur to some to speculate upon his life if he had remained at the Bar. Perhaps his physical health would have given way under the strain. No doubt he preferred the bench to the practice. It is an unfortunate thing that there is so much, often bitterly selfish, emulation in the practice. Many things in the actual practice are distasteful to a soul of refinement. This perhaps had an unfelt effect on Judge Baker. Early in his life he had shown that he had the kind of ability that made him a popular and successful practitioner. He often said that he found pleasure in the practice and it is well known that he left the activities of the Bar with high rank as a lawyer. Doubtless he chose wisely, wisely for himself, certainly wisely for his country, when he decided upon a serener atmosphere where his talents had a peculiarly useful field and where he did not soon succumb, large and prolonged though his labors undoubtedly were.

On January 2, 1899, he took his seat in the Supreme Court of Indiana. On January 5, three days later, he delivered his first opinion. On January 25 he delivered his second opinion and he

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soon was in full career. But his service there was an episode except as it marked him for higher judicial office. In January, 1902, he was appointed United States Circuit Judge in succession to Judge Woods, who had died in the preceding June. The framed commission signed by President Roosevelt hangs in the private office of the Clerk of this Court. It is a singular coincidence that when Judge Woods was promoted in 1892 from District Judge to Circuit Judge, John H. Baker succeeded him and the successor of Judge Woods as Circuit Judge was the son, Francis E. Baker. He early made an impression in a Court where he first sat with Judge Jenkins, a most finished and courtly judge, with Judge Grosseup, a man of undoubted intellectual power, and, somewhat later, with Judge Seaman, who is still venerated as an almost ideal judge for courtesy, patience and impartiality.

This Court of Appeals is a great and powerful court. Its relation to the Supreme Court is practically like that of the Courts of Appeal in England to the House of Lords. The changes in industrial life have caused great changes in the methods of business, so that state lines are no longer barriers to commerce. The vast appellate jurisdiction of the Court over interstate commerce and patents adds to its business. The jurisdiction through diversity of citizenship makes this the chosen field for enforcing the injunction, often forgotten, of a law sometimes called Divine: "One law shall be to him that is homeborn and unto the stranger that sojourneth among you." Finality

of decision in most cases is given to this Court. Many considerations make it just as important that the Federal Courts of Appeal should be manned by judges of superior merit as that such men should fill the Supreme Court. Judge Baker's long service in this Court of Appeals showed his admirable fitness to meet all the requirements of even our highest court. It is one of the mysterious dispensations of politics that he was not called to that highest court in recognition of his great deserts.

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He had a vivid sense of the vast responsibility of his high office as an interpreter of the law. The law is often sought to be covered with reproach. Some of her degenerate sons are periodically engaged in hacking our aged mother to pieces, but always she continues and must continue her endless reign. She must always, contemptuous of puny men, pass on like the weary Titan "bearing on shoulders immense, Atlantean, the load well nigh not to be borne, of the too vast orb of her fate." For the "law is the protection of the consideration which each of us enjoys in the state. It is the foundation on which our liberties are built; it is the fountainhead of that justice which we all demand. The living spirit, the very soul, and the foresight and deliberate opinion of the state is in the law. Just as we cannot use our bodies without the mind, so the state cannot use its parts without law, which is its system of nerves and sinew. The executive magistrates are the ministers, the judges are the interpreters of the law. Therefore we are all servants of the law in order that we may be free."

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M. Zaue

This eloquent saying, taken from one of Cicero's legal arguments, comes to us with some of the dewy freshness of that early morning of our modern law. The house of the law contains many mansions, which must constantly be accommodated to the development of the society that dwells there. Since the state exists only through its widely ramified edifice of law, those who labor to preserve and adorn that structure are entitled to be called the true workers in the elevation of humanity. Well have they been called, "docile echoes of the Eternal Voice, pliant doers of the Eternal Will."

What exists among us is what the ancient world never devised—an adequate tribunal. This adequacy gives power to the judges to say, as interpreters of the law, that the legislature and the executive are, not less than any of us, the servants of the law, in order that we all may be free, even the stranger within our gates. Thus it is that the judge must fill the poet's ideal of the man just and tenacious of purpose, who is not moved by the factious thinking of the ignoble, demanding unjust things. Thus it is, as a great jurist has said, that the judge must of all men be the one who shall pay no price for justice. Neither by popular referendum nor by necessity for reelection shall he meet any penalty for doing his duty. Though a wholly unfit and unworthy man be found, but that very rarely, intrenched for life, it is far better that such a misfortune come, than that the generality of judges who are fit and worthy, should be penalized for keeping their souls unstained.

Happily, tribunals filled by judges of secure tenure are not wanting in our land and they represent the last word in statesmanship in providing adequate tribunals. They keep burning from generation to generation the sacred flame upon the altar of justice in accordance with law. Justice, which is the necessary treating of men with equality, is "the great standing policy of civil society" and "the highest interest of man on earth," but it is justice as defined by the law, justice according to rules impartially applied. This justice, an old Greek philosopher tells us, "does not exist by nature." Justice is an artificial thing constructed by the infinite toil and wisdom of priests after the order of Papinian and Ulpian, who were jurisconsults and judges, typifying the labors both of the Bench and of the Bar.

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Every judgment, especially of a high appellate court, is not only a decision but a prophecy. It is a decision so far as settling the rights of parties is concerned; it is a prophecy so far as it states general principles applicable to future controversies. The difference in judges is mainly a difference in this prophetic power to lay down a rule which shall be so guarded that it shall stand the test of the future; for the laying down of principles is simply "the soul of the wide world," through its chosen workers, "dreaming on things to come." This is the secret of the expansibility of the law, adjusting itself to social demands from age to age. Therefore it is that a judge of a court of final appeal should be capable of far higher conceptions of the law than the judge at *nisi prius*. On this

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elevated plane Judge Baker, with his grasp of fundamental principles, and his caution and tact in handling principles, was calculated to shine, and did shine, as a brilliant light.

But not less are the ordinary daily duties of a judge. Complete integrity is his proper portion, but in the case of Judge Baker, as Tacitus said of Agricola, to mention his integrity is almost an insult. The ordinary duties of a judge were never better expressed than by that wisest of mankind who freely gave his life out of devotion to the law. He said: "Four things belong to a judge, to hear courteously, to answer wisely, to consider soberly and to decide impartially."

The hearing courteously comes by nature. A man with kindness of heart, natural or acquired good manners, and innate, instinctive courtesy, is bound to be a courteous hearer, and this Judge Baker was. How many are the times that he has sat in his court holding a school of legal instruction. It seemed to cause him positive pain to be compelled to decide the cause in a way that would reflect upon a lawyer's technical conduct of the case. To a lawyer who was ignorant but obviously sincere and in good faith, his kindness was proverbial. In one of the oldest Year Books, a counsel has made an argument to support his case but the Chief Justice says gruffly from the bench: *De faute de bon serjeant fet B. perdre ses deniers*. "The want of a good lawyer makes B. lose his money." It is impossible to imagine such cruelty from one so uniformly humane as Francis Baker. Even when a pertinacious counsel was positively

abusing the indulgence of the Court, after the hopelessness of his position had been pointed out, Judge Baker would sink back with a look of resignation and allow the lawyer to exhaust his verbosity or to consume the allotted time. Then, too, although he never complained, there were times when Judge Baker was enduring great pain, but all that showed it was a look of intense suffering upon his countenance that was pathetic to those who knew him well. To a straightforward man, in command of his case, no word ever came from the bench to interrupt the steady unfolding of the cause. But a plausible, neat and unsound thing was instantly exposed. He followed the saying of a Chief Justice in the late twelve hundreds under Edward I who interrupted a serjeant to say: "That is a fallacy and this place was made for truth."

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To some points and phases of argument the judge must answer at once and that wisely. In this respect Judge Baker was supereminent. He had a marvelously quick apprehension. He caught the point almost before it was wholly stated. His acute intelligence and his readiness in summoning his knowledge, turned additional light upon a sound thing as soon as it was uttered. Unsound positions met instant challenge. The celerity of his thought was sometimes confusing to counsel. But he always made himself plain; he answered wisely. He never felt it necessary to assume the solemn reticence which sometimes conceals poverty of ideas or a desire to be taken seriously.



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It may be that now and then a lawyer imagined that the Judge interrupted him too soon. A judge should at least have the power of a referee to blow a whistle and tell the contestant that he is playing off-side. Judge Baker felt that time was poorly spent on useless things and if an answer could be made on the spot it should be made. In this way he often brought the argument to the smallest dimensions. To a judge of his sifting quality of mind and instant apprehension, the mere statement of the case indicated the true question that lay at its heart. This he went to at once. He withdrew the argument from irrelevant matters and focused the contentions of the parties upon the actual point for solution. This characteristic of the Judge was sometimes disconcerting to counsel, but it was always illuminating. Certain it is that he had no appreciation of the purely linear style of presentation, which has length without depth or breadth.

Sometimes, in answering wisely, a judge must make an oral decision upon a difficult case. There is a most remarkable oral opinion of Judge Baker's at 268 Federal Reporter 571 in an important case involving an injunction against a State Commission that is worthy of a Lyndhurst or a Stanley Matthews. The intense concentration, the close following of a difficult line of reasoning, the ease and ready command of a multitude of fundamental principles that go to the very basis of our government, elaborated with ready command and fluency of language, is an intellectual feat of the very highest order. At the end came the modest

flower of courteous phrase: "My Brethren graciously state that they concur in the views that I have endeavored to express."

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In the phase of considering soberly we must appeal to those who met with him in conference. But one fact stands out. In all his service he found it necessary to dissent in only four cases. This fact shows, since he was always associated with capable men, that he had much strength and capacity for demonstrating his own views, and also had no obstinate pride of opinion, but so open a mind and he was so ready to heed the views of others, that in hundreds of cases he found it unnecessary to dissent.

One of his dissenting opinions was in a case of transcendent importance. It was sought to enjoin the rates put forth by the Interstate Commerce Commission, constituting lines for basing rates, whereby the country from east to west would be as to rates divided into zones, with reference to centers of distribution. Judge Grosscup held the rates to be illegal in a strong opinion and with him Judge Kohlsaet concurred. Judge Baker dissented in an opinion which shows his keen analysis, weighing the facts and examining the statute with close reasoning. The case went to the Supreme Court (218 U. S. 88). There five of the Court agreed with Judge Baker. The opinion in the Supreme Court quotes at length from this remarkable dissenting opinion, which had evidently greatly impressed the higher Court by its wealth of suggestion and its compactness, coherence, and careful guarding of propositions.

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As to deciding impartially, it is but the simple truth to say that any other course was impossible to a man of Judge Baker's integrity of mind. His decisions were the result of pure intellect working with given facts and circumstances. He went to the greatest pains to show to a party's counsel a fundamental error in his contention. There is a unique explanation at 279 Federal Reporter 671 for the benefit of those of the patent bar who seemed to think that patent law was an occult science governed by principles of its own, not discernible by the eye of the general practitioner. Nothing could be more direct, plainly stated and better put than his reduction of the whole matter to the one plain general rule. There is a freshness as well as vigor in the thought which take the utterances out of the sphere of ordinary opinions. And here it should be said that among the patent bar Judge Baker was looked up to as one of the most satisfactory authorities in matters concerning patents in the country.

Judge Baker was eminently a judge satisfactory to lawyers because he had none of those popular tricks which are supposed to appeal to laymen. He did not seek for public applause, nor did he make the slightest effort for popularity or recognition even among politicians. He strove only for excellence in his opinions, which were designedly written for the competent lawyers. His own statement was: "Write only for those who are fully informed as to the law, cite few cases, and then only when necessary, appeal only to principle." Yet he took a profound interest in political hap-

penings. In his thought he was a liberal conservative. He had the rare combination of respect for the law as settled and a liberality of outlook that permitted him to feel that the United States in the various states had "a great political laboratory," as he said, in which experiments might be tried before national adoption. Perfect honesty of purpose, under the guidance of great knowledge of law and exceptional intellectual vigor, with liberality of thought, is happily with us something often seen upon the bench. In him there was added the tendency to stand *super vias antiquas*, a realization of the continuous necessity of the great constitutional limitations, a lack of the personal eccentricities of conduct and idiosyncrasies of thought, of those hasty conclusions and peculiar prejudices, which some judges display. He had openness and receptivity of mind, fineness of intellect and devotion to duty. This rich endowment made him a judge of mark among able men, while his direct simplicity and geniality, warmed by his cordial kindness to all, made him a man that we honored and loved.

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Enough has been said to indicate that Judge Baker had in full measure the self-support which an otherwise great judicial officer should never lack, and which only courage can give. He had courage himself, he admired its expression in others. He once spoke with positive enthusiasm of the admirable boldness backed by fine ability of a certain lawyer in maintaining the then novel point that an injunction would lie against a party proceeding in violation of the *res judicata* of a prior

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decree. He said that the vivid recollection of that argument had not faded from his mind after the lapse of many busy years. No greater display of courage can be found than his opinion in a case, where authority compelled him to hold a rule in this Court, to the direct contrary of the rule he had held in an opinion in the Supreme Court of Indiana. A weaker man would have dodged the issue; he faced it like the man he was.

But we have not exhausted his claim to judicial eminence. He is a fortunate judge who has a distinct literary style, who shows those niceties of literary cultivation, those personal touches in the use of words or development of ideas that mark the individual as unlike others—a literary style in the sense that the form of expression is a personal trait. This is the gift of fate, but it is much helped by intense literary cultivation, such as he had not spared. His opinions have this peculiar fragrance of mental personality. This characteristic was accompanied by an invariable good taste. Those who have heard him on occasions when he felt that wit was called for, know why it is that here and there, imbedded in an opinion, we may come upon the subtle aroma of engaging humor. Above all, his opinions have finish, and show the skill of one who knows that language is more than mere words and must flow with the grace and ease of culture. It was in recognition of that literary quality that his Alma Mater conferred upon him ten years ago her degree of Doctor of Laws. Alas, he shall never more return to those halls under the old elms which always seem to be drooping over

the Campus in sorrowful memory of the life and youth and hope that they have looked upon, which are now mouldering in the tomb.

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The last time that most of us can recall his public appearance was at the Bar's dinner to Chief Justice Taft. It demanded a speech worthy of the occasion. Judge Baker's address was to that great assemblage of lawyers a marvel of clear, constructive skill. It was on an old theme, the essence and characteristic form of this government, composed of an indestructible union of the whole people and of a union of different parts of the people in indestructible states. But he gave us a flood of new light upon that old subject. His remarkable figure of this Union, analogous to the balance of centrifugal and centripetal forces in the universe, was exquisite, not only in its perfectness of expression, but in its aptness. Simplicity, preciseness and propriety of diction, without a note and without any memorized oration, is something rarely heard. Yet we had it all, and there was not a man whose heart did not swell with pride to feel that the head of our local Federal judiciary was capable of such a triumph. It seems but yesterday, and now that fine intellect has passed beyond the veil. It is a consolation, bitter as is his loss, but a consolation still, to realize that he died without having reached "the languor of pain, the chillness of age."

To those who cherished and loved him in the tender relations of husband or father we can only offer our heartfelt sympathy, with the thought that the pure in heart have a special beatitude and there

Address is rest beyond the grave. Even more consoling to  
by Mr. John them is the remembrance that,  
M. Zane

him, on whom, in the prime  
Of life, with vigor undimm'd,  
With unspent mind, and a soul  
Unworn, undebased, undecayed,  
Mournfully grating, the gates  
Of the city of death have for ever closed,  
Him, I count him, well-starr'd.

Soon there will hang upon these walls a portrait traced by a cunning hand, and from among those who have in their time graced this high bench, his speaking countenance will look down upon us. But he will not be here and we shall keenly miss him from his accustomed seat. Yet that face looking down upon us will speak of one who liveth in those made better by his presence and it will be a constant exhortation to us all to remain faithful to justice and her eternal harmonies. Fortunate indeed will we be, if we can say, when we come to our last account, that we have done nothing unworthy of the lesson of his pure and faithful life, nothing unbecoming to men who once enjoyed the friendship of Francis Baker.

