

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

request that it may be spread upon the records of the Court. The resolution is as follows:

“WHEREAS, the Honorable Louis FitzHenry, a member of this Court, passed away on the 18th day of November 1935; and

WHEREAS, it is deemed appropriate by the Bar to acknowledge in some permanent form its appreciation of the merit and the services rendered by him;

BE IT, THEREFORE, RESOLVED that the bar of the Seventh Judicial Circuit presents to the Court a portrait of Judge Louis FitzHenry and requests that in harmony with the traditions of the Court it may be kept and hung upon the walls of this courtroom as a memorial to the outstanding and honorable career of the departed jurist and, also, as a constant reminder to all who appear here of his distinguished and honorable service and that as citizen, as lawyer, and as Judge, Louis FitzHenry enjoyed the affectionate regard, the admiration, respect, and esteem of his contemporaries of the bench and bar.”

GEORGE I. HAIGHT, *Chairman*

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FRANK K. LEMAN	GEORGE L. WILKINSON
SIGMUND LIVINGSTON	DAVID WRIGHT

The Sub-Committee appointed to select the artist to produce this portrait consisted of Mr. George I. Haight, as Chairman, Col. George Buckingham, and John A. Dienner. This Committee is one of recognized ability and made a happy choice. It selected Mr. Paul Trebilcock, an artist, who, although still young in years, is one of great distinction and international reputation as a portrait painter. His fine work of notables may be found in Europe, as well as in this country. His work of Judge FitzHenry, now finished and present in Court, is a splendid likeness of our departed Jurist—so much so, in fact, that it has been said that an old friend sitting before it might feel the urge to commence a conversation with the Judge, something he loved so much.

Appropriate resolutions regarding our departed friend have already been adopted in this court and it is, therefore, not our purpose to recall at length the fine virtues and qualities that distinguished him. It is proper, however, as we are met here to make this presentation with a few words and expressions of tribute which naturally arise on such an occasion, from several who have known Judge FitzHenry for many years. I knew him since I was a small boy. He was then a youth of seventeen years, working in a newspaper office in which he had charge of the newspaper carriers and I was one of his "boys." Our association was such that an intimacy sprang up between us that was kept fresh during all the years following. I saw him rise from the lowest of beginnings and go step by step upwards and onwards from a newspaper cub,

to editor, to manager, to owner; then to the study of the law, during which time he kept up his newspaper work. Then I saw him as a lawyer, I saw him obtaining political preferment in a community very strongly opposed to his political beliefs. Then he became a Judge upon the District Bench, and later, upon this Bench. In all positions of life, he always did more than his full duty and he reached heights far and far above his humble beginning.

In the economic turmoil that has gripped this nation for some years, let us not forget the traditions and opportunities that made his life possible. On the contrary, let us cling to them with all the greater fervor so that the youth now and always going forward and the millions as yet unborn, will continue to take courage and inspiration and to rise above humble beginnings.

I trust that we may hear a few additional words appropriate to the occasion from Mr. Hal M. Stone of Bloomington, Illinois, and Ralph F. Potter of Chicago, who also were friends of the Judge of many years standing.

Mr. Ralph F. Potter, of Chicago, addressed the Court as follows:

It has been said there is a flower that blossoms only at the edge of the grave. With rare exceptions we do justice in our thinking to contemporaries who deserve well of us, only after they are gone. Though I knew Louis FitzHenry all along the years since school days it was not till he had passed beyond the Valley of the Shadow, that realization

came that he had within himself all the elements of greatness.

Born in one of the lesser cities of central Illinois he lived there all his life, was educated in its public schools, and achieved there his first successes. He received his law degree from the University in his home city in 1897 and after ten years practice of his profession was elected City Attorney, the first of his political persuasion to attain such an honor by the votes of the electorate in that community. Five years later he was sent to Congress by his District, always before controlled by the political party to which he did not belong, and served there during the first term of President Woodrow Wilson. While a member of the Judiciary Committee of the House of Representatives he won the confidence of the President, and when in 1918 a vacancy occurred upon the Federal Bench in his home District, President Wilson appointed him United States Judge for the Southern District of Illinois. In that District of thirty-nine counties he was sole Judge until an associate was appointed one year before his elevation to this Court by appointment of President Roosevelt in October, 1933. He was associate Justice of this Seventh Circuit Court of Appeals until his death last November. It was as a Judge of the Courts of the United States that all of us knew him best. In that capacity we are here to do him honor and to dedicate to his memory, and for the benefit of succeeding generations, this portrait.

Judge FitzHenry was appointed to the District Bench at a time as difficult as any within our mem-

ory. The World War had just ended and the disorganization and unrest following that catastrophe were at their height. The unpopular and untried statutes having for their purpose the enforcement of the prohibition amendment had lately been enacted. Acute labor troubles and disorder followed shortly after. The new Judge for the Southern District had had the usual professional experience of a lawyer during his first twenty years of practice in a rural county seat. During almost half of that time he was conscientiously discharging the exacting duties of elective office. He had probably never tried a case in the Federal courts. Before coming to the Bar he had edited a daily paper and owned and edited another periodical devoted to the interests of organized labor. His District was highly industrialized. In his home town and elsewhere were extensive railroad shops, centers of industrial unrest during the early years of his judgeship. Peoria, one of the seats of his court, was a center of the distilling and other liquor interests. In some quarters doubt was entertained, if not expressed, as to the experience, qualifications, and supposed prejudices of the new incumbent of the Federal Bench. But such doubts as existed were soon resolved by the firm but unobtrusive competence with which Judge FitzHenry administered the affairs of his court. He enforced the prohibition laws in the terms of their enactment without fear or favor. In the troublous period of railroad strikes in 1920 and '21, interested lawyers will recall the wisdom and at times the stern authority with which he averted serious results of threatened violence. No life was lost and no serious injury

sustained through labor troubles in the Southern District during that period.

Judge FitzHenry possessed a natural and never failing dignity which without conscious effort on his part commanded the respect and scrupulous attention to the proprieties, of all who appeared before him. Yet he was the most unassuming of men. He never thought of himself as a genius, or as the possessor of a scintillating brilliance requiring frequent exhibition. He was patient, attentive and considerate. Stern upon occasion, he never gave a judgment in anger, nor hastened nor delayed a decision through prejudice or favor. He quickly acquired and retained in mind the facts presented upon a trial, and his facility in classifying them and determining their relation to the questions at issue, was exceptional. He exemplified Rufus Choate's definition of a great judge:

“He shall know nothing about the parties, everything about the case. He shall do everything in justice; nothing for himself; nothing for his patron; nothing for his sovereign.”

To the extent that Judge FitzHenry's high sense of duty would permit, his judgments were rendered in the light of sympathy for the unfortunate and helpless. But no informed advocate ever sought to have the fate of a guilty client passed upon in his court when another tribunal was available. Withall, he was scrupulous in his enforcement of the fundamental rights of litigants and accused, whether guilty or otherwise. In one of his earlier cases one Joe Kelih, an alien, was indicted for violation of a prohibition statute. His

counsel moved the Court to order the return of certain evidence secured, as he alleged, by the unlawful and illegal search of his private dwelling. Judge FitzHenry ordered its return and in his published opinion said :

“However, the contention is made that, because the evidence procured upon the unlawful search discloses a home-made still in operation, the premises ceased to be a private dwelling and became a distillery. It would be equally as sound to contend that if defendant had had a sausage mill in his kitchen, which his wife used occasionally, that would change the character of the dwelling to that of a packing house.”

The reports contain upward of one hundred of Judge FitzHenry's printed opinions. Seventy of them were rendered during the two years that he was an associate Justice of this Court. Each bears unmistakable evidence of the care and attention which he bestowed upon his work. His early newspaper training gave him an understanding, and an excellence of literary style, apparent in his opinions.

What has been said sounds like an enumeration of the qualifications of the ideal Judge. However, no lawyer who practiced before Judge FitzHenry but will recognize the justice, even the inadequacy of the estimate, and none looking upon this speaking likeness will detect there a feature which belies an item of it.

The privilege afforded me would be inadequately discharged should there fail to be recited here some

of those qualities which distinguished Judge Fitz-Henry as a man, quite apart from the high office which he held and honored.

He was a most human man, gregarious, with a great genius for friendship. He loved contact and converse with his fellows and never permitted the dignity or superiority of his position to hold him aloof from them. He was friendly, and welcomed association with lawyers practicing in his court, yet such was the crystal clarity of his character and purpose, that none ever mistook that friendliness for improper favor or preferment. He was simple, always natural, and utterly without pretense.

Judge FitzHenry's inheritance consisted only of character, health, and a good mentality. One might have more, but none could ask for better. At twelve years of age he had a daily newspaper route, and each evening as a City employee, lighted the gas street lamps at dusk and put them out at midnight. From that time on he was, in a very literal and material sense, the architect of his own fortune. What he had of education, preferment, or this world's goods came to him through his own effort and native worth. The habit of industry acquired in his early youth remained always with him. He never spared himself.

He lived to within five years of the allotted span, all in one circumscribed community. During most of his adult life the spotlight of publicity played full upon him. For half those years he held high national office. No breath of suspicion of offense or shortcoming ever touched him in his public or

his private life. He cherished high ambitions, but no thought of attaining them except by worth and service.

His life story and his career, in romance and achievement, could hardly be duplicated, in his day, in any land but ours. From humble beginnings he attained and held with high credit a place among the makers of the Nation's laws, and the greatest honor that can be conferred upon an American lawyer,—a place upon the Federal Bench.

The lawyers of his native city inscribed upon his memorial, these quoted words:

“He has achieved success who has lived well, laughed often and loved much; who has gained the respect of intelligent men and the love of little children; who has filled his niche and accomplished his task; who has left the world better than he found it; who has never lacked appreciation of earth's beauty or failed to express it; who has always looked for the best in others and given the best he had; whose life was an inspiration; whose memory is a benediction.”

Judge Louis FitzHenry exemplified these things. By that measure his life was a success. May his memory be our benediction.

Mr. Hal M. Stone, of Bloomington, Illinois, addressed the Court as follows:

William Tudor in an article written 120 years ago makes this statement:

“Whenever any set of men shall entertain designs against the Constitution, either to

overwhelm it in the anarchy of simple democracy or to found upon its ruins a usurpation of monarchical power, they will commence their operations by open or insidious attacks to weaken and overthrow the judiciary.”

Thus very early in the history of our Nation was the stabilizing influence of its Courts recognized.

It is a matter of great satisfaction that notwithstanding the fact that every decision of every Court carries with it some disappointments to one or more litigants, and to those interested with them, who have contended with earnestness and sincerity in most instances for a different outcome, and whose disappointment has too often been evidenced by open criticism in which not infrequently the attorneys in the heat of partisanship and advocacy have joined, and notwithstanding the further fact that some decisions of the Courts have been of such a nature as to affect the interests of the people as a whole, and to mold and to fashion popular opinion, and to control popular action, oftentimes contrary to the wishes or ambitions of considerable numbers or of associations of citizens, and that because of these facts the

(1) Courts have been subjected to almost continuous, though intermittent attacks throughout the years, sometimes in the public press, often in political gatherings, and more infrequently in the halls of legislative bodies.

(2) Concerted movements have from time to time been inaugurated to control the decisions of the Courts by proceedings to impeach —by the recall of Judges, and even by the re-

call of decisions of the Courts by the vote of an uninformed electorate, and strangely enough these movements have from time to time been joined in by persons whose utterances upon other occasions have indicated an appreciation of the sound and wholesome influence of the Courts;

yet no movement of this kind has been able to obtain the approval of that great body of American citizens whose support is so necessary to the efficient administration of any branch of Government, but on the contrary the people have had an increasing faith in their Courts and increasing confidence in their judgments and the trend of public opinion has from time to time been turned back by the decisions of the Courts into the channels of right thinking.

As a whole, American citizens have confidence in the wisdom and above all in the integrity of their Courts and prefer such errors as may occasionally intervene in their judgments to the unbridled will or temporary whims of any number of their fellow citizens.

This growth of public faith has been possible only as a result of the uniformly high degree of intelligence, justice and integrity possessed and exercised by the men who have presided in these Courts. The great body of the law is a matter of spiritual growth. While many Statutes have been passed (too many perhaps) both the interpretation of these enactments and the proper administration of justice with respect to that large number of human rights and remedies concerning which there

are no legislative directions are governed by a higher law, which has its sure foundation in fundamental concepts of right and wrong which do not change and have not changed throughout the years.

In order that one may be fully qualified to justly apply these principles he must have had experiences that enable him to understand the meaning of the philosophy which he seeks to apply to the adjustment of social controversies. He is best qualified to pass upon the conduct of other men and interpret their acts if he has himself experienced the conditions and difficulties under which they have lived and acted. He must understand that beneath the simplest home-spun garment lies a breast filled with the same hopes, desires, ambitions, likes and dislikes that possess his own and that the garments of wealth do not cover any other or different concept of life. He must have drunk deeply at the fountain of legal learning. He must have become imbued with the spirit of the law. This is a matter of study and growth.

Measured by these standards Louis FitzHenry was well qualified by birth, inheritance, circumstance, experience and attainments to discharge the duties of a Judge. He knew well the heart and mind of men. He was well acquainted with the best traditions of our people. He was by instinct, by choice and by practice a gentleman. No position to which he attained ever changed that or caused him to feel that he was in any sense superior, either in intelligence or integrity, to those who had occasion to practice in his Courts. He was an able lawyer

and advocate, a careful, painstaking, upright, learned and just Judge—always a kindly, courteous and considerate human being, both on the Bench and off of it. He inspired confidence, not alone in his own integrity, but also in the wisdom, justice and protection of our Courts.

It seems to me that one of the highest tributes that could be paid to his memory came from the lips of one who had no connection with the law. He said of Judge FitzHenry:

“He increased our belief in the wisdom of law, he deepened our faith—when so much needed in these days—in Judges and Courts.”

His portrait hanging upon the walls of this Court Room, in company with those of his illustrious predecessors, will not alone carry out a long established custom, but will distinctly add to the atmosphere of a room which is already well filled with the inspiration emanating from the lives of these great and good men.

The Bar and the people generally of his home city take great satisfaction and pride in this recognition of a long time friend and worthy citizen.

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

We are grateful to you members of the bar of the Seventh Circuit and especially to the committee in charge of this memorial for presenting a portrait of Judge FitzHenry.

It is no pleasant task to respond to a memorial presentation in honor of our departed associate. The portrait which you have presented is a worthy reproduction of the friendly countenance of Judge FitzHenry, and does credit to the artist, Mr. Paul Trebilcock. Yet I must confess that sufficient time has not elapsed since his death to remove the intense regret which results from a realization that it is a reproduction and not Louis FitzHenry in person.

It is most gracious and generous of you, the members of the Bar of this Circuit, to pay the tribute we have just heard to one who only yesterday was a living member of our family. We of this court, are the special beneficiaries of your gift because we will daily dwell beneath his likeness and it awakens memories that are sweet and will grow more so with each passing season.

This action on your part is evidence of support and encouragement which is not only appreciated but is a source of inspiration to us as well. Such sentiments could not exist were you members of the bar not kindly disposed, as well as charitable to us who pass judgment on your arguments and on your clients' causes. A judge can seldom satisfy more than fifty per cent of those whose cases he tries. He cannot explain—he cannot even apologize, if he would, for his opinions.

It is indeed fortunate for a bench to have a Louis FitzHenry thereon for he possessed the rare quality of disarming the disappointed and softening

the resentment which comes from a severe shock to deeply settled conviction.

On a previous occasion I spoke for this court in appreciation of Judge FitzHenry's career. I will not repeat the sentiments then expressed.

For one quality which I did not mention on the previous occasion, we will ever be indebted to him.

Judges differ not a whit from other lawyers. Some there are who must "speak out." Others cannot resist the use of satire. To voice outspoken conviction without sting, to feel regret without compromising conviction—these are rare gifts. They were the attributes of Louis FitzHenry. Always did his official activities bring bench and bar into closer and more cordial relation that made for better performance of a common task. For this we all are indebted to him.

On behalf of the bench, I thank you most heartily and sincerely for this memorial. We are especially indebted to the committee whose efforts made the portrait possible and to Mr. Trebilcock, who has produced a living likeness of our deceased friend.

We accept the portrait and it will take its place on the walls of this room. The resolutions and memorials will be spread on, and made a part of, the records of this court.

In further respect to his memory, the court will stand adjourned.

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