

PROCEEDINGS

In Memory Of

ASSOCIATE JUSTICES HOMER BLISS DIBELL

and

ALBERT SCHALLER

On the morning of October 18, 1934, at ten o'clock, the court being assembled at the court room in the State Capitol, Chief Justice John P. Devaney called upon Rollo F. Hunt, president of the Minnesota State Bar Association.

Mr. Hunt then said:

May it please the Court:

The Minnesota State Bar Association has arranged, with your permission, to present memorials for two distinguished members of our association and of this court, Homer B. Dibell, who died February 17, 1934, and Albert Schaller, who passed from this life March 31 of this year. Both of these men were distinguished in learning and in public service; and, more than that, they personified the ideals of our profession. It is our privilege at this time to pay tribute to their memory. A committee has been designated to arrange a program to be presented at this time, and I will ask the court to recognize the Honorable Oscar Hallam, chairman of that committee, who will advise the court of the speakers who will deliver the memorial addresses.

Chief Justice Devaney then said: Judge Hallam.

Honorable Oscar Hallam then said:

May it please the Court:

I will present the memorial of the State Bar Association for the Honorable Homer B. Dibell. Mr. Bruce W. Sanborn will give the memorial for the Honorable Albert Schaller. Judge Hallam then presented the following

MEMORIAL

Homer Bliss Dibell was born on a farm in Fillmore county, Minnesota, January 17, 1864, the son of Elihu Dibell and Elizabeth Ann Bliss Dibell. He was the youngest of three brothers, one of whom, Edwin J. Dibell, of Wolcott, Indiana, survives him. The family moved to Illinois in 1865, and in 1875 to Wolcott, Indiana. Justice Dibell attended the local schools and for a number of years taught country school in Indiana. He entered Indiana University and graduated in 1889. He received the recognition of merit in scholarship by election to Phi Beta Kappa. As a senior he won a \$300 prize for an essay on the tariff against competitors in universities throughout the United States.

After graduation he studied law for a time in law offices in Logansport, Indiana. In 1890

he graduated from Northwestern University Law School. As a law student he was one of four who divided the highest prize.

In 1890 he went to Duluth, and in October of that year he was admitted to the bar of Minnesota. He was a law clerk in the office of McGindley & Cotton from 1890 to 1891, a member of the firm of Cotton & Dibell from 1891 to 1893, a member of the firm of Cotton, Dibell & Reynolds from 1893 to 1895, and of the firm of Dibell & Reynolds from 1895 to 1899. He was elected judge of the district court in 1898, taking his seat in January, 1899, and was re-elected in 1904 and 1910. On April 1, 1913, he was appointed by the supreme court to fill one of the two newly created offices of supreme court commissioner. In 1918, upon the death of Justice George L. Bunn, he was appointed an associate justice of the supreme court, to which office he was elected in 1920 and re-elected in 1926 and 1932.

During his service on the supreme court he lectured at the St. Paul College of Law and the Law School of the University of Minnesota. In various summer sessions during this time he also lectured at the law schools of Yale, Michigan, and Northwestern universities. In 1927 the honorary degree of Doctor of Laws was conferred upon him by Northwestern University.

For a number of years, beginning in 1927, he served at various times, under appointment by President Coolidge, President Hoover, and President Roosevelt, on arbitration boards and boards of mediation in labor disputes between various railways and their employees. During his last illness he received an appointment from President Roosevelt to serve on a mediation board in connection with a labor dispute between the Denver and Rio Grande Railway and its employees. His illness and death prevented his acceptance of this appointment. He died February 17, 1934. Justice Dibell's record in these numerous labor controversies was so fair that he won the confidence and respect of both sides. His picture in a recent edition of "Labor" carried the caption "Square Shooter."

President William Lowe Bryan of Indiana State University said of him: "Justice Dibell of the supreme court of Minnesota was one of the most brilliant students at Indiana and one of the most able jurists in the United States. He is one of the men of Indiana who has walked stride for stride with the strongest men of the nation. To me his loss brings profound personal grief."

Those of us who knew Justice Dibell best loved him most. He had a breadth and vigor of mind but withal a human touch. He had the education of a scholar, but his was a native culture. He did not seek glamour, but the plaudits of his admirers followed him. He did not seek the crowd, but no man kept in closer touch with the stream of human thought or the trend of human activities. He mastered books, but there was more than this that made him a great judge. A judge must have a mind that grasps. He had that. A judge must have decision of character. He had that. A judge must be fearless. He had that quality. A judge must have a human sense of justice. He had that. A judge must have the patience that hears. He had that. A judge must have the quality of mercy that tempers. He had that. He carried the dignity of his position, yet with the grace that accorded courtesy and recognition to all. He knew the problems of the workers about him, of the artisans he met about the capitol, of those who served his table, of those who scrubbed the floors, and his words cheered them. Gifted with a keen sense of humor, he was genial in companionship. He was molded and regulated by the highest standards of honor. He will fill a large niche in the state's hall of fame.

OSCAR HALLAM
BRUCE W. SANBORN
CHARLES W. BRIGGS

Judge Hallam then read the following tribute from Judge Henry J. Grannis, who was unable to be present:

I regret more than I can express my inability to accept your thoughtful invitation to be present at the memorial services for the late Supreme Court Justices Dibell and Schaller, to be held Thursday of next week.

Having become acquainted with the late Justice Dibell soon after he came to Duluth to practice law in the early 'Nineties, it has been my privilege to enjoy his friendship throughout the intervening years and to note his progress in his chosen profession, first as a painstaking, courteous, and successful practitioner at the bar, then as judge of the district court of the eleventh judicial district, then as supreme court commissioner, and finally as justice of the supreme court.

In all these capacities Homer B. Dibell was always the same friendly, unassuming, and sincere individual. As a district judge he was noted for his legal learning, his fairness to litigants and attorneys, and his broad human sympathy.

His enduring monument is embodied, as I fancy he himself would have wished, in the reported decisions which he wrote, as the expression of the court, with such clearness of statement and embellishment of legal learning. These decisions and others in which he joined with his associates in working out did not affect the immediate matter in hand only but will serve as beacon lights to guide the bench and bar so long as free institutions and constitutional government shall endure in Minnesota.

In what seemed the untimely passing of Justice Dibell, the bench and bar suffered the loss of a truly great lawyer and judge, and the people of the state were deprived of a sympathetic and understanding friend.

I did not have an intimate acquaintance with the late Justice Schaller. His service on the supreme court was comparatively short, but I know that he gained and deserved the reputation of being a well qualified lawyer and judge and was recognized as a real gentleman and true friend.

Judge Hallam then said:

I have also a tribute from a distinguished citizen, the greatest law commentator of our generation, Dr. John H. Wigmore, whom we ordinarily know as Dean Wigmore. Dean Wigmore's tribute is as follows:

Judge Dibell's career was long known and admired by me. I first took an interest in it because he was an alumnus of Northwestern University Law School, though he had graduated before I came to the school. Afterwards I studied and followed with great respect his opinions as commissioner and judge of the supreme court of Minnesota. His opinions not only showed that sound learning of law which we expect always to find in our supreme judges, they had also qualities of their own which gave them individuality,—a conciseness, a directness, an economy of expression such as is seldom found. His unflinching devotion to his task, his solitary industry in preparing his opinions, are known to all. His stern disinterestedness, his persevering detachment from the usual distractions of everyday humanity, were unique. But a quiet and shrewd sense of humor was always apparent in his personal relations and tempered agreeably his severe social modesty. The supreme court of Minnesota, which can show an eminent roster of jurists, has no name more worthy of honor as typifying the impartial and competent judge who merits the entire confidence of the profession and of the community at large.

Chief Justice Devaney then said: Judge Sanborn.

Honorable John B. Sanborn then said:

May it please the Court:

To me Homer B. Dibell was a great deal more than a justice of this court. He was a very old and a very dear friend. I will not flatter myself by thinking that I merited his confidence and affection, but it has been a great satisfaction to know that I had them.

He had every quality to make him what he was—a great judge,—humility, modesty, selflessness, intelligence, industry, honor, courage, freedom from prejudice, a keen sense of humor, a sympathetic understanding of human nature, utter frankness, and an instinctive and unerring sense of justice.

He was the most unselfish person I have ever known. For himself he wanted none of the things which most men crave—neither wealth, nor power, nor fame, nor even public recognition of the services which he had rendered. Whenever he could help a friend without that friend knowing from whom the help came, or whenever he could do a kindly act and have the doing of it attributed to someone else, he was delighted. While asking nothing for himself, he wanted his friends to have everything that they wished for, and gloried in their successes.

If he were here today he would, partly in jest and partly in earnest, charge us with a breach of trust for taking any note of his departure. When his time came he wanted to step quietly out into the shadows, leaving behind him no grief, no trouble for others, and no memorials. He accepted life simply, and naturally, and accepted death in the same way. When he became ill and knew that he had but a few days to live, he never thought of himself, and his only worries were for those whose future might in some way be adversely affected by his going. After he had done all that he could do to assure their future, he entered upon his last great adventure as simply as he had entered upon any of the adventures of his lifetime. He asked for no rewards in this world, and expected none in the next. To him his work was its own reward. Few will ever know the extent or the importance of the services which he rendered both as a judge and as a teacher of the law. That devotion which most men during an entire lifetime lavish upon their families he gave to his work on the bench and in the law schools.

This court, to which he devoted so many years of his life, is not a group of individuals, but an institution which has its roots deep in the soil of the past. Its character and reputation are not a composite of the character and reputation of its justices, but have been built up through the years by the great men, living and dead, who have served it, both on the bench and at the bar. Perhaps the greatest tribute that can be paid to one of our profession, whether he be a lawyer or a judge, is that he has added something to the dignity, the standing, the reputation, or the usefulness of the courts which he has been called upon to serve. This court is a better court because Homer B. Dibell was a member of it. He has gone, but his fine spirit and character have become a part of the institution which he served so well.

Chief Justice Devaney then said: Mr. Gearhart,

Mr. H. G. Gearhart then said:

May it please the Court:

It is a great privilege to be permitted to address this court as we members of the bar of Minnesota meet with it to do honor to the memory of our dear friend, the late Justice Homer B. Dibell.

His career has been outlined in the memorial presented by the bar association, and it is in many respects similar to that of an astonishing number of our leading jurists—a boy with less

than the usual material advantages, a good mind with a determination to make the best possible use of it, an honor student in college, a successful lawyer during his years of practice, a good and respected judge of a trial court, and finally an honored member of the highest court in our state. Such a career is one which any one of us might point out to his son as an example of the success and honors which can be attained by serious study and persistent application to one's chosen life work.

I will say little of his legal ability and his work as a justice of this court. You members of the court who, worked with him doubtless know, better than his warmest friends, his great legal ability and untiring labors in accomplishing what he felt to be his duty as a justice of this court.

Those members of the bar who lacked a personal, intimate acquaintance with him gained a knowledge of his ability through the decisions of the court as written by him. Therefore, what I may say of him will necessarily be of a somewhat personal nature.

As a judge of the eleventh judicial district he won and kept the warmest admiration of all of us who practiced before him. He was a natural teacher or instructor, and, during the period when he was with us as a district judge, many were the young lawyers whom he assisted by a quiet suggestion as to the presentation of evidence, or some similar item, with the idea that not only did he wish to aid the young lawyer, but that a case might be so presented that justice could be accomplished.

While ranking high among its members during the existence of this court, for a number of years past he had in his mind an inclination to give up his honorable position here and devote the remaining years of his life to teaching law. I think he felt an unusual ability to impart to law students something from his store of legal knowledge, for he frequently remarked to me that almost any good lawyer would, with experience, make a good judge, but that few lawyers were capable of instructing untrained minds in the application of legal principles.

We in the northeastern part of the state ever looked upon Justice Dibell as our judge. We took pride in him and read decisions written by him with exceptional interest. His home was in our city of Duluth, and he was one of us. Upon his frequent visits to Duluth, after his elevation to the supreme bench, most of his time was spent in and about our courthouse, where he had previously sat as district judge, visiting with everyone from the janitor to the sitting district judges. Word that he was in Duluth would take many of the lawyers from their work and to the courthouse for the sake of a chat with him.

The dignity of his office never burdened him in the least, nor did it in the least embarrass his friends. Though, from force of habit, we usually called him "Judge," in our minds he was always "Homer," a friend among friends. Yet I have never heard a suggestion that such friendship influenced his work in the slightest degree, for he was always a "just judge."

His greatest pleasure he found in his work. He did not indulge and never had indulged in the pleasures which appeal to the average man; the great out-of-doors life, a reasonable amount of which in my judgment is necessary to the well-being of each one of us, was to him a closed book. In this I think he missed much, and it may well have been that his close application to his work without any of what you and I call recreation was to a considerable extent responsible for his untimely death. However, he lived the life which most appealed to him, a life as to which none can offer a word of criticism, and departed from us respected and honored by all, and loved by his intimates.

Chief Justice Devaney then said: Mr, McClearn.

Mr. Hugh J. McClearn then said:

May it please the Court:

It may with candor and sincerity be said of Judge Dibell that he feared praise, not blame. He was a very sensitive man. He shunned publicity. He was a disciple of the doctrine of plain living and high thinking. His whole philosophy of life may, I believe, be summed up in the famous line from Micah: "and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God." I have on several occasions in private heard him quote the last stanza from Bryant's *Thanatopsis*. I think it was one of his favorite poems. Thinking of the Judge suggests the hope that some day someone competent to deal adequately with the subject will bring vividly to the attention of the bench and bar, as well as the general public, the great influence our district judges exert on the lives and work of the lawyers of their districts, especially the young lawyers. It is a subject, I am convinced, worthy of great treatment.

I tried my first case before Judge Dibell 30 years ago. I have never forgotten the experience. Afterwards I tried many cases before him as a trial judge. Looking back over the years, I can testify from experience that he possessed the great virtue called patience. Many have acclaimed him a great judge. So he was. To me, however, and to many others who came to the bar while he was on the district bench, he was more than a great judge. He was a great man.

It is true, as has been said, that he possessed a fine mind; he also had a big heart. His sympathies were very broad. To many in trouble and to the young lawyer just beginning his practice, he was more than a judge; he was a friend.

The experienced judge is necessarily a serious-minded man. By the world at large, no doubt, Judge Dibell was so regarded. He was, however, a many-sided man. The general public saw only the serious side. His friends knew there were other sides to his nature. The Judge had a number of cronies among the older members of the bar. It was always a delight for the younger lawyers of the eleventh district to see and hear these in friendly rivalry and combat with him. The Judge had a sense of humor. He enjoyed a good story. He could appreciate a joke. Moreover, he could laugh when, the joke was on him. To me, these are unmistakable signs of greatness.

After the Judge came to this court, I, and many others who commenced their practice before him, never came to the Twin Cities without making an effort to see him. A visit with him did us good. He always appeared glad to see us. We were his boys. He was still interested in us. We were interested in him. He was very human. He was interested in people. He never lost the common touch. Always he would inquire about old friends and acquaintances. Conversation with him was a pleasure. You never felt any disparity in talking with him. His manner always put you at your ease. His attitude was friendly.

It would be a mistake to believe that the Judge was interested only in the law. Everything human seemed to interest him. He was widely read outside the law. Aside from his kindness, the things that impressed all of us who knew him well were his keen sense of justice; his alert mind; his untiring industry; his enormous capacity for work. That he worked to a purpose is attested by his opinions, which find a permanent record in our reports.

No outline of the work and influence of Judge Dibell would be complete without mention of his work at the University Law School and the St. Paul College of Law. While teaching at those institutions, he touched the lives of many young men destined to be lawyers. Those who knew him will not doubt that he influenced them in the right direction. He was an influence for good in many directions.

In his passing the state has lost an able judge, an outstanding character, a fine influence. I have lost a friend.

Dixi.

Chief Justice Devaney then called upon Justice Holt to speak for the Court on behalf of Justice Dibell and Justice Schaller.

Justice Andrew Holt then said: Gentlemen of the Bar:

HOMER B. DIBELL

So far no two persons have had the privilege of working side by side as members of this court for 20 years except Judge Dibell and me. Not only that, but during the entire period there was an intimate friendship and affection between us, never interrupted for a moment no matter how widely our views differed in respect to some particular problem for decision. Judge Dibell had also the distinction of being one of the two men selected by the court as members thereof. It is needless to say that the court looked solely to the qualification of the men selected for the work. Not only the opinions of Judge Dibell and Judge Taylor, the two commissioners first selected, but the opinions also of the subsequently selected commissioners, vindicate the wisdom of the court's choice. My participation in the selection of Judge Dibell for membership in this court is one of the very few acts in my life that I look back to with complete satisfaction. Judge Dibell and I occupied adjoining chambers for 15 years, and scarcely a working day passed that we did not consult and advise with each other concerning cases in hand. Notwithstanding such opportunity to know and appreciate Judge Dibell, I am embarrassed in the attempt to pay him a just tribute because of his oft expressed objection to the tributes usually paid the dead. I shall therefore let a few bare facts speak.

Judge Dibell remained single. He had no recreations of any sort. He pursued no hobby. He devoted his entire time to work and study, with this exception, that he seemed to enjoy meeting and talking with people in his chambers or elsewhere; but, even so, he appeared to be in the pursuit of knowledge, for by skillful questions he extracted information from a visitor without the latter often realizing that any had been given.

Judge Dibell was mentally well endowed. He was an honor graduate of a university. He kept in touch with current events of state and nation. He had a keen and analytical mind. His judgment was sound and free from bias. He despised sham and pretense. When to these traits are added a consuming desire to discharge every duty imposed to the utmost perfection attainable, the result of his work must accord him a place in the front rank of able judges and teachers. In the opinion of his associates and friends, he permitted this consuming desire to drive him beyond human endurance. Nearly every morning, holidays and Sundays not excepted, found him at six o'clock in the capitol at work in his chambers or in the law library, and he frequently returned after supper to labor way into the night. Knowing that he was subject to recurring spells of severe headaches, his friends sought to prevail on him to take his work less strenuously and to seek some rest or relief. But our efforts went for naught. He persisted in attending the sessions of the court when it was apparent to everyone that he was suffering intensely.

Judge Dibell's desire to serve was not confined alone to the work of the court. During the 20 years he was a member thereof he taught or lectured in the University of Minnesota Law School and in the St. Paul College of Law, and sometimes he spent his summer vacations lecturing at noted law schools. From the many hundreds of lawyers who have been his pupils comes the most ample testimony of the excellency and thoroughness of his teaching. It is

generally not known, nor did he seek to make it known, that for these years of teaching he accepted no compensation. In addition to the work already spoken of, he several times served for weeks on national arbitration boards in labor disputes between railroads and their employees. His ability, fairness, and patience in hearing and judging controversies had come to the notice of both the president of the United States, who made the appointment, and to the employers and employees, who were satisfied with the appointment. For the services so rendered he likewise refused remuneration except for his travel expenses.

From the facts stated one would know that the opinions prepared by him would bear intrinsic evidence of their worth. They appear in 70 volumes of our reports, beginning with volume 121, and are models of terse and lucid statement of both the facts involved and the applicable law. They reveal a painstaking effort to make them exact and concise. Lawyers will find little opportunity to claim that any legal pronouncement in his opinions is obiter dictum. Few men on this bench have been better grounded in legal knowledge than Judge Dibell, but you will look in vain for any attempt to display learning in his opinions no matter how exhaustively it was found necessary to treat the question for decision.

In the tributes here today paid to Judge Dibell as a man, as a judge, as a teacher, and as a friend, this court joins. But I cannot refrain from quoting and applying to Judge Dibell this eloquent tribute composed by him and published in the Legislative Manual for 1929, to the memory of Judge Lees, esteemed and loved by all, who was selected as commissioner to succeed Judge Dibell when appointed a justice. It reads:

"He enjoyed his work on the bench. His years there were happy years. His opinions were incisive. He coined no words and was no phrase-maker. He thought his case to a clear conclusion and stated the result in language not to be misunderstood. He was in the first rank of Minnesota jurists. He was a friend and helper of young men. He lectured at the University of Minnesota Law School and at the St. Paul College of Law. His students were appreciative listeners. They were then and afterwards his friends and he theirs. He was beloved of his associates on the bench; was enjoyably companionable; and was devoted to the cooperative work of the court. Judge Lees is a memory. This is our appreciation of him; this is our tribute."

Even so is our appreciation of Judge Dibell and our tribute to his memory.