

PROCEEDINGS

In Memory Of

ASSOCIATE JUSTICES CHARLES LUNDY LEWIS, CHARLES BURKE ELLIOTT, AND THOMAS DILLON O'BRIEN.

In the afternoon of November 25, 1936, at two o'clock, the court being assembled at the court room in the State Capitol, Chief Justice John P. Devaney called upon Michael J. Doherty, president of the Minnesota State Bar Association.

Mr. Doherty then said:

May it please the Court:

The bar of Minnesota asks leave at this time to join with the court in honoring the memory of three men who have passed from this life since this court last convened for a similar purpose. Each of these three men was during his lifetime a leader of the bar of this state and a distinguished member of this court. The Honorable Charles L. Lewis died February 11, 1936. The Honorable Charles B. Elliott died September 18, 1935. The Honorable Thomas D. O'Brien died September 3, 1935. In order that a brief biography of each of these men and an expression of the sentiment toward them of their contemporaries be preserved in a lasting form, we ask that the memorials and the addresses which are to follow be when given inscribed upon the permanent records of this court. The bar is represented by Mr. Frank Crassweller, Mr. Hugh J. McClearn, Mr. A. L. Agatin, and Mr. John B. Richards, who will present a memorial of the Honorable Charles L. Lewis; by Mr. James D. Shearer, Mr. Fred B. Snyder, and Mr. Willard R. Cray, who will present a memorial of the Honorable Charles B. Elliott; and by Mr. Charles Donnelly, the Honorable Frederick N. Dickson, Mr. James D. Shearer, and the Honorable Pierce Butler, who will present a memorial on behalf of the Honorable Thomas D. O'Brien. Although the last mentioned of this group has for some years occupied a high judicial position, he is still, I think it is safe to say, in spirit, a member of the bar of Minnesota.

ASSOCIATE JUSTICE THOMAS DILLON O'BRIEN

Chief Justice Devaney then said: Mr. Donnelly.

Mr. Charles Donnelly then said:

May it please the Court:

As a member of the committee consisting of Mr. Justice Butler, Judge Frederick N. Dickson, and myself, I desire to submit this

MEMORIAL

Thomas Dillon O'Brien died at his home in this city on September 3, 1935, in his seventy-seventh year. He was an associate justice of this court from September 1, 1909, until January 1, 1911. Except for his short service on this bench and a service of two years as insurance commissioner of this state, he was throughout this long period a practicing lawyer, devoting himself unsparingly to the interests of his clients.

He was a member of a remarkable family. His father, Dillon O'Brien, and his mother were natives of Ireland, highly educated, and living the carefree life of people who have leisure and means to enjoy it, until the depression that descended upon Ireland in the Forties swept away their possessions and left no choice but to emigrate and begin life anew in some other land. They came to America and settled at LaPointe on Madeline Island, Wisconsin, near the head of Lake Superior, where the father became a teacher in a mission school. Here Thomas was born on February 14, 1859. In 1863 the family moved to Minneapolis, and two years later to St. Paul, Minnesota; and for the remaining 71 years of his life Thomas was a resident of this state and, except for a short period during his boyhood, a resident of this city,

In 1877 or 1878 he entered the office of Young & Newell as a student and clerk. Later, and at the time of his admission to the bar in 1880, he was clerk of the municipal court, where he remained for a year. In 1885 he was appointed assistant city attorney. A partnership formed with his brother, John D. O'Brien, continued until 1888, when he entered into a partnership with his brother C. D. O'Brien. In 1891 he was elected county attorney of Ramsey County and served one term. He disliked the role of prosecutor, felt that he was not by temperament fitted for it, and declined reelection.

In 1905 Governor John A. Johnson appointed him insurance commissioner. This position he held until 1907, when he resigned to enter private practice and organized the firm of O'Brien & Stone. On September 1, 1909, he was appointed by Governor Johnson a justice of this court to fill out a term which ended January 1, 1911, when he returned to private practice, organizing the firm of O'Brien, Young & Stone, later O'Brien, Horn & Stringer. In 1917 he became the first president of the St. Paul Association. He was one of the founders of the St. Paul College of Law, lectured there for many years, and until his death was a member of its board of trustees. When the St. Thomas College of Law was organized, he became its dean and so remained during the period of its existence.

His service as a member of this court was too short to enable him to achieve fully the high place in the ranks of the judiciary which, with a more extended service, his abilities would undoubtedly have won for him. He was a member of the court for but 16 months, and during this period he wrote the opinions in about 100 cases, appearing in Volumes 109-113 of the Reports. Strong, clear, direct, firm, and easily understandable, his opinions exhibit the ease and mastery with which long training and earnest thought and study enabled him to move over the whole field of jurisprudence; and they are informed throughout with the love of justice and the determination to do right which, during his whole life, were so characteristic of the man.

It was as an advocate, however, that he won the high place which he held in his profession; and it is as a great advocate and a great citizen that he will be remembered by those who knew him. His sense of civic duty was high, and it was a matter of wonder to his friends and associates how, in his busy career as a lawyer, he found so much time to devote to the public service. His death marked a great loss to the profession and to the state; and it is eminently fitting that a tribute to his memory should be placed on the records of the court on which he served.

PIERCE BUTLER
FREDERICK N. DICKSON
CHARLES DONNELLY

Mr. Charles Donnelly then said:

In presenting this memorial to a man who had achieved such distinction in his profession and who, throughout a long life, was ready at all times to respond unselfishly to any call made upon him to render public service, I feel that I ought to say a word about my own relations to him and what his friendship meant to me.

There are doubtless many of the older members of the bar of the state who knew Judge O'Brien longer and better than I knew him, for my acquaintance with him began only about 25 years ago, and at that time he had already been a practitioner at the bar of the state for nearly 30 years. When I first met him he was immersed in the work and study involved in the Minnesota Rate Cases; and, as it happened that at that particular juncture I was myself pretty much occupied with that branch of the law, we had a common intellectual interest, and in this our friendship originated. I saw a good deal of him thereafter in the trial and argument of cases, and came to share the admiration in which he was universally held for his gifts as an advocate. He was a most formidable antagonist, and few who encountered the rapier-like thrust of his wit or sarcasm cared to provoke it a second time. But it was not an embittered wit. He did not like to feel that he had left a wound. Indeed I have sometimes thought that he suffered more than his opponent from the blows he gave, for of all the strong, forceful, rugged men whom I have ever known he was, I believe, the most gentle-hearted.

It was a matter of regret to those of us who knew and admired Judge O'Brien that he did not have the opportunity in a more extended service on this bench to exhibit the qualities which we believe would have placed his name high among those of the eminent men who have occupied places on it. It is sometimes said that exceptional gifts of advocacy such as he possessed are not compatible with that calm and serenity which are supposed to go with or form a part of the judicial temperament. Names will readily occur to the minds of all of us which completely refute that notion. Judge O'Brien was undoubtedly a strong and resolute champion, or even partisan, of any cause which he had taken up, or which had enlisted his sympathies. But his sense of justice was also strong; he was fully capable of taking the detached view which is a necessary preliminary to judicial action; and in the work he did in the short period of his service here we have an earnest of what he might have done.

Yet though the brevity of his judicial career was a disappointment to his friends, and may have been a disappointment to him, no one can look back over that long life which, beginning on a little island at the head of Lake Superior almost with the beginning of the history of our state, came to a close only a year ago in the city that he loved, without realizing not only that this life was lived from first to last with a strong unity of purpose, but that that purpose was always high. In whatever field his activities were cast, he never slurred his work, nor did his interest in it ever slacken or flag. To the task in hand, whatever it was, he gave the best that was in him. His interests were keen to the end, his sympathies were quick and warm to the end; and in taking our farewell of him the lines of Milton may, I think, in very truth be applied to him:

"Nothing is here for tears, nothing to wail
Or knock the breast, no weakness, no contempt,
Dispraise or blame; nothing but well and fair,
And what may quiet us in death so noble."

Chief Justice Devaney then said: Judge Dickson.

The Honorable Frederick N. Dickson then said:

May it please the Court:

Judge O'Brien was a very good friend of mine for many years, and it is as a friend that I would like to submit this memorial.

Thought is deeper than speech and feeling deeper than thought and it is extremely difficult, in fact impossible, to set down in words a satisfactory tribute to the memory of such a man and such a friend as Judge O'Brien.

The scion of a distinguished, cultured, and at one time opulent family, he yet enjoyed the advantage of passing his youth in the straightened circumstances common to the pioneers of a new country and thus was brought in touch with the common people and learned to know and appreciate their problems and their methods and means of getting happiness and enjoyment out of life as well as overcoming their obstacles and disappointments.

For nearly 50 years I knew Judge O'Brien quite intimately; was associated with him from time to time in some legal matters as well as in a social way, and many times have enjoyed the benefit of his wise and kindly advice.

Judge O'Brien lived in a remarkable era. The span of his life measures an era of the most stupendous progress in civilization the world has ever known. Born in 1859 at LaPointe on Madeline Island at the head of Lake Superior, a far-flung outpost on the extreme frontier, of western civilization, he witnessed and experienced the transformation of Minnesota and the Northwest states from a wilderness into the splendid commonwealths of today. He witnessed and experienced the progress from the dim illumination of candlelight to the brilliant electrical lighting systems which now banish darkness and turn night into day; from transportation through rivers and forests and prairie trails by canoe, oxcart, and horse to transportation by railroad, the automobile, and the airplane. From a time when news was sparsely and slowly disseminated by the weekly newspaper and by word of mouth from one to another, he lived to see general news of all kinds hourly disseminated to a great nation and the world at large by means of the telephone and the radio; from a time when the national election could not be known generally for weeks and months to a time when such result is known to the whole nation and the world on the evening of election day. He saw the crude entertainment of pioneer days supplanted by the marvel of the talking pictures. He witnessed the marvelous and almost miraculous development of medical and surgical science and the very extensive development and amelioration of the law of the land through judicial decision and statutory enactment by the representatives of a free people, extending to the humbler and laboring classes protection of their property and human rights.

Of all of these marvelous changes and developments Judge O'Brien was not only a witness but was himself a part, especially in the development and improvement of our laws and in the liberalizing of our political philosophy. Living in such an era, with his cultured family background, his wide experience in human affairs, his innate intelligence and broad human sympathy and his youthful experience and observations of the struggles and problems of the humbler classes, he could hardly avoid developing into the splendid character he was and rendering to society the humane and beneficial services he performed.

For two years Judge O'Brien was county attorney of Ramsey County. At the end of his term he refused again to stand for the office because he felt that he did not possess the stern qualities of a successful prosecutor. While he abhorred crime and the motives which inspired it, his sympathy with the innocent who necessarily suffer from the wrongs of those upon whom they depend made that phase of official duty most distressing, and he felt that he lacked the implacable and uncompromising attitude so necessary to a successful prosecutor.

Judge O'Brien was born and bred in the Roman Catholic faith and remained throughout his life a staunch and consistent member of that church. He was, however, less intrigued with its ritualism than impressed and motivated by its fundamental Christian doctrine. He was a devout Christian, believing absolutely and unquestioningly in the fundamental principles of Christianity. He believed in the existence of a personal God, who rules and orders the universe; who has a kindly personal interest in humanity, and to whom humanity owes a personal allegiance; who has equipped humanity with a capacity to know right from wrong and with a knowledge of its duty to choose the right in preference to wrong. And he believed in that other wonderful doctrine of the immortality of the soul and a life beyond the grave for which this life is but a training and probation, a philosophy of life which in all ages has produced the finest results in human character. His religion was not a mere philosophy but rather a very practical rule of conduct, and in all his ways he sought earnestly to conform his life to the ethical teachings of Jesus.

Judge O'Brien's keen wit and delightful sense of humor, his wide and varied fund of human knowledge, and his broad and liberal outlook upon and appraisal of the problems of humanity made him a most delightfully entertaining and instructive companion, and his generous, sympathetic, and lovable nature made him a wonderful friend. While he will be remembered as a great lawyer and a sound judge, a loyal and capable public servant who in his official and public capacities rendered valuable and lasting service to his state and country, he will, I believe, be best and most lovingly remembered by those who were fortunate enough to have enjoyed intimate social relations with him, as a delightful companion, a wise, kindly, helpful, and beneficent friend, and a genuine Christian gentleman.

Chief Justice Devaney then said: Mr. Shearer.

Mr. James D. Shearer then said:

Judge Thomas Dillon O'Brien, known to his intimates as "Tom O'Brien," was a very unusual man. He was large physically, mentally, morally; a kindly man, temperate in speech, but convincing. Dignified, but not unbending; quietly humorous among friends, or to clarify a business proposition.

He recognized that beneath a rough exterior there was often a warm heart and a discerning mind.

He had great poise in bearing and manner; was a good friend.

His going has left a void in the bar of this state.

In closing I would pay him the tribute which Hamlet paid to his father, the deceased king:

"He was a man, take him for all in all,
I shall not look upon his like again."

Chief Justice Devaney then said:

The tribute of the Honorable Pierce Butler of the United States Supreme Court in memory of Judge Thomas D. O'Brien will be read by Mr. M. J. Doherty,

Mr. Doherty then read as follows:

May it please the Court:

Official work makes it impossible for me to attend the session at which will be presented the memorial to Honorable Thomas D. O'Brien. We were friends since first associated in professional work nearly 50 years ago. I ask that I may express and leave upon the records of the court a word concerning him.

He was indeed a fortunate man. Among the things that developed and sustained him were: A fine physique and vigorous mind; just pride in an honorable lineage; steadfast adherence to the religion of his ancestors; sound instruction by a father distinguished among the men of his day for culture and character, and wise guidance by a mother eager to uphold all that makes for right living; strength in professional standards reinforced by counsel and example of leaders of the bar with whom he worked during the period of preparation and his first years in the practice; persistent purpose to be worthy of his high calling; encouragement grounded upon the strong attachment ever existing between him and his brothers and sisters, and, above all, the constant support of a loved and loving wife and of their children.

He was ever ready to help all belonging to his great family. His friends were legion, and willingly he served them. He was liberal in thought and wanted to know, and was keen to help to attain, that which best will serve the people, the State and the Nation. He believed in our form of government and that, consistently with the Constitution, there may be accomplished all desirable changes. He was a good lawyer: as counselor, diligent, sensible and frank; in negotiations to settle controversies out of court, alert and effective; in the conduct of litigation, a skillful strategist and powerful advocate. By conscientious preparation and faithful presentation of his clients' causes according to the truth, he merited and attained high standing in the community and before the courts. He was a good judge. In every case he was careful to ascertain the controlling facts, rightly to apply the law, and plainly to state the reasons for the judgment of the court.

He was an admirable man and will be affectionately remembered by all who knew him. Long may the record of his successful life serve to encourage and guide.

PIERCE BUTLER.

Chief Justice Devaney then said:

Justice Royal A. Stone, who was to speak for the court in memory of Judge O'Brien, is unable, because of illness, to be here at this time, and he has asked me to read this tribute:

It is so much our habit in matters of necrology, when the subject in his lifetime was an object of our respect and affection, to indulge in exaggeration that tributes such as we are now rendering are seldom taken by the thoughtful at their face value.

There is another reason why any tribute of mine to Thomas D. O'Brien should be taken with some allowances. For the 16 years from 1907 to 1923, except for the period from September 1, 1909, to January 2, 1911, during which he was a member of this court, we were partners. From 1906 to 1907, inclusive, while he was insurance commissioner and I assistant attorney general, we were in almost daily collaboration. We both resigned in the autumn of 1907 and organized the firm of O'Brien & Stone, which, with the usual changes due to the kaleidoscopic nature of human life and its affairs, has continued to the present time.

After such an association, with a spontaneous beginning and ever increasing admiration and confidence on my part for my friend, my partner, and my elder brother in the law, it is not to be expected that anyone can acquit me of a disposition toward overstatement on this occasion.

Notwithstanding, it is my fixed purpose to indulge, so far as in me lies, in fair statement, without effort to add another hue to the complete spectrum which Thomas D. O'Brien made for his own life.

More than any of you, probably, I know how well merited are the things which have been

said at the bar. I know especially how much Judge O'Brien would appreciate, sincerely and deeply, the making here of a proper and fair record in his memory. I know also that no opposition would be greater than his own to the utterance here of praise of him which he did not deserve.

Entirely aside from his professional life, he was a most unusual man. There was a largeness, a symmetry, and a balance about his mental and spiritual makeup which were fittingly symbolized by his large, splendidly developed; and always well carried physique. His outward appearance of poise, courage, and forward-looking was a true reflection of the inner man. In all that, he enjoyed a rich heritage from the very finest quality of cultured Irish ancestry. He had the good fortune to be able to carry on that tradition in his own family life.

On the professional side, while I have known many lawyers better versed in the ease and book learning of our profession, I have known none with a better instinctive understanding of the verities of the law and their proper application to the duties and controversies of life. He was frank in expressing his dislike for the mounting volume of law books and for the increasing vogue of the ease lawyer. Against their technique, he wanted liberty to invoke and apply, to the ever changing situations presented by human evolution, those principles that would work out what to him seemed justice. And with what seemed in any case to be justice to Thomas D. O'Brien, it was always difficult to express reasoned disagreement.

If I were to select from his numerous public services those which to me seemed the most important, I would first choose one which at the time was somewhat of a political secret. When the late John A. Johnson first became governor of the state in 1905, he knew that his attorney general would be of an opposite political faith. Wanting close at hand a counselor of his own party and his own choice whom he could trust, Governor Johnson chose Mr. O'Brien as his insurance commissioner. The first important advice that the governor sought and obtained from him was to the general effect that the Republican attorney general, Edward T. Young, was the constitutional head of the legal department of the state and that it was the governor's duty to seek, and if possible to be guided by, his advice. Governor Johnson followed that counsel and found that in Mr. Young he had a legal adviser of the highest professional capacity, whose judgments in the affairs of his office and the state would be influenced not at all by partisan considerations. Ever afterwards Governor Johnson gave Judge O'Brien credit for having at that important juncture started his administration on the right track and for having kept him, the governor, from making a serious mistake.

Later on, while he was insurance commissioner, Judge O'Brien became the chairman, appointed by President Theodore Roosevelt, of the committee of insurance commissioners which did so much in collaboration with the activities of Charles Evans Hughes and his committee to put the old-line life insurance business of the country on a sound basis. The old and vicious tontine system was uprooted and destroyed and in important particulars, in respect to the assurance of important rights to the assured, policies were standardized all over the nation.

Again in 1907, when labor disputes on the Iron Ranges of Minnesota threatened the disorganization of an important industry in a large portion of the state, Governor Johnson sent Judge O'Brien as a conciliator and mediator to the scene of the trouble. He took such steps that chaotic conditions immediately became orderly, and industrial peace was established where industrial strife had been imminent. For his work there, that keen and accurate appraiser of men, Charles B. Cheney, then and now on the editorial staff of the *Minneapolis Journal*, characterized Judge O'Brien as the Taft of Minnesota, and the name Taft was then at the zenith of its significance in American affairs.

To an extent I have never known in any other man or woman, Judge O'Brien had the capacity for deciding justly, notwithstanding the personal interests of himself or his clients. He could appraise fairly and justly the views of opponents. He was never afraid to point out where they were right even when exposing an error of his own. If at times he leaned over backward, as the saying is, in that respect, it was one of those weaknesses nearly always found with such greatness as was his.

His greatest delight was in aiding law students and young lawyers. He was never too busy or too weary to take time off from his own work to counsel them in theirs. He was generous to a fault—altogether more free at times in extending financial aid, sometimes to deserving needy and sometimes to mere impostors, than was just to himself. That was but one manifestation of his habit of resolving doubt against his own interests. One magnificent result was that he never intentionally wronged anyone.

Instinctively, as well as by training, he was one of those automatically just men concerning whom it was said so long ago: "The path of the justis as the shining light, that shineth more and more unto the perfect day."

If in our profession, if in our affairs of government and business, lawyers and businessmen and politicians would follow the path from which the life of Thomas D. O'Brien never consciously strayed, we would be on the way to "the perfect day."

Chief Justice Devaney then said:

In response to the suggestion of the president of the bar association, it is ordered that these memorials be filed and become a part of the records of this court and that they be printed in the *Minnesota Reports*.