

## 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

### ASSOCIATE JUSTICE ALBERT SCHALLER

Chief Justice Devaney then said: Mr. Sanborn.

Mr. Bruce W. Sanborn then said:

May it please the Court:

On behalf of the committee of the Minnesota State Bar Association I desire to present the following tribute to Justice Albert Schaller.

### MEMORIAL

The members of the bar of the supreme court of Minnesota deeply lament the death of the late Albert Schaller, at one time a justice of this court, and record their appreciation of his learning, ability, and high character, the affectionate regard with which they cherish his memory, and the great loss to the bar and to the state occasioned by his death.

This court has been called upon to perform many important duties, but none more sharply commended by the proprieties than that which we are attempting here today.

A former member of this court is dead, one whose talents and exalted purpose placed him in the front rank of the profession which he adorned. In attempting to portray his career and to mention the qualities of mind and heart which set Judge Schaller apart and made him individual, which constituted what we call his personality, we find what a poor vehicle language is.

Albert Schaller was born in Chicago, Illinois, May 20, 1856. When but a few months old he was brought by his parents to Hastings, Minnesota, which place from that time forward, for a period of 77 years, he called his home. He graduated at St. Vincent's College at Cape Girardeau, Missouri. He spent two years of study in France and then attended the Washington University Law School at St. Louis, Missouri, from which school he graduated with honors in 1879. In that year he was admitted to the practice of law in Minnesota. Judge Schaller's first public office was that of county attorney of Dakota county, which position he held for ten years, from 1880 until 1890. He was legal adviser to the city of Hastings from 1891 until 1897; he was city attorney of South St. Paul from 1895 until 1899; he was state senator from Dakota county from 1895 to 1915; associate justice of the supreme court of Minnesota, by appointment of Governor Winfield S. Hammond, from March, 1915, until January, 1917. Thereafter he practiced law in St. Paul and Hastings until his death on March 31, 1934.

In 1881 he married Kate E. Meloy of Hastings, and she and two daughters, Mrs. Wilbur B. Joyce of Duluth and Mrs. Cecil Shiell of Tarrytown, New York, survive him. Judge Schaller's tender love for his family, his delight in their presence, his constant watchfulness for their welfare, were dominant and lovable characteristics of his private life.

Judge Schaller was endowed with a strong intellect, with a sound judgment, and an impartial, considerate temper. His mind was stored with an accurate knowledge of the law, an intimate acquaintance with general literature, a refined taste, and a canny insight into the purposes evidenced by the acts and sayings of men. The human side of the man was especially delightful. In hours of relaxation he sparkled like a jewel. Genial and joyful himself, his flashes of wit, his mirth provoking stories, which seemed to flow from an inexhaustible source, amused and charmed his companions.

Such is the naked canvas on which the needle of time has wrought the picture of the lawyer, learned and careful; the legislator, experienced and thoughtful; the judge, able and unafraid; the citizen, discharging each duty of citizenship; the friend, who was indeed a friend.

We deplore the death of the distinguished lawyer and citizen, of a lovable man, of a fine friend, and bow to the Will of Divine Providence.

OSCAR HALLAM  
BRUCE W. SANBORN  
CHARLES W. BRIGGS

Mr. Sanborn then said:

I desire also to read a tribute to Justice Schaller from Judge Julius E. Haycraft of Fairmont. Judge Haycraft's tribute is as follows:

I enjoyed a friendship with Judge Schaller over a long period. We served together in the state senate for three sessions, and it was there that I knew him best.

There is arduous labor in the senate. There one learns to know his Colleagues intimately and well. He learns their characteristics, their integrity, their ability, and their worth. In that body there are dramatic and tense situations—situations that lead to anger and strife, hot words and utterances which afterward one would like to retract or expunge. I never, however, knew Albert Schaller to "lose his head" or to become indiscreet. With a smile, a witticism, a humorous anecdote he has broken the tenseness of many a dangerous moment.

He was the very embodiment of good humor. He was a lovable character.

I join in all and indorse all that is said of him in the memorial as an associate justice of this court. But I knew him best as a legislator by service with him in the sessions of 1911, 1912, and 1913. He was conscientious, fair, and able. What greater tribute can one be paid?

His love for his family was beautiful. The almost tragic, unlooked for, untimely deaths in the family were enough to ruin the disposition and change the life of another. Not so with Judge Schaller. He lived on, possessed of the same characteristics.

Judge Schaller, or Senator, as I like to call him, was all-Minnesotan and all-American. He was born in the United States and came, as a babe in arms, not to the state, but to the territory, of Minnesota. He came to Hastings on the nation's birthday, July 4, 1856. There he lived substantially his entire life, and there he died early in this year.

I mourn his passing, but am proud to add my humble tribute to my old friend in these memorial exercises.

Chief Justice Devaney then said: Judge O'Brien.

Honorable Thomas D. O'Brien then said:

May it please the Court:

In appraising the life and accomplishments of a friend and companion, we should content ourselves with dwelling upon those individual characteristics which, when found in the mass of humanity, make for order, happy homes, and decent living.

Albert Schaller belonged to that great army of Americans, the children of the first generation of the sturdy and intelligent people who about the middle of the last century came to this country to enjoy the opportunities for betterment and happiness it afforded. It was a strong group. Brave and self-reliant, thrifty, and industrious, its members faced the trials and the hardships of the frontier with a serene confidence in themselves, and transmitted to their children the virtues they themselves possessed.

With no other inheritance than this, Judge Schaller throughout his long life was true to every duty imposed upon him. As a member of the bar, as county attorney, as state senator, and as associate justice of this court, he was recognized as a capable and honest public official.

Predominant characteristics of his were cheerfulness and good humor; for though, like most of us, he encountered the vicissitudes of life, he never allowed himself to be cast down, never indulged in self-pity, nor was his kindness or courage ever affected.

He was a sincere Christian and, with the aid of his estimable wife, established a truly Christian and happy home which he maintained by his own industry and efforts.

He faced life bravely and met its obligations without faltering. He loved to be of service to his friends and rejoiced in their success.

And thus he lived a full and useful life, playing his part manfully and adding to the happiness of those who came within the sphere of his influence.

We who knew him and enjoyed the privilege of his friendship, rather than mourn because he has found reward and rest from a long and useful life, should rejoice in the good example his life afforded and the happiness we derived from our association with him.

Chief Justice Devaney then said: Judge Fosseen.

Honorable Mauley L. Fosseen then said:

May it please the Court:

It is a great privilege and honor to join with other tributes to Judge Albert Schaller, and I desire to add a very brief review of the many characteristics that belonged peculiarly to Judge Schaller, particularly as a legislator, having served in the house of representatives for four years while he was a senator and eight years as a fellow senator. I am not going to speak of him as a judge for the reason that his decisions are the best evidence of his worth and value as a member of this court. It was not my good fortune to know him as a neighbor or as a fellow practitioner, but it was my great privilege to know him intimately as a legislator.

Senator Schaller, as I wish to call him, was the most kindly and lovable legislator that it was my privilege of meeting during my legislative experience. As a younger member I naturally, especially during the beginning of my legislative work, listened and watched the older members at their work, and it was not long before it became perfectly clear to me that Senator Schaller was an outstanding member of the senate. What he said and did had a powerful influence over the members in the senate, and his great work became so effective and valuable that fellow senators soon forgot that Senator Schaller belonged to the minority party. He rose above party lines, and, as his work progressed, both in the senate and the committees, particularly in the judiciary committee, no one ever regarded him in any other light than that of an able, fearless, honest, and dependable senator; that he belonged to no party. His every action and utterance was exercised for the best interests of the state. He never questioned from what source a proposed law emanated; the question was always foremost in his mind: What benefit, if any, will the people receive should the bill become a law? He knew of no class distinction, always believing that all men were created equal in the right to exercise full liberty so long as the exercise of such liberties did not interfere with the rights of others. He dearly loved to be able to add a word here and another there in a proposed law in order to make the law more understandable and give greater and better effect to the bill so that the people of Minnesota would benefit thereby. He was always ready to give attentive hearing to those who sought information regarding pending bills or to those who desired to be heard, on such bills; and I remember, on several occasions when his presence was urgently needed in the senate or the judiciary committee, he would give the persons seeking such information ample time before responding to such call. I can well remember that on more than one occasion, particularly before the judiciary committee, he often became an ardent advocate of some proposed law which some outsider was interested in. The judiciary committee usually concluded that he was right and agreed accordingly.

Patience was another splendid quality of Senator Schaller, and we all loved him because of his patience and also for his dependability and rugged honesty—never afraid to work for and advocate a cause he believed in, even though he was practically alone in the advocacy thereof. He never sought popularity, never asked favors, but always demanded fair play.

The last time that I had the pleasure of meeting Senator Schaller was shortly before he passed away. He came over to Minneapolis to see me about a probate matter. Naturally, I addressed him as Judge, and his quick reply was: "Call me Senator, as we know each other best

by that title." Naturally, we drifted back to our senate experiences, the many struggles, the differences of opinion. We discussed the old members, both living and dead, and from such conversation I am firmly of the opinion that if Senator Schaller could live his life over and could choose between one road leading to wealth and fame and the other that of rendering humble assistance, comfort, and courage to all mankind and be a friend to man by the side of the road, he would choose the latter. Such was the life of Judge Schaller.

Chief Justice Devaney then said: Mr. Kueffner.

Mr. Otto Kueffner then said:

May it please the Court:

In memory of my lifelong friend, Albert Schaller.

He was born on May 20, 1856, in Chicago, Illinois, son of Jean Michael and Barbara (Klein) Schaller. His parents were Alsatians who had emigrated to this country, and when he was six weeks old his parents took him to Hastings, Minnesota, where he lived, highly respected and dearly beloved by all who knew him, until March 31, 1934. His long funeral cortege gave due proof of what his fellow citizens, laymen as well as professional men thought of him. All the judges of the supreme court and many judges of the district court followed his hearse, and we all agreed that we buried a good man, a friend, a lawyer, and a Christian gentleman.

He attended public schools at Hastings and then St. Vincent's College at Cape Girardeau, Missouri; then studied two years in France and two years at St. Louis Law School, which gave him his LL.B. on June 12, 1879. He and I were classmates and graduated together. Then he returned to Hastings, Minnesota, to practice law, and was elected county attorney for Dakota county the following November, and reflected until 1891. He was also city attorney for Hastings and South St. Paul. He was also a delegate to the Democratic National Convention in 1896, which nominated William Jennings Bryan, and was delegated to represent his fellowmen at numerous other conventions.

He was married in Hastings on May 24, 1881, to Miss Katherine E. Meloy, of Dutch-Irish lineage. Five children blessed their union. Rose Marie and Marion are still living, and so is his grandson, Albert Louis Schaller, and his granddaughter, Jane; but his dearly beloved son Karl and daughter Josephine died when the flu epidemic swept over this country. Josephine was the very image of her father and like him in all his ways, and when her brother was stricken with the flu she nursed him and contracted the same disease and died a few days before he did. Rose Marie, now Mrs. Wilbur Joyce of Duluth, is a graduate of the University of Minnesota and while attending there was appointed by Governor John A. Johnson to christen our Man of War "The Minnesota" at Newport News.

In religion Judge Schaller was a devout member of the Roman Catholic Church. He lost his father in the early part of his life, and, like most great men, had a special reverence and affection for his beloved mother.

Albert Schaller was tall and athletic, an excellent swimmer, good swordsman, an expert with the foils. He also spoke French and German. He also was a good actor, and he and his sisters and brother gave Hastings many a treat in amateur performances. His keen and intellectual face and beautiful brown eyes were able to portray any emotion the play might call for. He was a true friend and companion and a most congenial gentleman, fond of indulging in interesting conversations spiced by his keen wit and humor and apt illustrations. He enjoyed a good smoke, but tasted no liquor. He was keen in upholding the legal ethics even at his own loss. After his term on the supreme court bench expired he returned to his private practice in St.

Paul, and, upon meeting an old friend of his who did not know that Albert was off the bench and who asked him to recommend to him a good lawyer, he modestly did so, without disclosing that he himself was in active practice again.

As county attorney he was efficient from the start, and during his first term convicted all the accused who did not plead guilty so that the board of county commissioners passed a commendatory resolution on account of it. As city attorney he was equally successful. In politics he was a Democrat and an influential member of the senate. Although at that time the Democrats were in a woeful minority, he helped to pass many measures looking to the development of the state and utilization of its vast resources; but, while a member of the senate, I am sorry to relate, he had a great disappointment. He told me that it was the ambition of his life to pass a law making it "a gross misdemeanor for any man to work between meals," and, although his fellow senators agreed with him in principle, they failed to have the courage of their convictions and did not vote for the law; so, after trying to pass it for 20 years, he gave up in despair and refused a renomination, but the Democratic Governor Hammond came to the rescue and consoled him by appointing him in March, 1915, to the highest honor in the state of Minnesota, a judge of this supreme court, and the record of Albert Schaller as a lawyer and a judge confers distinction upon the Minnesota bar, of which he was an illustrious member for 55 years. He dispensed justice with an even hand, and his comprehensive legal knowledge, his wide experience in the courts, and the patient care with which he ascertained all the facts of each case which came before him gave his decisions a soundness and exhaustiveness to which no member of the bar could take an exception.

I, myself, have known Albert Schaller for 57 years. We were very intimate friends, law schoolmates, and kept offices together for a good many years; yet I have never been able to say to him: "Albert, you have done wrong," and I repeat it now, he never did wrong.

May he enjoy during all eternity his due reward for his clean life, his kindness of heart, his unselfishness, and his many good deeds to his fellow-men. Amen.

*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 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.

ALBERT SCHALLER

Judge Albert Schaller came to this court after a long experience as a lawyer and legislator. He was appointed in February, 1915, to fill the vacancy created by the death of Justice Philip E. Brown. Judge Schaller had always taken a leading part in the political party of his choice, which, unfortunately for him, happened to be numerically small when he came up for election, and he was defeated. So his services on the bench did not last quite two years. But that notwithstanding, we soon came to know him as an upstanding man and an upright and conscientious judge, whose chief concern was that the decisions of the court should be right and just. He was a cheerful companion and an agreeable co-worker. He never overestimated his own ability or legal attainments. He worked hard and was very appreciative of the assistance his associates could give. His wide experience as a lawyer and long connection with public and private business had broadened his vision and matured his judgment so that he was very helpful in the practical solution of many problems confronting the court. To his state and nation Judge Schaller was the exemplary citizen, always ready to discharge any duty required. To this court he was not only the esteemed and beloved associate while here, but also the loyal friend and supporter ever after. To his wife and children he was always the devoted husband and the affectionate father.

This court joins in the tribute today paid his memory.

Chief Justice Devaney then said:

These memorials will be filed and will become a part of the records of this court and will be printed in the *Minnesota Reports*.