

IN MEMORIAM.

HON. JOHN P. ELKIN.

On the opening of the court on Monday, January 3, 1916, Chief Justice BROWN announced the death of Mr. Justice ELKIN in the following terms:

Since we last were here the Angel of Death summoned from us our beloved Brother ELKIN. He was a member of this court for more than ten years, and brought to the performance of his duties a highly endowed and well-trained mind, and a conscience intolerant of wrong. He was as gentle as he was strong, and was as much loved for his suaviter in modo as he was respected for his fortiter in re. Every expression of his convictions was tempered with amiability, but never lacked force. What was said of one of his predecessors in this judgment seat may now be fittingly repeated of him, for, after his "intellectual endowments, the benevolence of his heart was the most marked feature of his character. He was a most genial spirit; affectionate and kind to his friends, and magnanimous to his enemies. Benefits received by him were engraved on his memory as on a tablet of brass; injuries were written in sand. He never let the sun go down upon his wrath."

We pause, gentlemen of the bar, for a moment to give expression to our sense of the loss sustained by the Commonwealth in the death of Mr. Justice ELKIN, for we feel it most keenly, and know, perhaps more than others, the measure of his usefulness to the people, for in that branch of their government to which they have committed the ultimate safeguarding of life, liberty, property, reputation and the pursuit of happiness, he was our associate.

JOHN P. ELKIN was born in the County of Indiana, this State, January 11, 1860, and died in the City of Philadelphia, October 3, 1915. When barely more than fifteen years of age he became a teacher in the public schools of his county, and so grew in the esteem and confidence of its people that they sent him, as their representative to the legislature for the sessions of 1885 and 1887 where he served on most important committees and rendered valuable services to the public. Shortly afterwards he was appointed deputy attorney general, and subsequently served as attorney general of the Commonwealth from 1899 until 1903. These early successes came to him because he deserved them, and his career at this

stage of his life is an example to be well studied and followed by the young of to-day, who are ambitious to succeed. To his qualifications of high character there was added industry, and he spent no idle days waiting for others to help him succeed. He never complained of what is not infrequently regarded by some as the luck of others who succeed, for he knew there was no road of luck leading to success, and manfully started out to help himself in travelling over the only road which does lead to it—the way of hard work. He was literally the architect of his own fortune.

Judge ELKIN became a member of this court on the first Monday of January, 1905, entering upon his duties without judicial experience, but he at once exhibited in a most marked degree, agreeably surprising to his colleagues, an aptitude for the new labors which had come to him. He grew as rapidly and strongly in his judicial life as he had grown in usefulness in all the other public trusts which had been committed to him, and soon came to be regarded by the profession as a diligent, patient, courteous, learned and impartial judge, who neither respected the person of the poor nor honored the person of the mighty. No colleague could have been more companionable and helpful. He was as tolerant of the views of his brethren when not in accord with his own as he was courageous and independent in asserting what he believed to be the law. For nearly eleven years we were helped by his well-balanced judgment, his clear and correct reasoning, and were aided by his learning and industry; and we shall miss him. Forty-two volumes of the State Reports are, and will continue to be, his enduring monument. Though he fell at his work while the rays of the day's sun were still shining upon him, and before the shadows of evening had gathered about him, his life was not lived in vain, for as a son he was pious, as a citizen, upright, as a lawyer, able and successful, as a legislator, wise and useful, as a judge, learned and impartial, and as a husband and father, affectionate and God-fearing to the end, as is attested by his unique and chivalrous will.

And now, January 3, 1916, at the opening of the court for the current term, the prothonotary is directed to note upon the minutes that JOHN PRATT ELKIN, who entered upon his duties as a justice of this court on the first Monday of January, A. D. 1905, to serve for a term of twenty-one years, died October 3, 1915, in the fifty-sixth year of his age, affectionately esteemed by his colleagues, respected by the profession which he adorned, and trusted and revered by all the people of the Commonwealth for the perfect purity of his life and for his learning, uprightness and courage as a magistrate in their highest court.

On Monday, March 20, 1916, a portrait of Mr. Justice ELKIN was presented to the Supreme Court. The presentation was made by Hon. Francis Shunk Brown, the Attorney General of the Commonwealth, who said :

MAY IT PLEASE THE COURT :

I welcome the service of presenting to this court on behalf of his family, the portrait of the husband and father your former associate justice, JOHN PRATT ELKIN.

I am grateful for the opportunity to express in this presence and write in the records of this august tribunal, on which he served with such fidelity and honor, something of my sense of the loss sustained by the State, and my personal regard for, and sorrow in the passing of one whom I loved as a brother.

Of him it may be fitly said—"It has pleased the Providence of God to raise up, from time to time.....men of pre-eminent goodness and wisdom."

He was a positive and prominent figure in the public affairs of this Commonwealth. A friend of popular education—the foundation of his learning. A man of untiring energy and industry and of wonderful common sense—enthusiastic, straight and honest, a manly genial soul which radiated to all with whom he came in contact, and made everybody his friend. Always sympathetic, and ever ready to lend the helping hand. His life was one of loyal friendships.

He was a big, strong, courageous, warm-hearted man, with whole-souled impulses, and good clean instincts, and pure ideals.

A natural leader—always in touch with men and events. No one during his active life "enjoyed a more varied career and won such an enduring place in the hearts of men active in the life of the State."

His life is an example and inspiration for all, of success over almost insuperable obstacles.

But he is above and beyond the need of eulogy. His career is so much a matter of common knowledge and so

treasured of all as to render it unnecessary to review in detail. His achievements are inwrought enduringly in the annals of this Commonwealth, and the man himself is forever enshrined in the affections of the many who could call him friend.

He came to this bench strengthened by arduous personal and professional experience and training, ripened by conspicuous, yea, brilliant service in public places. As scholar and lawyer his eminent gifts were steadily made increasingly manifest in the distinction of his judicial deliverances, and the elevation of his utterances.

But great judges, like great poets, are in large measure born, not made. He had those personal qualities and virtues which are innate and not acquired—of dignity of character, devotion to the right and passion for the truth, without which no professional attainments, however splendid or ample, can make the just and true judge. Loftier than the legal lore that adorned or the learning that graced his opinions and rulings was the unfailing sense of justice that inspired and moulded them. The law was to him a body of living principles affecting human beings in their manifold and complex relations, not a fixed inflexible code dealing with an inert social and industrial organization. He never undertook to make law from the bench, but he had the vision and the insight to see the rulings which would operate beneficially, and was ever vigilant to decide consistent with that supreme and liberal test. Precedent was a guide, but never a master.

He was impatient of technicalities, yet thorough in the law. Without loss of fidelity to fundamental principles he interpreted the law in the light of the wider outlook of the present and sought to adapt it to changing social and economic conditions. His jurisprudence took heed of the need of the day and the hope of the morrow, rather than the outworn theories of yesterday. Throughout all of his decisions can be heard the voice of the statesman—a judicial quality kindred in note with

that which so signalized Marshall's consummate unrivalled interpretations.

He had withal a profound reverence for constitutional forms and institutional safeguards. He believed with Disraeli, that "The rights and liberties of a nation can only be preserved by Institutions."

None more firmly held the faith or was a stauncher defender of the covenant, that there had been written into our governmental structure a domain of reserved individual rights which even the government itself, in the plenitude of its power dare not invade. No public clamor or shifting caprice of the hour could awe or influence him to surrender any portion of that sacred domain.

Holding to the doctrine that the acts of a coordinate branch of the government should not be set aside unless in plain and palpable violation of the Constitution, he was fearless in upholding the fundamental law against infringement by the legislative power.

Of his industry and his diligence, of the reach and range of his intellect and power the records of this court will attest, and his opinions bear living witness, for all time.

Through them he still speaks, through them he will continue to speak to the generations yet to come.

Blest of all that makes life whole and happy—the love of family and friends, the joy of success—while it was yet early afternoon, in the fullness of his splendid powers the night came and the day was done.

His life was a glorious service to the State and his name will survive with honor on the long and shining list of those who have shed luster, and added greatness to this bench.

This temple of justice will ever be adorned by the portrait of "this worthy son of the Commonwealth" which he loved so dearly and served so well.

When the Attorney General had concluded, Hon. William A. Stone, former Governor of the Commonwealth and present Prothonotary of the Supreme and Superior Courts, spoke as follows:

MAY IT PLEASE THE COURT:

I first knew JOHN P. ELKIN in about 1895. He was then Deputy Attorney General. The Attorney General was H. C. McCormick, one of the ablest lawyers in the northern tier of counties. I saw him at intervals during the four years that he was Deputy Attorney General. He impressed me as a man of candor and sincerity from my first knowledge of him. In 1898 he was chairman of the Republican State Committee. My relation to him then became personal and intimate and remained so until his death. When he became Attorney General in January, 1899, he brought to the office the skill and training he had learned from his predecessor and a thorough knowledge of the work of the office. There is no period of four years in the history of the State when the demands upon the Attorney General were more unusual and tested the ability of the lawyer so much as they did during his occupancy of the office. Four great and far-reaching questions concerning the power of the executive were settled and adjudicated in the courts and the United States Senate by him and his able deputy, F. W. Fleitz, during this period. The first was the power of the governor to veto a joint resolution seeking to amend the Constitution of the State resulting in a decision by this court that such a resolution need not be presented to the Governor for his approval—reported in *Commonwealth v. Griest*, 196 Pa. State Reports page 396. Prior to this decision the Governors had been signing and vetoing such resolutions, frequently thereby preventing the people from voting upon the adoption of the amendment. While the report of the case does not show him to have been connected with it still it was his plan and work to test the question and have it finally settled.

The next question was of great importance in which the power of the Governor to approve a part of an item in a general appropriation bill and veto a part of the same item was sustained in this court, reported in *Commonwealth v. Barnett*, 199 Pa. State Reports page 161. Previous to this decision it was generally supposed that Governors must either approve the whole item or veto it—many items were reluctantly approved by Governors because they were in part meritorious and necessary. This resulted in a deficit in the treasury as the appropriations were invariably greater than the revenues. Since this decision the Governors have been able by reducing items to keep the appropriations within the anticipated revenue. The next question was important to the whole country as well as this State. It was the power of the Governor to appoint a United States Senator while the legislature was in session. Judge ELKIN argued this question before the Judiciary Committee of the United States Senate. His argument was so able that he was personally complimented by his opponent Senator Edmunds and by many able lawyers and judges. But the most important question of all for the first time to be decided in any court in this country was the power of the Governor to declare martial law. In *Commonwealth v. Shortall*, 206 Pa. State Reports, page 165, you will find this case reported. It has been the leading case upon this subject and settled the question for the first time holding that the Governor of a state may declare martial law and enforce it. It was a bold stand that Judge ELKIN and his Deputy Attorney General took, fraught with serious consequences if not sustained by the courts but made necessary by the condition existing at the time in certain counties of this State. Fortunately, the patriotism of this court rose above the technical objections of skilled attorneys and by a unanimous opinion this court upheld the order of the governor and the commanding officer of the national guard in practically making the civil authorities subordinate to the military

authorities when circumstances justified extreme measures to preserve the public peace.

Judge ELKIN was fitted in the school of strenuous experience to sit in the highest tribunal of the State and when he became a candidate for a place upon this bench the people of the State showed their appreciation of his merits by electing him a justice of this court by a large majority. Of his record as a justice of the court I will not speak. The published reports of his decisions are accessible to all. He was not new and unacquainted with the law when he came here. He was ripe with the study and experience of great constitutional and governmental questions. He early demonstrated by his opinions his familiarity with the issues that came before him. His opinions rank well with his predecessors and colleagues. His logic was keen, forcible, direct, compelling assent. He grew and grew as a jurist with every year's experience until his rank and status as a judge were not questioned by any one. He worked hard and wrestled hard with the many difficult problems that came before him, but he settled every one of them in the eye of his judgment and conscience and never approved or disapproved a single judgment without a clear belief that he was right. He felt the great responsibility of his high office and never acquiesced in the opinion of others without testing and proving the result of knowledge obtained by investigation. He was conscientious. His motto was "be fearless but first be right." He had great courage. Observant of public sentiment he was yet independent of it and was never controlled by it. Glad when it approved his course, sorry when it did not, but at all times uninfluenced by it. He was a great judge, a righteous judge. But it is of his charming character as a man that I wish to speak. He was a loyal friend. He would sacrifice much for his friends. His friends were many. They all loved him. He held the key of sympathy with which he unlocked every troubled heart. He believed that suffering alone established a

claim to sympathy. He never withheld it from man, woman or child. Absolutely clean morally himself he yet never inflicted his morals upon others, and while not justifying shortcomings in them—the holier than thou thought never entered his mind. He was simple in his tastes and habits, very little sufficed him. He was not vain or proud or egotistical. Many envied him but none were his enemies. He was a great character. He was John Ridd in that matchless story of Lorna Doon. The strength and beauty of his character were as wide and open as the sea. His friendship was like the shadow of a great rock in a desert land. He is gone. He sleeps in the bosom of the country that he loved. The rich and the poor alike had tears for him and his untimely death. When Decoration Day comes his grave will be covered with flowers. They will not all come from the florist. There will be wild flowers plucked from poor men's gardens, the forests and the meadows. There will be flowers from the old and the young, little children who loved him and for whom he always had a smile and a kind word will bring them. Their play will cease as they speak in hushed voices of the man with the wonderfully winning smile. Mr. Chief Justice, you can paint the lily, you can paint the rose so exact and truthfully that it can hardly be distinguished from the model, but sir, there is one thing of the rose that you cannot paint, you cannot paint the fragrance of the rose. I can tell the story of JOHN ELKIN, I can tell of his rapid rise, his exploits, his conquests, I can speak of his great ability, his great sympathy for mankind, I can tell of his talents, but I cannot paint the fragrance of his character and his friendship or the great love, respect and veneration which his friends have for him.

Chief Justice BROWN, in accepting the portrait on behalf of the court, responded as follows:

We have listened with great interest and satisfaction to what has been said of our late Brother ELKIN, and

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heartily approve the beautiful and just tributes paid to him. We have already given expression to our affectionate regard for him as a man and our esteem and respect for him as a judge. His portrait, presented by his family, is gratefully accepted by the court. It will be on the walls of this room for awhile, and then be placed in our consultation room beside those of his worthy predecessors, where we and those who shall come after us may look upon his good, manly face as his useful labors here are recalled from time to time.