

IN THE SUPREME COURT OF PENNSYLVANIA.

In Memory of Former JUSTICE EDWARD J. FOX.

PHILADELPHIA, Pa., May 10, 1937.

The session of the Court for the Eastern District of Philadelphia on May 10, 1937, was attended by representatives of the Bench and Bar and by many friends of the late former Justice EDWARD J. FOX, for the purpose of paying tribute to his memory.

HERBERT F. LAUB, ESQ., President of the Northampton County Bar Association, T. MCKEAN CHIDSEY, ESQ., of the Northampton County Bar, ROBERT T. MCCrackEN, ESQ., Vice President of the Pennsylvania Bar Association, and Hon. RUSSELL C. STEWART, President Judge of the Court of Common Pleas of Northampton County, addressed the Court.

Mr. Justice SCHAFER presided owing to the absence due to illness of Chief Justice KEPHART.

The proceedings were as follows:

Mr. Justice SCHAFER: Mr. Laub.

HERBERT F. LAUB, ESQ.: With the permission of the Court: Representing the Northampton County Bar Association, it is my sorrowful duty to announce to your Honorable Court that former Supreme Court Justice, EDWARD J. FOX, died suddenly at Easton, Northampton County, Pennsylvania, on February 5, 1937. By appointment of the Honorable MARTIN G. BRUMBAUGH, then Governor of Pennsylvania, he became a Justice of the Supreme Court of our State on June 23, 1918, and served until the first Monday of January following the election for the full term to which he was appointed. Before his elevation to said Court he was one of the leaders of our Bar, and after his retirement therefrom

he was its leader until the time of his death. All its members respected him personally and admired his integrity and ability. We appreciate the opportunity granted by your Honorable Court to here express our respect and admiration for the life and character of Justice Fox. Our Bar has lost its outstanding lawyer. Our community has lost a sincere and earnest public servant. Those of us who knew him have lost a good and faithful friend.

With the Court's permission, T. McKEEN CHIDSEY, ESQUIRE, will speak for the Bar of Northampton County, and President Judge RUSSELL C. STEWART will speak for the Courts of that County.

MR. JUSTICE SCHAFFER: President Judge STEWART.

HON. RUSSELL C. STEWART: May it please the Court: I suppose that from the viewpoint of time no one is better qualified to speak to you about the legal life of Mr. Justice Fox than I. We were boys together in the Primary Department of the old Brainerd Sunday School. His mother was our teacher. We went to the same preparatory schools. We entered Lafayette College together in the class of 1878. After graduation we took up the study of the law, he in his father's office, and I in another office in Easton. There was a prescribed course of study marked out for us by the Court Rules of Northampton County, and we read the same law books, and almost every day we discussed what we had read, and one night a week we read together some legal book or book on constitutional law, and discussed it while reading.

We were admitted to the bar at the same time. He entered into practice in December, 1880, in his father's office, and I, after a year spent in Europe, opened my own law office, and we met almost daily in the afternoons, and took long walks, and discussed legal matters.

Mr. Justice Fox's family has been for over a century distinguished for the legal ability of its members. His grandfather was a leading lawyer and a Judge in Bucks County. His father came to Easton many years ago,

and rapidly rose to the front rank of our bar. He was the best cross-examiner I ever listened to, and was a powerful advocate with a jury. Mr. Justice Fox thus had from the time of his commencing the study of the law, a great example before him, and he profited by his opportunity; yet at the same time he was from the start of the greatest help to his father, and he brought to the office a habit of study and investigation into the law and facts of every matter brought by clients to them. The older lawyers often remarked that when he entered his father's firm, their law work was much better done than ever before. His father died in 1889, and the entire burden of a large practice rested on a young man's shoulders, until in 1896 he took his brother, the late James W. Fox, into partnership. The latter died in 1924, and thereafter Mr. Justice Fox's son, Edward J. Fox, Jr., became his partner. While the business of the firm was large and lucrative when his father died; under the intensive application which Mr. Justice Fox gave to his legal business, it increased in scope to include not only the ordinary business of a local lawyer, but he added the larger business of many corporations of which he was not only the lawyer, but also adviser and director. He was very attentive to any work entrusted to him, whether it was large or small, and was very painstaking in the preparation of his cases. He never relied on the "inspiration of the moment." He wanted to know the law and facts before he went into court. As a trial lawyer he was very successful in the conduct of his clients' business. He always seemed to have the greatest confidence in the justness of his client's cause, and juries were always influenced by his high standing as a man, and his clients had that personal element added to his legal ability in the trial of their cases.

Not only at the bar, trying cases with him and against him for twenty-seven years, but after observing him for over thirty years from the Bench, I can unhesitatingly say that he was a great lawyer. He was thoroughly well grounded in his knowledge of legal principles, and

well acquainted with the leading cases. He was well read in general literature, and always used good English in his addresses to the Court and to the Jury. He was clear and concise, and never wasted words or took up the time of the Court unnecessarily. His manner toward the Court and to counsel on the opposite side was delightful. For years as a member of our Bar Association, as a member of the American Bar Association, and as a member of the State Bar Association, and as its President, he worked for everything that raised the standards of legal practice. He was always a gentleman, and his influence at our bar in favor of all that tended to the elevation of our profession, will be felt for years.

Our bar felt highly honored when he was appointed a member of this Court. We knew him. We knew how fit the appointment was, and when it came to working for his election, he had the support of our bar irrespective of Party affiliations.

Mr. Justice POTTER died April 14, 1918; Mr. Justice MESTREZAT, April 28, 1918. Governor Brumbaugh in June, 1918, appointed Mr. Justice SIMPSON and Mr. Justice FOX to the vacant offices. This Court fixed the second Monday in July as a special date for the argument of cases which it thought should be heard by a full Bench. Mr. Justice FOX sat with the Court on that special argument day.

The opinions of the Supreme Court were handed down the following October, and the first case in which the opinion of the new Justice was reported is *Benner v. Phila. & Reading Ry. Co.*, 262 Pa. 307, decided, October 7, 1918. The opinion of the majority of the Supreme Court was delivered by Mr. Justice FOX. Mr. Justice SIMPSON delivered a vigorous dissenting opinion in which he was joined by Mr. Justice STEWART. No member of this Court, as now constituted, was a member of the Supreme Court at that time. A comparison of the two opinions will give those interested some idea of the mental make-up of the two Judges who delivered the

opinions. Those of us who knew Judge FOX were charmed at the strength and vigor of his opinion, and were delighted that it represented the judgment of this Court. It is a satisfaction to observe that that opinion has been frequently cited and approved by this Court down to the late case of *Frank v. Reading Co.*, 297 Pa. 233, decided March 18, 1929; opinion by Mr. Justice **KEPHART**.

On the same day the opinion in *Benner v. Phila. & Reading Ry. Co.* was filed, Mr. Justice FOX filed four other opinions, and during the month of October, 1918, he filed three additional opinions. These opinions covered such varied subjects as Taxpayers' Appeal—Public Service Corporations—Constitutional Law—Guardians' Appointments—Election Contest—Negligence—Building Contract—Workmen's Compensation—Negligence of a Railroad for causing fire—Jurisdiction of the Orphans' Court—and two Practice cases. Although the time was very short before the general election in November, those who favored Mr. Justice FOX's election were encouraged to find that those opinions afforded excellent ammunition for the approaching election, and what he had done in the Supreme Court after his appointment was used most effectively to help his election.

I was very closely connected with the committee that had charge of Mr. Justice FOX's candidacy, and I was surprised to find how his work on this Bench in that short period of time secured the support of many of the best lawyers in the state irrespective of their Party affiliations. After the election Mr. Justice FOX filed no opinions until his last day in this Court. The books show that he filed seventeen opinions in all, and they are all reported in 262 and 263 PENNSYLVANIA STATE REPORTS. While his work on the Bench did not secure his election, nevertheless it can be confidently stated that if he had been elected, he would have maintained the high standard set by this Court in judicial work. After he left this Bench, he took up the practice of the law, and continued in it until the very date of his death.

Although he lived beyond the Scriptural allotment of years, yet he was spared the infliction of the loss of either mental or physical power. To the very day of his death he practiced the profession which he loved, and which he graced. All of you knew him not as an associate, but as a lawyer, and it is very fitting in the judgment of his friends, that this Court has given us the opportunity to pay our respects to this good man, and great lawyer.

MR. JUSTICE SCHAFFER: Mr. Chidsey.

T. McKEEN CHIDSEY, ESQ.: May it please the Court: Measured by the length of service rendered by those who were his colleagues, Justice EDWARD J. FOX sat in judgment on this high Bench for a short period of time. One would expect but a fleeting image of a Judge whose term was itself so fleeting; but such is not the case, for Judge FOX came to the Bench with too rich a background—a background tinted with outstanding success as a lawyer, with a record of leadership in the civic affairs of his community without parallel, with a spotless reputation for truth and integrity. The memory of such a man cannot be fugitive.

President Judge STEWART has traced Judge FOX's career as a lawyer, but no tribute to him would be complete without reference to his life as a citizen. Perhaps the most remarkable thing about Judge FOX was that he took an active interest in so many walks of life without permitting such pursuits to interfere with the active and highly-successful practice of his profession.

He was intensely interested and took an active part in every move for civic betterment. He was a leader in every community project. With consummate skill and untiring zeal he led the campaign which resulted in the erection of a new hospital for the City of Easton. Easton's beautiful Y. M. C. A. Building is a memorial to his initiative and energy. He headed every Liberty Loan campaign during the World War, and later when the City adopted a similar plan of raising funds, ED-

WARD J. Fox led the first Community Chest campaign to a successful conclusion. Long before this he was known and acclaimed as Easton's first citizen.

He was interested in banking as a director of the Easton Trust Company, became its president and so served for twenty-three years until his death. He gave freely of his time to the guidance of youth and was president and a trustee of the Y. M. C. A. Through his services to Lafayette College, he made a substantial contribution to education. He served as president of the College Alumni Association, was elected to its Board of Trustees, became president of that body and served in that capacity until his death. In June of 1936 the College departed from tradition and conferred upon him an honorary degree. It will be of interest to this Bench to know that it was at his suggestion that next month Lafayette College will confer the degree of Doctor of Laws upon the present Chief Justice who succeeded Judge Fox on this Bench and whose qualities Judge Fox deeply admired. He frequently expressed this admiration and at the last meeting of the Board of Trustees stated to David B. Skillman, Esquire, of our Bar and a co-trustee of the College, how much he was looking forward to presenting Judge KERHART at the coming Commencement exercises.

Prominent lawyer and prominent layman, Judge Fox was an equally prominent churchman. He was frequently a commissioner to the sessions of the General Assembly of the Presbyterian Church in the United States and served on the important judicial committee of that body. His character and manner of living were built upon devotion to his God and his church. He was elder, trustee, and Sunday School teacher throughout the major portion of his adult life. He believed in prayer and constantly turned to it for guidance.

This broad background of a many-sided life brought Judge Fox to the Bench intellectually and spiritually attuned to the high duties of the office.

There was no let-up in his activities when he left the Bench, and additional honors came to him with great rapidity. In 1919 he was elected president of the Pennsylvania Bar Association. In 1920 the University of Pennsylvania conferred upon him the degree of Doctor of Laws. The Pennsylvania Bankers Association elected him its president in 1922, and a few years later he was made president of the Trust Company Division of the American Bankers Association.

Time does not permit detailed reference to his many fine traits of character: his kindliness, his wit and personal charm, his unfailing courtesy, his ever-ready willingness to extend a helping hand, his modesty. He seldom talked of himself and his own affairs and I doubt whether many here know that President Wilson tendered him an appointment to the United States Court of Claims and that he was seriously considered for the position of Solicitor General of the United States—a position which when Judge Fox declined, went to Mr. Gregory who subsequently became Attorney General, and that at one time he was asked if he would allow his name to be presented for an appointment to the United States Circuit Court of Appeals. He was expeditious; it was little short of amazing how he managed to do full justice to his many and varied activities.

Throughout this busy life, he was a lawyer first, and the Bar of Northampton County is grateful for this opportunity to pay tribute to one whose fifty-seven years of exemplary practice will ever remain an inspiration. Judge FOX was preceded at our Bar by another EDWARD J. FOX, his father. We are glad that the name and fine traditions of this family are being carried on by EDWARD J. FOX, JR., well known to the members of this Court.

Throughout Judge Fox's long practice, the welfare, standing, and betterment of his profession were his chief concern. He never permitted selfish motives to steer his course. To the miasma of politics and prejudice he was

immune. He was a stout defender of the independence of the courts.

His loss will be felt in a much wider field than the community in which he so abundantly, so usefully, so beautifully lived. In this day when the Bench and Bar seem to be favorite targets of public criticism, when their conduct is loosely charged as responsible for so many of this country's ills, what a loss to the State and nation as well is a lawyer who represented the highest ideals of the profession—a Judge who, limited as was his term of service, graced the Bench with justice, ability and wisdom.

MR. JUSTICE SCHAFFER: Mr. McCracken.

ROBERT T. MCCRACKEN, ESQ.: At the request of the President of the Pennsylvania Bar Association, who is unfortunately unable to be present here to-day, I desire, as one of its Vice-Presidents, to note the participation of the Association in this ceremony. As has been so well said, Judge Fox, in the midst of a busy and active life, during his entire career gave unstintedly of his time, energy and enthusiasm to the work of the Association, and much of the progress that it has made during that period has been due to his efforts.

I deem it, therefore, a high privilege and an honor, to express, on behalf of the Organized Bar of the State, its appreciation of his fine service, and to pay a tribute to his memory.

MR. JUSTICE SCHAFFER: MR. CHIEF JUSTICE KEPHART because of illness is unable to be here to-day to his great disappointment and regret. If he were here he would say:

The passing of MR. JUSTICE FOX, lately a member of this Court, inspires sincere regret for the loss of one for whom we entertained a high esteem as a lawyer, a jurist and a man—one whose affable and endearing attachments compel most pleasant recollection. Although none of us had the pleasure and honor of sitting with

Justice Fox upon this Bench, he was our contemporary. We knew his work as he appeared before the Court and his work as a jurist.

He was appointed to the Supreme Court on June 17, 1918, to succeed Justice MESTREZAT. During his tenure of office he served the Commonwealth well and faithfully. We know the members of this Bench then associated with him had a very high regard for his intellectual attainments. With his exemplification of that very necessary equation of judicial loyalty to the Court inside and outside the consultation room, he well maintained its high traditions. Justice Fox enriched our law with many able decisions, which stand to-day, and shall forever stand as monuments to his learning, as testimonials to his judicial qualities.

Few members of this Court have, within so short a time, displayed such industry and such pleasure for their task. Like the man himself, his opinions are forthright, clear and sound in logic and law. They are devoid of superficial elaborateness and free from unnecessary verbiage. He was true to the facts of the case and never shielded the solution of a difficult legal problem, nor poised a legal conclusion on a strained or inarticulate statement of evidence. His decision in *Leiper v. The Baltimore & Philadelphia Railroad Co.*, 262 Pa. 328, notes a landmark in public service law. He there upheld the state's right through the Public Service Commission to exercise jurisdiction in the regulation of rates, and the necessity that private contracts yield to the superior power of the State to provide for the public good. It has been a model for a long and still lengthening series of cases and holds a high place among decisions defining the constitutional powers of the legislature. If Justice Fox had written but this decision alone, he would have made as lasting a contribution to our jurisprudence as many have made in a much longer period of service.

In the practice of law, the high regard which his noble character earned for him among those with whom he

was associated as an attorney has been well expressed by the President of the Bar of Northampton County and its President Judge. For myself I desire to add to their eulogy the highest tribute that a man can pay to one who has stood against him for public office—he was a generous and honorable opponent; there existed between us and lasted to the day of his death a strong bond of mutual respect and friendship which no differences could sever.

While we feel the loss of Justice Fox deeply because he intimately shared our task, we are not the only ones bereaved. The Commonwealth of Pennsylvania and all its people have lost a distinguished friend and a loyal servant.

In accord with our custom and our rules, to-day's proceedings in his honor will have a suitable minute in our records and will be published in our Reports.