

IN THE SUPREME COURT OF PENNSYLVANIA

Session in Memory of HON. H. EDGAR BARNES.

Justice of the Supreme Court, 1935-1940.

PHILADELPHIA, Pa., November 25, 1940.

A meeting of the Philadelphia Bar Association in memory of the late Justice H. EDGAR BARNES was held on the convening of the Supreme Court of Pennsylvania. The HONORABLE WILLIAM I. SCHAFFER, Chief Justice of Pennsylvania presided, and the speakers, in addition to Chief Justice SCHAFFER, included Hon. Joseph P. Gaffney, Chancellor of the Philadelphia Bar Association; HON. BYRON A. MILNER, Judge of Court of Common Pleas No. 3, and C. Brewster Rhoads, Esq.

The proceedings were as follows:

CHIEF JUSTICE SCHAFFER: Mr. Gaffney.

JOSEPH P. GAFFNEY, ESQ.: This morning, the bar joins with your honors in paying just and proper tribute to the memory of one who but lately graced this bench. The phrase "public office is a public trust" to EDGAR BARNES was not a mere lip belief, it was his positive faith. I know whereof I speak. We entered public life about the same time as members of old common council. During his term of service in city councils, he exhibited the same fine qualities which were later to endear him as your associate. He was always the kind and courteous gentleman. Industrious, never shirking in the performance of his part or share of official duties. Approaching each task assigned to him with a determination to explore it thoroughly, give to it the best that was in him, and then make the only decision he ever wished to reach, the one that was just and honest.

All of these qualities presented themselves as we sat together in the council chamber or went about the performance of our legislative duties. Surmounting all was his unyielding courage. To aid a friend that was

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true or help a cause that was just, he would travel to the endmost part of the world. But if there lurked within the bowels of a requested service even the semblance of forfeiture of his oath of office, to such a request, irrespective of the relationship or station of the petitioner, his answer was a stentorian "no." That hardy fearlessness attended him throughout his public and private life until untimely death ended the worldly all.

He was, at all times, interested in the Philadelphia Bar Association. He rarely missed one of its functions, enjoying thoroughly the spirit of comradeship to be found in these off-hour diversions. He was in full accord with the view that strong organism is essential not only for the bar itself but for the public welfare.

And now may I present his intimate friend and associate, HON. BYRON A. MILNER, Judge of Court of Common Pleas No. 3, who will speak for the Judges of our county courts.

CHIEF JUSTICE SCHAFFER: Judge MILNER.

HON. BYRON A. MILNER: Mr. Chief Justice and Associate Justices:

To pay tribute to the memory of H. EDGAR BARNES upon the convening of your honorable court today is a solemn privilege of which the bench and bar avails itself in appreciative remembrance of a Philadelphia lawyer of unusual attainments who graced a place upon this court for too brief a space of time.

It was my cherished privilege to know him intimately for thirty-seven years. It was at the Wharton School of the University of Pennsylvania that I first met him, when we were both students in the university, and after we had completed our courses of study we were associated for about fourteen years in the practice of law during which time we both taught in the same department of the University of Pennsylvania, and jointly compiled several editions of a case book known as "Selected Cases in Constitutional Law."

He was a loyal, helpful, understanding and true friend. I valued highly his friendship as do a host of friends who mourn his passing. He was distinguished for his spirit of kindness. He was gentle and shy in his disposition, and I know that encomiums and flattering eulogies would be repugnant to him, but he was justly proud of the success that attended his struggles through life, and he was deeply attached to his family and I therefore believe he would not have disapproved of the relating by his friends of the facts about them.

H. EDGAR BARNES was born in Washington, D. C., on June 28, 1883, the son of George W. and Lydia Slee Barnes. His father was in the Government service at Washington. He graduated from the Northeast High School of Washington, the Wharton School of Finance and Commerce of the University of Pennsylvania, and the law school of the university, with the degrees of bachelor of science in economics and bachelor of laws. In order to secure his education he had to work his way through college, and did so by tutoring and teaching. While in college he was a member of the Philomaethean Society and the Sigma Alpha Epsilon, and in the law school he was a member of the Hare Law Club. Little did he think when he was a student at the University of Pennsylvania that later on in life he would be elected a trustee of that great and historic institution of learning. But that distinction was to come to him. He was elected a trustee of the university in 1935, and this fall, just a few days before his death, he attended the various exercises in celebration of the bicentennial of the founding of the university in the capacity of such trustee. At the close of one of these occasions he told me that when he went upon the rostrum in Irvine Auditorium to take his place with the board of trustees he recalled his struggle for a livelihood as a student, and his pride and happiness in serving the university was mingled with humility and gratitude.

In 1906 he was admitted to the bar, and from that

time until he was appointed to the bench he actively practiced law in Philadelphia. He was admitted to practice before your honorable court and the Philadelphia Courts of Common Pleas and Orphans' Court. He was also admitted to practice before the Supreme Court of the United States, and appeared as counsel before that court.

In the early days of his practice he was associated with Joseph DeForrest Junkin, Esq., and Frederick C. Newbourg, Jr., Esq., where I joined him later on. Subsequently he was associated with V. Gilpin Robinson, Esq., and John G. Kaufman, Esq., for a period, and for some years before the close of his career as a lawyer he practiced independently. He represented many important clients and established a reputation as an able and successful advocate.

In 1911 he married Miss Mae Graham, of Swarthmore, Pa., who survives him, as do his two daughters Jane and Mary Patricia, and his mother. His married life was a very happy one, and he was devoted to his family. Of him it can truly be said that he was a family man. He spent every possible moment that he could spare from a busy life with the ones he loved, and his greatest pleasure was to take vacation trips to distant places in this country and abroad. He once said that he never saw a map but that he was away if only in contemplation or imagination, to some far place that was shown thereon.

When George H. Earle was elected Governor of Pennsylvania, he appointed H. EDGAR BARNES, who had been his personal counsel, a member of his cabinet in the office of Secretary of Revenue. He served in this office until July 31, 1935, and he was appointed to your honorable court on August 12th of the same year to fill the vacancy caused by the death of Justice ALEXANDER SIMPSON, JR., and took his seat on the bench at Pittsburgh on September 30, 1935. He was elected Supreme Court Justice for the full term of twenty-one years in November, 1935, but lived to serve only five years of his

term. He died after a short illness on October 6, 1940.

He was a scholarly and able lawyer and an indefatigable worker. He strove to perform the professional tasks allotted to him with meticulous care. He chose the highest standard of ethics and the honored traditions of our bar as his guides. To my mind he fitted the definition of a true lawyer as given by Lord Chief Justice COCKBURN who once said, "The arms which an advocate wields he ought to use as a warrior, not as an assassin. . . . He ought to know how to reconcile the interests of his clients with the eternal interests of truth and justice."

H. EDGAR BARNES brought to his high judicial position a wide experience in law, business and finance, intellectual honesty, integrity of character and a keen sense of justice. Chief Justice HUGHES, in a plea for able judges which he made a few years ago before the American Law Institute, said, "a prime necessity of making judicial machinery work to the best advantage is the able and understanding judge, qualified by training, experience and temperament for his office." These qualifications Justice BARNES had. His decisions show that he was not shackled by outmoded precedents but was a true liberal, seeking to apply logic and common sense to the realistic interpretation of the law in order to arrive at justice. His interpretations of the law show that he considered it the duty of a judge to view the law as a living philosophy to be adapted to a changing social order and a growing political economy, and not to view it as a tournament in which the nod of approval is given to stale and illogical reasonings which have only the weight of time as their justification. Of the large number of carefully considered opinions he wrote in the comparatively short space of time he was on the bench others will speak, and I will only state that for his contribution to our jurisprudence we are grateful. We of the bench and bar salute the memory of a true and kind friend, and a just and able judge.

CHIEF JUSTICE SCHAFER: Mr. Gaffney.

JOSEPH P. GAFFNEY, ESQ.: May I now present Mr. C. Brewster Rhoads, who will speak on behalf of the bar of your honorable court.

CHIEF JUSTICE SCHAFER: Mr. Rhoads.

C. BREWSTER RHOADS, ESQ.: I am genuinely conscious of the privilege of testifying on this occasion to the deep esteem and affection which the bar of this State, and particularly of Philadelphia, cherished for our dear friend Justice BARNES. Since his elevation to this court he has left the imprint of his industry, scholarship and philosophy upon the body of our common law. In less than five short years his energetic mind has contributed two hundred and fifty opinions which became the majority decisions of this court, and which, so long as our judicial system persists, will remain a living monument to his prodigious energy and passionate desire for literary and rational perfection.

Truly great was his contribution to the law of torts where always he strove to harmonize the traditional, and sometimes harsh, principles of the common law with the necessities of a fast-changing economic and social order; but his zeal did not stop there. Through twenty volumes of our reports we trace the record of his industry in decisions of national interest involving constitutional and municipal law. His rare ability to state a complicated legal principle in the language of the layman, to clarify an obscure provision of a will whose interpretation had challenged the acumen of the bar, have made his opinions classic examples of erudition which I know he cherished, not only as contributions to the bench and bar, but as a loving legacy to his devoted family.

He labored diligently, and far beyond the limitations of his strength, to add new lustre to the achievements of this court by the excellence of his contributions to its work. The meticulous care with which he edited, corrected and again revised opinions long after the decisions had been handed down, was an inspiration to your

State Reporter and to those whose privilege it was to be in constant contact with his acute mental processes.

His passion for intellectual honesty is manifest in every line of his judicial utterances which should remain guiding stars to those who share the conviction that the immortal spirit of a great jurist is eternally revealed in his opinions.

One cannot justly appraise the character of Justice BARNES without touching upon his great courage—a pre-dominate trait in a life devoted to his family and dedicated to his work. He bore physical adversity with a fortitude which endeared him to his friends, and, by his example, he strengthened others tempted to falter under the weight of lesser burdens. But there was also a moral courage; a passionate desire to eternally think right, which induced him to file those rare, but constructive dissents; and again to concur with the majority of your honors when to do so constituted a shining example of the integrity and independence of the judiciary.

Justice BARNES brought to his judicial service the affection of the bar. As a judge he never forgot to think as an advocate; to appreciate the problems of those practicing on this side of the bar. He continued to maintain a graciousness and simplicity, so truly attributes of the judicial office. During his years of devoted service his modesty, humanity and ever-sympathetic understanding of our problems, continued to endear him to us as his career unfolded. His humility of spirit made him great. His memory is like a benediction. Because he lived unselfishly, careless of himself, I venture to believe we share his immortality in the memory of his cherished personality. To us he says:

I have a rendezvous with life
 In days I hope will come,
 Ere youth be sped, and strength of mind,
 Ere voices sweet grow dumb.
 I have a rendezvous with life
 When spring's first heralds come.

Sure some would say 'tis better far
 To spend our time in sleep,
 Than face the road, the wind, the rain,
 To heed the calling deep.

But I have a rendezvous with life;
 And tho' wet, nor space, nor blow I fear,
 Yet fear I deeply, too,
 That death may greet and claim me
 Ere I keep life's rendezvous.

Mr. Chief Justice SCHAFFER, your esteemed colleague of the bench, our comrade of the bar, faithfully kept his rendezvous with life to the end.

CHIEF JUSTICE SCHAFFER: To no one except the members of his family and near relatives could the passing of Mr. Justice BARNES bring more sorrow than to the members of this court. He was appointed to our bench on August 12, 1935, and took his seat with us on September 30th. He was, therefore, our colleague and companion for five years, in what is necessarily a very intimate association. These five years were particularly trying times in the court, because of the large number of important public cases which had to be passed upon. He met the questions involved in them, as he did all others, in a spirit of judicial rectitude of the highest type, unswerved by anything outside his obligations as a judge and his conception of the law which governed. Our service and association together caused us to have a respect and esteem for him which are without stint. He brought to the court wide experience as a practicing lawyer, particularly in business cases, great common sense and a desire to fulfill his judicial duties in the best traditions of the bench. This desire he accomplished. We shall greatly miss his counsel and wisdom in our deliberations and the pleasure of our contacts with him. Always courteous and considerate, association with him was delightful. His untimely departure is a personal loss to each of us.

A minute of these proceedings will be made and it will be spread upon the permanent records of the court.