

In Memoriam

HONORABLE JOHN WESLEY SHENK

**Associate Justice of the Supreme Court
of the State of California, 1924-1959.**

The Supreme Court of California met in bank in its courtroom, State Building, San Francisco, at 10 a. m., February 2, 1960. Present: Chief Justice Gibson, presiding; and Associate Justices Traynor, Schauer, Spence, McComb, Peters and White. Sullivan, Clerk; C. W. Johnson, Acting Reporter; Bushong, bailiff.

CHIEF JUSTICE GIBSON announced that

Many members of the Bench and Bar join with us this morning in paying tribute to the memory of Justice John Wesley Shenk whose service of more than 35 years on this court was terminated by his death on August 3, 1959. We wish by this memorial to express our appreciation of the many priceless gifts he bestowed upon us and countless others during his lifetime and for the rich legacy of fine thoughts and good deeds he has left for future generations.

The Chief Justice stated that Honorable Stanley N. Barnes, Judge of the United States Court of Appeals for the Ninth Judicial Circuit, would present a memorial on behalf of the Bench and Bar.

The proceedings were as follows:

JUDGE STANLEY N. BARNES: Chief Justice Gibson, May it please the Court: First, let me say I am sensitive of the honor of being chosen to address the Court in memory of Mr. Justice Shenk, for, since a time prior to my admission to the bar, he was my friend. And to John Shenk, friendship was a prize beyond value.

John Wesley Shenk was born on February 7, 1875. From his middle name (which was also the middle name of his father, and is that of his younger son) we can be assured that his family was of the Methodist faith, and that that faith was a living one. Indeed, Mr. Justice Shenk's father was a Methodist minister. And so, in the manner of most minister's families, John senior did not stay long in one place.

John Shenk's two older brothers were born in Monticello, Minnesota, and St. Anthony, Minnesota, while he was born in Shelbourne, Vermont, the third of four boys, who were followed by two younger sisters who arrived after the call had come from Methodist churches in Omaha, Nebraska, and Central City, Nebraska. After education in the Nebraska public schools and the Omaha, Nebraska High School, John Wesley Shenk had eyes toward a college education. But ministers of the gospel with six children had many places for their small salaries, and enabling six children to obtain a college education was not an easy task. The young man worked at various trades—as a printer, farmer, painter, and newspaper reporter. As might be expected, his college choice was Ohio Wesleyan. Even as many lawyers of today, his studies were interrupted in his junior year by the call to arms. He enlisted in Company K, of the 4th Ohio Volunteer Infantry, and saw service in Puerto Rico. After one and one-half years in the service, he returned to complete his college courses, and received his A.B. degree in 1900.

A college degree, but what to do with it? His brother, Adolphus, supplied the answer. This brother had come to California and settled in the fabulous Imperial Valley on a ranch located somewhat north of Calexico, and south of Imperial. First, a job as a farm hand and mule skinner, and then as the first school teacher in the newly formed school district, were John's. His certificate of office, issued by the County of San Diego (for the County of Imperial had not then been created), was his third prized "shingle," to hang with his college diploma and his good conduct discharge.

By that time, twenty-six-year-old John Shenk knew what he wanted to make of himself. Typical of his deep desire to obtain the best possible training for his chosen profession was his decision to save money, and take his law work at the University of Michigan. This he did, completing his course in less than normal time, and graduating in 1903 with the degree of "Juris Doctor."

It is of interest to note that each of his alma maters subsequently honored him with a degree of Doctor of Laws, as did also the University of Southern California.

Taking the oral bar examination in 1903 before the same Supreme Court he was to later grace for so many years, John Shenk loved to relate, in his modest manner, how he had been "lucky" in reading a certain unusual case on an obscure point of law the night before his oral examination. On the

next day, Mr. Chief Justice Beatty asked a question in this same obscure area, and the applicant before the bar "hit the nail on the head."

(Incidentally, after hearing this story, one of the hearers asked the name of the case involving this obscure point. When told by Mr. Justice Shenk he could no longer remember the name, or even the legal point, Mr. Justice Shenk was asked if it wasn't that in *Greenberg v. Western Turf Ass'n.*, 140 Cal. 357, involving the expulsion of the publisher of "Daily Racing Form" from the Tanforan Race Track. Mr. Justice Shenk replied, with characteristic adroitness, that he couldn't be sure, but it was more likely he would have been studying *Westwater v. The Rector, Wardens and Vestry of Grace Church*, 140 Cal. 339, involving a choir singer's breach of contract.)

In 1906, he became a Deputy City Attorney of Los Angeles, under W. B. Mathews. In 1909, City Attorney Leslie R. Hewitt had the problem of filling the shoes of Lewis R. Works, who had become a judge of the Superior Court of Los Angeles. John W. Shenk became the new Assistant City Attorney, and in 1910 when Leslie Hewitt resigned as City Attorney, John became City Attorney of Los Angeles.

As City Attorney, John Shenk had the important and delicate task of shepherding a city into a great metropolis.

"It was during this period (says Judge Leon David) that Los Angeles came of age—a period rich in legal experience, for perhaps in no other incumbency (than John Shenk's) were so many fundamental legal problems first encountered and decided by the courts.

"Wilmington and San Pedro were annexed. Necessary contiguity was furnished by the famous 'shoe-string strip.' Time was short, and opposition great, and Justice Shenk recalls a midnight trip midst irate farmers and sharp-toothed watch-dogs as he hurriedly listed polling places and secured names of election officers for the required ordinance calling the annexation election. (See *People v. City of Los Angeles*, 154 Cal. 220.)"

But more important to Los Angeles and Southern California than a harbor, was water. Mr. Justice Shenk vindicated the city's right to all the waters of San Fernando Valley—basing that right on the old pueblo rights of the Spanish City of The Angels. But, that was not enough water for the thousands

swarming into Los Angeles, and again City Attorney Shenk took charge of obtaining more—through the Owens Valley Project.

Associated with him in much of this important work was his long time friend from law school days—Edward R. Young, and other names well-known to lawyers in Southern California—George E. Cryer, Emmet H. Wilson, S. B. Robinson, Jesse Stephens and Charles E. Haas.

One could go on and on in listing the interesting problems John W. Shenk faced and solved.

Mr. Justice Shenk was a mild man in many aspects of his life, but he was a firm believer in direct action when such was required. In the tidelands litigation of 1909, the city challenged the title of the Huntington interests. The Pacific Electric proposed to lay a spur track to the San Pedro tidelands it claimed. It was necessary to cross First Street in San Pedro. City Attorney Shenk said this required a franchise. By way of answer, and over the Labor Day weekend and holiday, the Pacific Electric hurriedly installed the track over the street—relying on the absence of judges and injunctions over the holidays and a *fait accompli*.

The Board of Public Works, acting on advice of John Shenk, paid back in kind on the following weekend. It took men, horses and equipment to the harbor, took possession of the empty railroad cars after removing them, tore up the tracks and announced the city was and would remain in possession. The Outer Harbor was saved for the people of Los Angeles.

Then there was the development of municipal power; the "Hyperion" sewer problem; the famous Griffith Park case, which even today may be revived by means of baseball contracts; the acquisition of the Los Angeles Public Library site; the Water District Act of 1913—still known as the Shenk Act.

From all this Mr. Justice Shenk developed a keen interest in Municipal Law, and particularly California Water Law, and a real expertness on the subject. As one judge described it in 1950:

"Mr. Justice Shenk today is considered one of the foremost American authorities on municipal corporation law."

Before leaving the subject of his service as City Attorney of Los Angeles, I might mention the fact that he was succeeded as City Attorney by the Honorable Albert Lee Stephens, the senior judge on the court on which I have the honor to sit, whose friendship was greatly valued by Justice Shenk.

In 1913, he succeeded Judge Nathaniel P. Conrey as Judge of the Los Angeles Superior Court, where he quickly established himself as one of its best. He was appointed by Governor Hiram Johnson to that bench. His colleagues there were such well-known names to this Court as Judges Leslie Hewitt, Frederick Houser, Curtis Wilbur, Charles Monroe, Paul McCormick, F. G. Finlayson, Lewis R. Works, and Louis W. Myers. Within eleven years, and on April 8, 1924, Governor Friend W. Richardson appointed John W. Shenk Associate Justice of this Supreme Court. There he remained for more than thirty-five years; more than one-third of the entire time since there has been a Supreme Court of this state. Very few judges can speak of the 1,355 opinions he has written, appearing in 79 volumes of the California Reports. Mr. Justice Shenk could. The only tenure comparable to this remarkable thirty-five year period on the Supreme Court is that of Mr. Justice Beatty, from 1888 to 1914—twenty-six years.

I shall leave to others a recounting of his work and accomplishments as a Justice of the Supreme Court of California, and by reason of his thirty-three year membership on the Judicial Council of the State of California—during its entire history. I would like to turn to some other aspects of the life of John W. Shenk. For I do not think of Mr. Justice Shenk as a judge—but as a man—as the warm, friendly, human being he always was. I recall quickly his humor, his humility, his charm.

No one could have come in contact with John Shenk without developing a strong feeling of friendship for him. His whole personality generated warmth and affection. It led people to know his great and unique capacity to share himself with his fellow man. It was evident in his every action. He wanted to help his fellow man—not only with respect to abstract theories of justice and law, but with a participation in those things that lead to the specific achievement of happiness for others.

It is in that aspect of his life that he honored me, by swearing me in as Judge of the Los Angeles Superior Court in 1947.

He had a warm spot in his heart for Los Angeles and Southern California, and his many friends there, even though the last thirty-five years of his life were centered at Los Altos. There was scarcely a visit that the Supreme Court made to sit in Los Angeles that did not see this eminent jurist quietly

absent himself from the State Building to stroll about the, until recently, scattered courtrooms of the Los Angeles County Superior Court. Here he would look up old, or young, colleagues on the bench, or more likely, a court stenographer or clerk, or an elevator operator. He remembered his old friends—he was genuinely glad to see them again; and to find out what they were doing, and how they were getting along.

His great capacity for friendship extended to those of his friends in the Masonic Orders, and that meant every Mason. He was proud of his membership in that fraternity—proud of the fact that he was Master of South Pasadena Lodge #367, F. & A. M., in 1909, of his membership in the Shrine, in the Knight Templars, in the Order of the Red Cross of Constantine, and particularly, of his Honorary Thirty-third Degree in Masonry. He worked at his craft; he was faithful in attendance at Grand Lodge and active in its committees—particularly in the Grand Lodge Committee on Jurisprudence. In the same manner, he was loyal to his college fraternity, Beta Theta Pi, and to his legal fraternity, Phi Delta Phi. There hasn't been an initiation into Phi Delta Phi in many years, in either Northern or Southern California that hasn't seen John Shenk act as the principal installing officer. And he saw to it that his brothers, both from the Supreme Court and on other courts, attended and participated, because he was vitally interested in the young lawyer—in seeing him get started in the profession with the proper ethical concepts and ideals. When he read to these young lawyers of the duties they owed to their clients, to the courts, and to their profession, he read with his voice, but spoke from his heart. It was what he believed in, firmly and completely.

This deep loyalty to his friends, and to his fraternal organizations, extended to his Church. When he found no Methodist Church in Los Altos, he supported, by his own unflagging interest and efforts, the Union Church of that small community. He was President of its Board of Trustees, and of its Building Fund, whereby he left tangible evidence of his devotion to his God.

I have said nothing as yet of his great devotion to his beloved wife, Eleanor, nor of his great pride in his two sons and their families. I will not attempt in my words to describe that sacred bond. Several years before his death, mindful that none of us may know when that fateful hour may be, John Wesley Shenk left a simple note to his family, mentioning

certain wishes. With his family's permission, I use his words to tell of this. Mr. Justice Shenk said:

"I express a profound satisfaction in my family life, with affection beyond bounds for each one—a beloved wife, who has been my delightful companion through the years, two fine sons, their charming wives, and five wonderful grandchildren."

Could any wife; could any son, have a more heartwarming or soul satisfying tribute from a loved one? I think not.

What was John Shenk's philosophy of the law? Let me quote from his own words, written when he was honored by bench and bar after twenty-five years as a Supreme Court Justice;

"Justice, it has been said, is the first duty of man towards his fellow men. Over three centuries before Christ Demosthenes said, 'It will be found that what mars everything and originates every mischief is the unwillingness to observe justice uniformly.' The struggle to insure it in the western world is found in the beginnings of our government. The federal union was formed first of all to establish justice. In practice it is not always easy of accomplishment but it is the purpose and the effort to accomplish it that is the vital need. Addison said, 'To be perfectly just is an attribute of the divine nature; to be so to the utmost of our abilities is the glory of man.'"

And then with typical modesty and practicality he added:

"While we adhere to the doctrine that the elemental principles of right and wrong will never pass into oblivion and that the right if possible should always prevail, it is sometimes difficult to segregate what seems to be the right or justice in the matter and cause it to triumph."

And then he added:

"Courts should be the symbol of stability as well as of progress. To maintain that stability it is essential that wisdom and judicial self-restraint be exercised lest the seeming exigencies of the moment disturb the foundations of our society.

"It has been and is an opportunity to labor in this field and the responsibility is great. I like to think that the place where justice is administered is an

hallowed place, a temple, and that the judges are its priests and ministers. To serve as a judge quickens the noblest impulses and attributes with which a human may be endowed. The permanence of our institutions and our way of living as a free people requires that those charged with this responsibility be true to this public trust."

When Charmian London received messages of condolence from all over the world upon the death of Jack London in 1916, a very strange and simple message was to her most comforting. From Australia came a note from an old sea-captain friend of Jack London. The words were few; the meaning large. It read:

"I have just heard of Jack London's death. There was a man!"

And then he swore a sailor's oath——

"By the Turtles of Tasman, there *was* a man!!"

John Wesley Shenk—true to his public trust.

There was a lawyer!

There was a judge!

There was a man!

The Chief Justice then called on Mr. Burnham Enersen, President of The State Bar of California, who read the following Memorial adopted by the Board of Governors of The State Bar of California:

"The recent death of the Honorable Justice John W. Shenk of the Supreme Court of California is a great loss not only to the Bench and Bar of California but to the State of California and all its citizens. Justice Shenk has had a long and honorable career of public service, including distinguished service on both trial and appellate courts. His years as Associate Justice on the Supreme Court are replete with his influence resulting from his broad legal experience, his outstanding ability as a jurist, his steadfast devotion to duty and an outstanding moral courage to stand for what his conscience and reason dictated. Although he is no longer with us, his influence will long be felt because of the wisdom and learning in his many judicial opinions.

"The Board of Governors of the State Bar of

California join in deepest respect to his memory and sympathy to his family.”

Chief Justice Gibson requested Mr. Justice Homer R. Spence to respond on behalf of the court.

JUSTICE SPENCE:

It is a privilege to be asked to make a brief response to the eloquent and richly deserved tributes that have been paid to the memory of our beloved colleague, Justice John Wesley Shenk.

So long and distinguished was his service on this court, and so deep and sincere were our affection and esteem for him, that we can scarcely realize that he has travelled along on his journey into the Life Everlasting. We shall miss him greatly—miss his wise counsel, his genial smile, his friendly handclasp, his scintillating good humor, and his many fascinating reminiscences of the days gone by. This court will never seem quite the same without him, for he contributed his fine ability and his untiring energy to its work over thirty-five years—his tenure being longer than that of any other Justice who has ever graced this bench. In the minds of many he personified the Supreme Court of California; and may we add that the stature of the court was enhanced by his presence on it.

As we think in terms of a fitting memorial, we are reminded that Justice Shenk has erected his own last memorial in the form of the countless masterful judicial opinions which he wrote during his long years of service. Those opinions are now enshrined in 79 of the bound volumes of California Reports for the enlightenment of this generation and of the generations to come. Perhaps his most profound and significant opinions were those which developed the law of this state in the important and complex field of water rights. Much could be said of those opinions and of his opinions in other fields; but no words that might be said here today could add lustre to the shining memorial which Justice Shenk himself has thus already erected.

But let us further record here today that by his kindly words and good deeds, Justice Shenk has also enshrined himself in the hearts of countless thousands who were and are proud to be numbered among his legion of friends. While these friends knew him as an outstanding jurist with a brilliant record of service, they also knew and loved him for his

extremely human and friendly approach in all his personal relationships. They knew him as a man whose humanness and friendliness were embellished by spiritual overtones which made for his humility—the unmistakable hallmark of his greatness.

Justice Shenk's associates on this court will always remember him admiringly for his eagerness, even to the last, to assume his full share of the work of the court, and for his ability to apply his fine legal learning and his rich experience to the solution of the problems encountered. They will also remember him fondly as one who loved life, who loved his family—his dear wife, his fine sons and their families, of all of whom he was so justly proud—who loved his friends, who loved his associates, and who loved his work. His was a happy, abundant and fruitful life—a life which was marked by courageous action and great accomplishments but yet one which was leavened by his love and compassion for his fellow men. He was truly a noble soul and his memory will ever linger with us as a guiding light and as a challenging inspiration throughout all the years to come.

Chief Justice Gibson thanked the speakers for their presentations and directed that the memorials be spread in full upon the minutes of the court and published in the official reports.