

## MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS AT THE OCTOBER TERM, 1929, ON THE LIFE, CHARACTER AND PUBLIC SERVICES OF HON. CYRUS E. DIETZ, DECEASED.

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At the hour of three o'clock P. M., October 19, 1929, other business having been suspended, the following proceedings were had:

MR. JUSTICE DUNN:

This hour has been appointed for the presentation of a memorial by the Illinois State Bar Association and the Rock Island County Bar Association in honor of the memory of our late associate, Mr. Justice Dietz. A memorial will be presented by Mr. John D. Black, president of the Illinois State Bar Association.

MR. JOHN D. BLACK:

It becomes again, too soon, the melancholy duty and privilege of the Illinois State Bar Association to present a memorial—this time for the late Justice Cyrus Dietz, a member of this great court. One of the objects of the Illinois State Bar Association is to cultivate and cherish the spirit of brotherhood among members of the legal profession. It is peculiarly fitting, therefore, that this association should join with the Rock Island County Bar Association, of both of which organizations the late Judge Dietz was a member, in presenting this memorial. Judge Dietz was alive with the spirit of brotherhood to his profession and to mankind in general. A memorial has been prepared by men who were close to him in the practice and in his private life.

Cyrus Edgar Dietz was elected a member of this court on the 6th day of November, 1928. On the 13th day of September, 1929, he died. There was little opportunity,—all too little, if your Honors

please,—for him to demonstrate by judicial service his unusual qualifications and fitness for membership in the supreme tribunal of Illinois.\* It is to his achievements at the bar that you must look for the record of his attainments and the demonstration of his worthiness for this high position. Those of us who are familiar with these achievements and with this record (and we are legion) have no misgivings. We know and can testify to his ability and his worthiness. That a career so brilliant has ended so untimely—that the State so soon has lost one surely destined, as we thought, to become one of its great judges and most useful servants—we find impossible to reconcile with our conception of any rational scheme of things. We bow to Heaven that willed it so.

Judge Dietz was born in Illinois on a farm near Onarga, in Iroquois county, on March 17, 1875. His parents were Charles Christian Dietz and Elizabeth Orth Dietz. He was the youngest of a family of eight children. His father was of Alsatian stock, born in Philadelphia, Pa. His paternal grandfather had migrated from his native Alsace-Lorraine in 1820, settling in Philadelphia. His mother was born in Lebanon county, Pennsylvania, and descended from Moravian stock, whose forebears came to this country in 1725. A great-uncle, Godlove Stoner Orth, was a prominent member of the Indiana bar and enjoyed no little political prominence, both State and National, serving in the State Legislature of Indiana from 1840 to 1849 and in the Congress of the United States from 1862 to 1876, when he was appointed minister to Vienna by President Grant. While serving in this capacity he was nominated for Governor of Indiana on the Republican ticket, which nomination he declined to accept.

Judge Dietz was graduated from the Grand Prairie Seminary in 1897. He then entered Northwestern University, where he pursued his studies in the college of liberal arts, in the school of speech and in the law school of that institution, and was there graduated with the degree of Doctor of Philosophy and Bachelor of Laws, in 1902. For four years he was a member of the Northwestern University foot-ball team and its captain for the two years of 1900 and 1901. During this period he won a place on the All-American team. For the season of 1902 he served as head foot-ball coach at the Kansas City Agricultural College, and in 1903 held

the same post at Willamette University, of Salem, Oregon. In 1904 he coached the Moline high school team to a State championship.

Following his graduation from the law school, in 1902, Judge Dietz was admitted to the bar of this State. He served an apprenticeship in the office of the late William A. Dever. Two years later he removed to Moline, and shortly thereafter was associated in practice with Burton F. Peek under the name of Peek & Dietz. This association was maintained until 1912, when Mr. Peek retired from active practice. In the meantime Judge Dietz's brother, Godlove Orth Dietz, had become a member of the firm, retiring from practice in 1915, when elected as a judge of the city court of Moline. In 1916 Thomas P. Sinnett became associated with Judge Dietz, and in 1918 the firm of Kenworthy, Dietz, Shallberg, Harper & Sinnett was formed, and continued until, on November 6, 1928, Judge Dietz was elected to this bench.

The ability of Judge Dietz attracted early attention. It was his lawyer-like presentation of a relatively simple matter in the circuit court of Rock Island county that led almost immediately to the formation of his first partnership in Moline. In 1925 he was engaged as a special assistant to the Attorney General of the State, the Hon. Oscar Carlstrom. In this capacity, in which he acted for the succeeding three years, he had charge of litigation of the highest importance, such as the suit of the State against the Illinois Central Railroad Company, involving a construction of the company's charter and taxes of large amount; the suit instituted in the Supreme Court of the United States by certain sister States seeking to restrain the so-called diversion of the waters of Lake Michigan,—a matter in which the interests of the Middle West are involved in a degree which cannot be over-stated. It is, perhaps, upon his participation in these *causes celebres* that his professional reputation rests. But his associates at the bar remember beginnings—his "faithfulness in a few things." They remember,—and there are many in the city of Moline who should remember if they do not,—the months of unremitting toil, practically without compensation, which he spent in adjusting the tangled intricacies of a defunct building and loan association, in which were invested the

little savings—many a widow's mite—of hundreds of the wage earners and wage savers of that city. They remember like unremitting toil, again practically without compensation, in *Bleakley v. Barclay*, wherein the conflicting laws of three States were reconciled to sustain the right of a foster-mother to the child she had adopted. They remember the many cases of lesser import, trivial, indeed, in comparison with those in which he was later engaged, but all prepared and conducted with the utmost of his care, industry and skill. The great State of Illinois in its all-important litigation was served with no greater ability and industry, and with far less sacrifice, than were these clients served in these earlier cases which have long since passed into that legal history which is oblivion.

Industry was one of the outstanding characteristics of Judge Dietz. If ever a man scorned delights to live laborious days it was he. He had a seemingly inexhaustible power of labor. No man should seek to follow in his footsteps unless he be ready to demonstrate in his own person that infinite work is the only touchstone of the highest standing in the law and that the sluggard and the slothful who enter here must leave all hope behind.

No tribute to Judge Dietz would be complete if it failed to recognize and present his loyalty to the profession. It is fitting that this recognition be made before this bench and in this company of lawyers. To him the law was truly a jealous mistress, and he adhered with tenacious affection and purpose to its fundamental principles: That a citizen charged with crime shall be presumed innocent until his guilt shall be established beyond all reasonable doubt; that no man shall be deprived, by the law, of property or reputation until his right to retain it is disproved to the satisfaction of all the twelve; that every suitor shall be confronted by the proofs, by which he shall stand or fall; that only after a fair hearing, conducted in conformity with these fundamentals, shall he forfeit life, liberty or property. It is right to repeat here the words of Mr. Justice Curtis, used in speaking of another: "Great injustice would be done to this great and eloquent advocate by attributing to him any want of loyalty to truth or any deference to wrong because he employed all his great powers and attainments and used to the utmost his consummate skill and eloquence in exhibiting and enforcing the one side of the case in which he acted. In doing so he but

did his duty. If other people did theirs, the administration of justice were secure."

A large part of the professional life of Judge Dietz was carried on under physical handicaps which would have deterred one of less character and determination. As a result of a severe attack of septicæmia, suffered in 1910, when for months his life was despaired of, he was left with ankylosis of the knee, and that member was in large degree useless. What this affliction meant to him we shall never know, for he never spoke of it, much less complained. We can readily understand, however, particularly when we know of his early athletic life, that the disappointment was deep and poignant, but it was borne as becomes the brave.

No lawyer ever under-estimates the value of a good judge, "profoundly learned in all the learning of the law." We know the unspeakable worth of a high-minded, enlightened, independent, just and humane judge—one whom neither fear, favor, affection nor hope of reward can turn from his course, doing justice though the heavens fall. It is not extravagant eulogy,—it is the considered judgment of his lifelong associates at the bar, who knew him as even your Honors could not have known him,—that Judge Dietz fulfilled this high ideal.

With these few words, inadequate as they are, we must bid farewell to one whom it was a privilege to know and to love.

"The wise Utopians, when death stretched out  
His arm to one of their own peaceful band,  
Wept not for him, nor did paid mourners stand  
About his bed in attitude devout.

"Oh, wisdom sure! They saw how death was stored  
With joy and beauty, when the hopeful soul  
Left fitful strivings toward an earthly goal  
And sped on singing wings to meet its Lord.

"And so, when friend so sure as he has gone,  
Glad in his joy, I should to God have knelt,  
Then followed, singing soft, the hearse behind,  
But midst that throng, where joy shown on each face,  
I should have paused and wept a little space."

I move, your Honors, that this memorial be spread upon the records of this court as a permanent record and memorial of Justice Dietz.

Mr. JUSTICE DUNN :

The court will hear from Mr. Oscar E. Carlstrom, Attorney General of Illinois.

Mr. OSCAR E. CARLSTROM :

*May it please the court*—There is but little I can add to the very beautiful but solemn tribute to the life of a distinguished lawyer, a distinguished gentleman and the promise of a distinguished jurist, who has been so untimely taken from our midst, except to express my personal sentiments regarding the intimate association I was privileged to have with the deceased.

Truly, Judge Dietz was a lawyer who was, in himself and in his conduct, an inspiration to every member of the bar who came in contact with him. It was my privilege to intimately know him. It was also my privilege, as Attorney General of this State, to solicit and receive his assistance in some of the major litigation in which the State has been involved for the last five years. It was to me touching and peculiarly appropriate that in the city of Washington, only recently, before the Hon. Charles Evans Hughes, the special commissioner of the Supreme Court of the United States appointed to hear that great contest between thirteen of the States of the Union, the opposing counsel, Hon. Newton Baker, of Ohio, arose to testify to the respect and esteem that he had come to hold for Justice Dietz; and it is peculiarly gratifying to me that Mr. Hughes, than whom, I believe, there is to-day no greater lawyer, attested with beautifully chosen words the respect which he had for Justice Dietz as an advocate before that court and before the master.

Justice Dietz was possessed of that knowledge, it seems to me, of the underlying principles of the law, which, if one is fortunate enough to possess, may be applied to any given set of facts, with the result that a conclusion will be reached which in almost every instance is supported by the weight of judicial determination. He loved the profession of the law. He gave to it everything in his power, mentally and physically, and we who labored so earnestly to see him honored as one of the justices of the Supreme Court,

did so with implicit faith and confidence that he would become one of the ablest jurists of this State.

Somehow the fourth judicial district has been visited from time to time by a rather hard fate. I remember distinctly, when I was but a lad, the thoughts that were impressed upon my mind when I stood in the cemetery at Aledo and heard the chief justice of this court attest the respect of the court for Justice Guy C. Scott, who also came from our district. We believed and hoped that Justice Dietz would give to this State the service that Justice Scott in his seven years upon the bench had the privilege of giving. I, who knew him intimately, crave the privilege of addressing the court in a more personal way.

Not only was Justice Dietz a great lawyer, but he had those innate characteristics of a great humanitarian. He gave to those in need, and to those whom his services might benefit, all assistance without regard to his own necessities, not only of his physical and mental strength but of his possessions. I stand before this court with all respect for it as an institution protective of and calculated to preserve the vital rights of the State and of its citizens, and feel moved to say that the court, in my judgment, has sustained a great loss, and we in our district feel that we can not recoup, however hard we may try, the loss we have all sustained in the untimely passing of Justice Dietz.

As we stood by the bier only recently and saw the silent form which the day before had been the friend we loved, we could not help but feel, as we must feel in circumstances of this character, that regardless of the value of a man to his day and time, his death in such an untimely and sudden manner moves us to emulate those fine characteristics of loyalty and character which were exemplified so outstandingly in Justice Dietz. Personally, I cannot help but speak with more feeling, perhaps, than any other who participates in this memorial. The ambition of my life was served in the elevation of Justice Dietz to this bench, more than anything that might have happened to me. I bow in reverence to that Will, difficult to understand but yet which governs the destinies of men. We attest the respect, the regard and the love that we had for Cyrus Dietz and the great loss which we all feel in his untimely passing.

MR. JUSTICE DUNN:

The court will now hear from Mr. Charles W. Hadley, a close friend of Justice Dietz.

MR. CHARLES W. HADLEY:

*May it please the court*—When a great chieftain has fallen it is always fitting and proper to gather to commemorate the memory of the departed and pay respect to his sterling worth and character. And so we are gathered here together to honor the memory of one of the great leaders of the bar of this State,—a dominant personality, who has risen to high position by sheer force of his character, ability and industry,—the late Cyrus E. Dietz, and to here make a permanent record of his virtues and achievements for posterity to review.

At this hour, sacred in its nature, our minds revert to other days, to other places, to a face now gone forever, to a voice now silent, to lips that speak no more. A sacred memory, for here we recall the beating of a pure, unselfish, noble heart, with a record of self-denial, service and devotion to his chosen profession and those he represented; a record of achievement and service that will nerve our hearts for further and nobler endeavor. Here, to-day, we turn back the wheels of time. We meet again our old friend. We listen again to his merry laughter. We note again the twinkle in his eye. We feel again the warm grasp of his hand. We feel again his radiant personality. We go down to the shores of the River Time, and here we live over the scenes of other days. We recall memories sacred and dear.

“Oh, a wonderful stream is the River Time,  
As it runs through its realm of tears,  
With its faultless rhythm and musical rhyme,  
And a broader sweep and a surge sublime,  
As it blends in the ocean of years.

“There is a magical isle up that River Time,  
Where the softest of airs are playing.  
There is a cloudless sky and a tropical clime,  
And a song as sweet as a vesper’s chime,  
And June with the roses are spraying.



"The name of that isle is the Long Ago,  
And we bury our treasures there.  
There are brows of beauty and bosoms of snow;  
There are heaps of dust. Oh! we love them so.  
There are trinkets and tresses of hair.

"There are hands that are waved when that fairy shore  
By the fitful mirage is lifted in air,  
And we almost hear through the turbulent roar,  
Sweet voices we heard in days gone before,  
When the wind down the river was fair."

The bar of this State has suffered an irreparable loss in the death of Justice Dietz. Of keen intellect, of unsullied reputation, upright and just, stricken at the zenith of his usefulness, he closed his eyes on the sunset of a useful life that he might behold the more glorious sunrise of eternity. His wisdom, strength of character and charming personality made his service to the community where he resided, to the State as well as to the bar, one long to be remembered.

It was my good fortune to have known Justice Dietz for nearly thirty years. For three years we were members of the same law class at Northwestern University law school. At that time his dominant personality was making itself known as one of the greatest foot-ball stars that university ever produced. Under his leadership Northwestern University was writing athletic achievements seldom equaled and rarely excelled. During those years a friendship sprang up between Justice Dietz, then affectionately known as "Ed," and myself, that is only found among students and classmates—a friendship that grew with the years. Shortly after graduation Justice Dietz located at Moline, and before long his force of character, his industry and ability, made him one of the leaders of the bar of Rock Island county, and soon his prowess at the bar was attracting the attention of the entire State.

Justice Dietz, as a member of the Rock Island county bar, will be remembered as one of the ablest lawyers of that strong bar, and one of the best trial lawyers not only of that bar but of the entire State. He took part in most of the important cases tried in Rock Island county during the time he was practicing there. A

tireless worker, resourceful in application, unselfish in his devotion, his client knew that everything that honorably could be done was being done, and the court that it could implicitly rely upon any representations made by Justice Dietz.

I count it a rare privilege that I was permitted on several occasions to appear on the opposite side of the trial table in some of the cases tried by this distinguished member of the bar. In some of these cases, lasting many days, the feeling between the litigants and persons interested was intense and bitter, yet Justice Dietz throughout the entire time remained calm, fair and dignified; advancing the interests of his client with all his great force and ability, yet never attempting to take an unfair advantage of the opposing side or to unfairly present the cause to the court. In his short connection with this court he upheld its high tradition. As a justice of this court he displayed great learning in the law, fairness and impartiality. In the passing of Justice Dietz the bar of this State has lost a great advocate, the court an able and upright judge, the State and Nation a patriotic and loyal citizen.

Those that knew Justice Dietz best will never forget his great, kindly heart, his jovial good nature and his radiant personality. He was a friend to all, without regard to position, wealth or affluence. His cheery greeting, his hearty handshake, were extended alike to all and on all made a lasting impression. When time has woven about his name her magic spell, it will not be his great ability as a lawyer and advocate nor his great learning as a justice of this court that will be his outstanding characteristic, but it will be his kindly heart, his service to his fellow-men, the fact that he was a friend to man, that will be the outstanding characteristic of his life.

As a friend of his school days, as a member of the bar of this State, as one who has been privileged to contend with Justice Dietz before the courts of this State, in view of the unquestioned fitness and propriety of the resolutions submitted in commemoration of the life and achievements of this distinguished member of the bar, this learned justice of this court, I respectfully ask that these memorials be accepted by this court and spread at large upon the records of this court.

Mr. JUSTICE DUNN :

Mr. Samuel R. Kenworthy, of Rock Island, was a business associate of Mr. Justice Dietz, and we will hear from Mr. Kenworthy.

Mr. SAMUEL R. KENWORTHY :

*May it please the court*—It is fitting that the bar of Rock Island county should join in the motion to have the testimonials of this meeting spread upon the records of this court, for it was in Rock Island county that Judge Dietz performed the greater part of his professional labors. It was in that county that he loved and wed and lived and died, and it was by the district of which that county forms a part that his outstanding services at the bar were so recognized that he was rewarded with election to this great court as a mark of appreciation of an illustrious and honorable career as an advocate and as a citizen, and on behalf of the bar of Rock Island county I desire to second the resolutions of the president of the State Bar Association and to unite in a brief expression of the position which Judge Dietz held in the hearts of his friends and associates at the bar.

It is also fitting that this great court, which in the performance of its labors knows neither friends nor enemies nor obligations, which reaches its authoritative conclusions uninfluenced by human sympathy, should pause for a moment from its usual labors and open up its records to give loving friends the opportunity to bring back the memory of those who die while they are in this branch of the public service, by resolutions and remarks that reflect their opinions of the personal and official character of a departed member of this court and to bestow a last mark of respect upon the deceased.

It is not my purpose to recount a biographical sketch of the life of Judge Dietz. There are lessons to be drawn from his life that do not depend upon the place where he was born, the institutions at which he was educated, the things that he accomplished or the honors which were bestowed upon him, but which can be best appreciated when we examine into his life to ascertain what impression his education made upon his mind, how he developed, what enabled him to do what he did do, and why it was that he enjoyed the love and esteem and confidence of all who knew him. When

his character in these respects is understood we can understand why it was that honors were heaped upon him.

There is a difference between reputation and character. In the books of our profession we early learn that "reputation is what people generally say about a man; character is what he really is." In the literary world it has been stated that "reputation is that which is spoken of a man by his acquaintances; his character is known only to his closest friends." I desire at this time, your Honors, to address this court as a friend of the late Judge Dietz, and to analyze, for the benefit of those who may be interested in his life, his character as it appears to those of us who were honored with his friendship, who enjoyed his confidence and who were permitted to meet him on the intimate terms of close association and friendship.

I know of no greater tribute that can be paid to any man than to state that he was a friend; a true friend; an honest friend; a friend who hastened to be the first to congratulate in success and the most faithful to give encouragement in defeat; a kind friend, who could help and assist with the kindest of words when kindness was helpful; an unselfish friend, always willing and eager to give his associates the full credit for a common enterprise; a loyal friend, who permits no criticism without a defense; a faithful friend, who forgives mistakes; a joyous friend when there is occasion for joy; an intellectual friend, able to entertain and instruct on all occasions. Such a friend was Cyrus Dietz to all who had the privilege of his friendship. Such a friend he was considered by the members of his profession in Rock Island county, and it is as one of his friends from that county that I shall speak on this occasion.

Judge Dietz was adopted into our community. Perhaps no man ever came into a new community who in so short a time was able not only to adapt himself to the habits of the people but to make the acquaintance of so large a number, acquire the confidence of a vast majority of them, and so ingratiate himself into their business life as to make himself an almost indispensable citizen, as Cyrus Dietz did in our locality.

Judge Dietz came into our county in 1904, in the prime of life, shortly after the culmination of a college career and his admission to the bar and after a brief apprenticeship in the practice of his

profession in Chicago. He was a picturesque figure at that time and would have been welcomed in any community. Almost a giant in size, young, strong and erect, every inch an athlete, and with a massive head crowned by a heavy mane of black hair, with strong but handsome features, standing six feet two, weighing over two hundred pounds and in perfect physical condition, fresh from conflicts on the foot-ball field which had brought him national reputation as an athlete, unanimous selection as an All-American half-back and the captaincy of his team, coupled with a high reputation as a foot-ball coach, he attracted immediate attention. And when it was found that he was intellectually as well as physically sound; that he was honest and straight; that his word was as good as his bond; that he was clean and upright in his habits, it is not strange that he was adopted by the community and made a part of it.

Cyrus Dietz took up the practice of the law in Moline, Illinois, equipped as few men are to battle for the rights of clients. He had completed his studies in Northwestern University, in the college of liberal arts, in the school of oratory and in the college of law. He had served a short apprenticeship in the law office of the late William E. Dever, in Chicago. He was well-grounded in the elements of his profession, ambitious and with a few years' practice, when he came amongst us. With enough practice to feel at home in the courts and enough confidence in his own judgment and ability to be of service to his clients, he became, almost from the beginning, a lawyer of recognized ability. As he ripened in experience and judgment he soon established himself among the leaders of his profession.

Judge Dietz would have been a leader in any field of endeavor to which he attached himself. In addition to the qualities that came to him from nature he possessed an industry that was tremendous. He was a dynamic, driving force, in complete control of himself and usually in control of every situation in which he found himself. Naturally brilliant, mentally shrewd, always calm and collected, never impulsive, he augmented these admirable qualities with the most diligent study of the law. Every bit of professional advice he gave was based upon thorough investigation and research. Every legal combat he indulged in was founded on elaborate study and diligent preparation. He made few mistakes, but such mis-

takes as he did make he attributed to insufficient preparation and profited by them.

Judge Dietz was elected a member of this court in November, 1928, to fill a vacancy caused by the resignation of Judge Floyd E. Thompson. He presented his credentials to this court at the December term, 1928. Shortly after his election his health began to fail, and during the holidays of that year he submitted to a serious surgical operation, which sapped his vitality and interfered for a time with his labors on this court. He recovered sufficiently, however, to sit at every succeeding session of the court until his untimely death. The opinions he wrote are to be found in volumes 334, 335, 336 and 337 of the reported decisions of this court. His fitness as a judge is best known to your Honors, who in your conferences must have noted the extent of his legal knowledge, the strength of his reasoning and the soundness of his judgment. His service in this court was too limited to give to those who were not personally acquainted with him, or to posterity, the ability to analyze his character or admire his great store of legal knowledge or his splendid diction, from a perusal of his written opinions.

Judge Dietz's place in the hearts of his friends must be found in a study of his life rather than a study of his opinions. It was as a man, a citizen and a lawyer, rather than as a judge, that he builded the monument that must comfort and satisfy his friends. He sought election to public office on only two occasions. In 1920 he was elected from his district, together with the present Attorney General of this State, Hon. Oscar E. Carlstrom, as a delegate to the constitutional convention which unsuccessfully attempted to draft a new constitution for the people of this State, and in 1928 he was elected a judge of this court. All of his business life, with the exception of his short service in this court, was devoted to the practice of the law. Whatever of success that he enjoyed must be found in the acts that he performed and the services he rendered as a lawyer—a country lawyer engaged in the general practice of his profession. Whatever reputation he earned in the business world was earned in the practice of his chosen profession. He had no other business. From the day he received his license to the day of his election to this court his entire time and energy were given to the practice of his profession and to nothing else. He

had no side lines or investments to distract his attention. He was one of the old school of lawyers who was able to demand and receive liberal compensation for his services but who had little regard for the emoluments of his labors. He died poor in worldly goods but rich in friendships. He was generous to a fault, and took more pleasure in representing those who were unable to compensate him than those who were. No man with a righteous cause was ever denied his services because of a lack of ability to pay. Back in the community where he lived are hundreds of grateful clients faithfully served by him without reward.

In every sense of the word Judge Dietz was a general practitioner. While it was as an equity lawyer and as a constitutional lawyer, advocating propositions of law and equity to the courts, that he excelled, in the conference chamber, as a counsel, that he was most frequently sought by his clients, yet it was in the rough and tumble battles before a jury that he found his greatest pleasure in the practice. He was a trial lawyer of outstanding ability and his management of a contested jury case was a pleasure to witness. Although venturing but seldom into the criminal courts, he was at times induced to defend a friend or some one in whom he became interested, but always he appeared for the defense. There was not that in his nature to prosecute his fellow-man. His was a nature that loved to fight for the constitutional rights of men. While he believed, as all law-abiding citizens believe, in the enforcement of the criminal laws, he firmly contended that more harm was done to society by an unjust conviction than by an unjust acquittal. He was sensitive to the least infraction of the rights and liberties of the citizen. His experience in the practice taught him that in this land of liberty public prosecution was often cloaked with political ambition, and he was quick to lend his efforts in defense of an individual who was a victim, as he thought, of political persecution. But the criminal courts were not to his liking and he was but seldom found there. It was in the civil practice that he achieved his greatest success. In the practice of his profession he was an indefatigable worker. He had the faculty of boring to the heart of a legal principle and was quick to get the real meaning in any precedent he read. His thorough manner of presenting a matter to the courts and the enthusiasm with which he battled for the

rights of his client, as well as the kindly manner in which he presented his case, endeared him to the courts before whom he practiced as well as to his associates and adversaries in the profession, and his extreme courtesy and kindly reference to those opposed to him made worshipers of his clients even in defeat and friends of his adversaries even in victory.

Had it been given to Judge Dietz to grace this court with his presence long enough for your Honors to have become thoroughly acquainted with his abilities, I know he would have endeared himself to you as an associate and as a friend and would have delighted and strengthened you with the accuracy of his logic and his remarkable knowledge of precedent. His presence and bearing gave instant assurance of the possession, on his part, of those qualities of mind and disposition which always attract. His bright and open face, unmarred by those malign passions which so often disfigure with their lines and furrows nature's fair handiwork, gave him an unfailing passport to the good opinion and friendly courtesies of the stranger, and no one ever met the cordial grasp of his hand without feeling that the heart which pulsed through it was filled with every kind emotion. His ardent nature made him an enthusiast in whatsoever he undertook. He never did anything in a half-hearted way. With all the devotion and zeal of a true knight errant he pursued the right as he understood it, yet with a generous courtesy, in which there was not a tinge of arrogance, he was ever ready to receive the counsel and advice of those who differed with him on questions of importance touching private interests or the public weal. He came to sit in this forum fresh from a practice requiring research in almost every branch of the law. He had been all his life a general practitioner, who made himself a specialist in the law applicable to every cause to which he allied himself. His practice took him into nearly every court room in this State. He was frequently found as an advocate in the Federal tribunals. He was privileged to advocate causes of more than ordinary importance. No lawyer in this State enjoyed a wider acquaintance in the profession. By all who knew him he was accepted not only as an acquaintance but welcomed as a friend and comrade, and the lawyers, not only of his district but of the entire State, almost without exception,



who knew him personally or by reputation, were expecting great service from him on this court.

It would be an easy matter for me to mention some of the leading cases which Judge Dietz advocated, but of what interest would that be in this court, which finally determines all controversies that come before it? To attempt a description of his abilities as a practitioner would be to say what could truthfully be said of every brilliant lawyer. He was able, loyal, sound, careful, painstaking. He was not distinguished for the brilliancy of his talents or the grandeur of his conceptions. He did not acquire his influence or achieve his success through the inspirations of genius or by the sheer force of intellectual power. He did not control or sway men by the magnetic influence of superior declamation or force of logic. He was not gifted with the power of originating new and grand rules of human conduct nor did he waste his time on undeveloped theories of legal philosophy, but he possessed the wisdom of prudence and the virtue of patient, untiring industry, which gave him an influence over men. He was quick to apply the axioms and principles of the law to the case in hand. He was a powerful advocate; powerful because he was a complete master of his case; powerful because he was honest and upright; powerful because he was practical, cautious and deliberate; powerful because he combined a high order of good common sense with the most painstaking preparation and with great goodness of heart, guided by an honest desire to arrive at a correct decision. To his good sense he added industry; to his industry, honesty; to his honesty, prudence; to his prudence, patience; and to patience, energy and perseverance. Possessing all these elements of usefulness, stimulated by a lofty and patriotic ambition, he deserved the success he attained, for he was great in his goodness and good in his greatness.

While Judge Dietz was blessed in early life with a splendid physique, which perhaps had much to do with his early success, he was not permitted to enjoy that blessing during the years of his greatest labors. About the year 1919 his system became poisoned with infection supposed to have had its origin in an abscessed tooth, and for many months he lay between life and death with a blood poisoning that attacked most every portion of his body. He

was confined during his sickness, and in convalescing therefrom, for over a year, and as a result of the infection his left knee and ankle became ankylosed and stiffened and for years thereafter he could scarcely walk without assistance. The poison from the infection never left him, and he was frequently prostrated and almost continually in pain. He was a large and heavy man, of extremely muscular build, used to strenuous exercise and delighting in the most active physical contests. When he became afflicted he was deprived of this ability to nourish his body with the exercise to which he was accustomed. To overcome his infirmity and to obtain the exercise his body craved he became a strict disciplinarian of himself, and by means of the strictest diet and most strenuous calisthenics he kept himself in fairly good physical condition. His love of the out-doors prompted him, many years ago, to seek recreation in horseback riding. He was a splendid horseman, and his admiration for horses was such that he was most happy when mounted on a spirited animal which could give him the exercise and excitement he craved. Although on several occasions in recent years he had been thrown violently from his mount and on one occasion again fractured his injured leg, he persisted in this favorite recreation and seemed to need the thrill of riding a horse that was hard to master. It was while engaged in his favorite pastime that he received the injuries which caused his death. On Friday, the thirteenth of September last, while returning from an early morning gallop, his horse was struck by a passing truck, and he was thrown to the ground with such force that he was injured internally and died a short time later at the Lutheran Hospital, in Moline.

Judge Dietz seemed doomed to a life of pain and suffering. His injured leg was fractured on four separate occasions—once in an effort to straighten his leg and three times by unavoidable accidents. The poison in his body brought on complications that required drastic operations at frequent intervals. A goodly portion of his adult life was spent in hospitals and sick-beds or in health resorts in an endeavor to win back a degree of health, yet those confinements were used by him in study and mental efforts to woo his mind away from melancholy. He cultivated habits of cheerfulness. He schooled himself in wit and philosophy. By mental

exercises he quickened the nimbleness of his wit. He found humor in every situation. He made a joke of his physical injuries. He became celebrated as a story teller, and was always able to summon an amusing anecdote to illustrate any point he was presenting. His bedside and sick-room were a rendezvous for friends who came there to extend their sympathy and who stayed to be amused. His sick-room, instead of a place of quiet, was generally, whenever friends were there, a place of riotous laughter and good cheer. He enjoyed visiting with his friends and had that happy faculty of making every friend feel that he was conferring a favor by permitting himself to be entertained. I visited him on many occasions and found him engrossed in study of law. He read the Illinois Reports continuously during his confinement, and could instantly recall to his mind the leading and most interesting of the cases there contained.

I first became intimately acquainted with Judge Dietz when he was first recovering from his illness in 1911. His business was in a bad way and he sent for me to come to his home to discuss certain matters pertaining to his clients' interests, and as a result of that conference I took charge of some matters for him. I thereby became more or less familiar with his business and acquainted with his clients. Later, after his health returned and he resumed active practice, we were associated much together in professional work, and a few years later a partnership was formed, which continued until his election to this court. For nearly a quarter of a century he and I labored together in the courts of our locality to obtain for our clients their just deserts. Prior to the formation of a co-partnership we sometimes sat on opposite sides of the table, but generally we toiled together in the advocacy of a common cause. Not only in business but in social matters we were comrades. Bound together by that confidential intimacy that a co-partnership makes, aided by the intimate associations of travel and social intercourse, always finding pleasure in each other's company, I learned to know him as a friend. And such a friend as he was! Few men are permitted such a friend, and when I endeavor to recall to memory the great accomplishments of his life, they seem to fade into insignificance beside his great and indelible acts of kindness and courtesy.

It does not appear to me to be appropriate on this occasion for me to mention the cases Judge Dietz advocated in the courts. His practice was large and covered many fields. His eloquence rang in many court rooms throughout central Illinois. Wherever he went he formed fast friendships. I have never known a man better equipped to fight for the rights of a client. He had a remarkable memory. His nature was such that he made friends easily. His logic was such that it seemed no effort for him to analyze the most complex situation. With a few minutes' argument he could strip the most intricate problem and reduce it to its component parts. He had a keen grasp of facts, a splendid knowledge of human nature, a diplomacy to meet every situation, and a knowledge of the law and an ability to single out the principles applicable to the case in hand that astonished his associates as well as his adversaries. He was the most versatile lawyer I ever knew, and the most pleasant recollections of recent years are those I spent in his company in the preparation and trial of many cases.

What useful purpose would it serve to state that Cyrus Dietz was a great lawyer? He is gone and no more can he devote his talents to the attainment of right and justice. The ability and characteristics of a great advocate are difficult to analyze. The difference between a lawyer of more than ordinary ability and one of outstanding prominence is a difference of personality which is utterly beyond the powers of language to express. Great efforts which appear almost to be inspired, when brought under the strictest scrutiny are generally found to be the result of long hours of study, application and meditation. I do not know that Cyrus Dietz was a great lawyer. I was too closely associated with him to attempt to classify him. Those great efforts he put forth were seemingly so easy and commonplace to one associated with him constantly that it is hard now to look back at them as out of the ordinary. If to be a great advocate one must know his cause; know the underlying principles governing the case in hand; be able to state those principles clearly; be able to know his facts and marshal them with ease; have eloquence which charms the hearer; be calm and patient and kind; respect his adversaries; be fair; honestly and sincerely believe in the righteousness of his cause; have an enthusiastic desire for justice, a love for right and

a hatred for wrong; then I would say that Judge Dietz was a great lawyer. In the practice of his profession he had all of these qualities magnified to a degree not usually found, but in addition thereto he had a friendly, joyous nature, with a keen and sparkling wit. He had the ability to express his thoughts in the clearest English, with an elegance of diction almost indescribable and with a terseness that was remarkable. His wit was of the kindly variety that left no scars.

The sturdy oak is not more majestic when its arms are tossed wildly about in its battlings with the storms than it is when the gentlest breezes play through its leafy arbors as it shields the earth from the rays of the sun. And so with Cyrus Dietz. In the stormy life of his profession he was a majestic oak, but it was in the calm of social intercourse that he was admired by those who knew him best.

If it please your Honors, the eulogy we pay to a departed comrade is easily spoken but seldom long remembered. Unless some lesson can be drawn from a life that is spent, then the less that is said about that life the better. Words spoken in praise, if exaggerated and insincere, become mere hypocrisy. We record the activities of a life well spent, not to paint a fanciful picture but to state facts concerning him who has departed from us which may be of assistance to those who are left and those who are to come. To the multitudes who knew Judge Dietz no eulogy is necessary. No record here made will in the slightest degree add to his memory or assuage their grief. It is to those who are yet to come, who did not know the virtues of his life, that we must dedicate these words. If among those who may peruse the record of these exercises there be one who is laboring under disappointment of defeat, who is burdened with sickness or pain, who is discouraged by disfigurement, let him know that here was a man who did his best life's work with a body seamed with scars, with a mind tortured with pain and with the handicap of disfigurement; a man who put out of his mind entirely his own discomforts and devoted his life to others, who made others happy when he was sad. He was a wise counselor. He was a great advocate. He was skilled in the niceties of the practice and grounded in the principles of the law. He was an able judge. He was honest,

fearless, impartial and just, but above it all he was a kindly, courteous gentleman, a devoted friend, a delightful comrade, an inspiring associate, of whom it could be truthfully said, "When a favor was asked of him it was he that appeared obliged." He has gone to a court of infinite wisdom, boundless mercy and absolute justice. He performed faithfully all the duties of life. If he had any faults I cannot now recall them. If there were such, we commit them, with him, to the judgment of that Great Court which holds the scales of justice to weigh us all with even balance and omnipotent power.

Mr. JUSTICE DUNN:

We have heard with appreciation the memorials presented in honor of our late associate, Justice Dietz, and Mr. Justice Stone will respond on the part of the court.

Mr. JUSTICE STONE:

It was Thomas Carlyle who said, "Show me the kind of man you honor and I will know what kind of man you are." To have one's name honored by his contemporaries is a greater achievement than the accumulation of great riches, for, after all, the greatest worth-while thing that can come into human life or to one's memory is the commendation of those who knew him best. Not every structure rears its head above the sky line. The perpetual snows of winter rest not on every mountain crest. Perhaps a majority of mankind leave the world scarcely better for their having lived in it. He, therefore, who has by his efforts contributed somewhat to the higher purposes of the civilization of his time rears his head above the sky line of life and encompasses his memory with the praise of his fellow-men. In honoring the memory of one who has been an outstanding force in the important affairs of life we emphasize the value of such a force. It is altogether fitting that there be preserved in this permanent manner these tributes to the memory of our associate. There has been expressed here to-day, as an epitome of a valuable life, all that can, in fact, be said of any lawyer or any judge who in the breadth of his conception of duty discharges that duty well.

Justice Dietz was elected to this court less than one year ago. His service here covered but four terms of the court, yet his

genial friendliness and pleasing personality endeared him to his associates. His fine mind and legal ability and his hearty co-operation in the work of the court won for him the esteem and admiration of the entire court. Coming directly from an active practice of the law, where he for years was the partisan and the advocate, as all successful lawyers must be, he in a remarkably short time demonstrated a marked aptitude for the work of the bench and gave every evidence that had he been permitted to continue he would have developed into a great judge. In his opinions and in his work in the conference room he was fearless, conscientious and able. His analysis of legal problems was unusually keen and clear and was of great assistance to the court.

But the enduring tribute to any great mind is not the spoken word of his contemporaries so much as it is the influence of its able and industrious career. There is usually but little known of the life work of a judge. His labors are to be found within the confines of records and books not read by the public generally, for in them the public has but little interest, but found only in the archives of the court in which he sits or on the shelves of lawyers' libraries. There is but little in such a life to elicit public attention. The glare of publicity or the excitement of public acclaim is rarely turned in his direction. He does not apologize for or explain the opinions of the court, and has no means of defending against the attacks of the vicious or the unthinking other than in the opinions themselves, aided by those whose respect for courts prompts such aid. Yet if he would discharge to its full the duties of a judge he must have pronounced convictions as to the principles of justice underlying human relationship and a determination to further those principles without that popular applause so satisfying to one in the discharge of a public duty. There is for him, however, encouragement in the knowledge that the advancement of the civilized governments of the world has been largely guided by their courts of justice. No statesmen or soldiers rendered more signal service to civilization than have its great judges. True progress has always been orderly progress and always will be. While there are those who decry the courts as too slow and declare that they should give less heed to precedent, yet the greater importance of stability of the law, possible only through due re-

gard for precedent, impresses itself upon all thinking people, and it is usually admitted, after the stress of the period is past and the unrest has subsided, that the courts have been the anchor to windward in times of storm. The aurora borealis causes comment because of its unusual brilliance, but the wonders of the dawn or the soothing beauties of twilight pass almost unnoticed. The mind catches a new or startling proposition and eagerly seeks its conclusion, but the constant adherence to high principle causes no comment, but by such adherence, only, do truth and justice obtain.

Justice Dietz held high regard for the importance of these considerations in the life of a judge, and likewise, through his conception of the purposes underlying government by law, he showed in his brief stay here a broad appreciation and knowledge of the common law and its development. The common law at the time of the magna charta differed widely from the common law of to-day. Civilization has come a long way in seven hundred years, and the courts have drawn from the manners and customs of the people the rules of conduct known as the common law. By this means have been laid the corner stones of government and upon them has its structure been reared. Justice Dietz demonstrated a clear appreciation of the principle that a judge on the bench is not privileged to set up his own wishes in the application of a law or in the determination of the question whether a legislative act shall or shall not be sustained. The judicial department, he well recognized, is but one of the three departments of government. Underlying them all is the constitution, and courts may not violate it either in letter or spirit because they feel that the temporary will of the majority favors their so doing. Because this is so the work of the judge must be done by those willing to accept the importance of the constitution as the foundation of all representative government. Through association with Justice Dietz here and acquaintance with him for years I came to esteem him a man of deep conviction as to these duties of the court and the bar. He was a man possessed of broad sympathies and was ever moved by the equities of the case before the court. But one consideration held his mind, and that was the administration of justice as embodied in the law. His interpretation of the law showed not only a broad familiarity with it, but likewise a keen appreciation



of fundamental justice. He had in him many of the elements of a great judge. His work, though covering but a brief period of time, stands as a contribution to the government of his State. Both as a man and as a judge he is and will be missed here.

Mr. JUSTICE DUNN:

The clerk will cause the memorials and the addresses to be recorded as a record of the court. The reporter will publish these proceedings in the Reports of our decisions. Out of respect for our departed associate and friend the court will stand adjourned until nine o'clock to-morrow morning.

REPORTS  
OF  
CASES AT LAW AND IN CHANCERY

ARGUED AND DETERMINED IN THE

SUPREME COURT OF ILLINOIS.

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VOLUME 337

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN DECEMBER,  
1929, AND CASES WHEREIN REHEARINGS WERE DENIED AT THE  
DECEMBER TERM, 1929, AND FEBRUARY TERM, 1930.

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SAMUEL PASHLEY IRWIN,  
REPORTER OF DECISIONS.

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BLOOMINGTON, ILL.  
1930