

MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS AT THE OCTOBER
TERM, 1940, ON THE LIFE, CHARACTER AND PUBLIC
SERVICES OF THE LATE JUSTICES FRANK K. DUNN
AND OSCAR E. HEARD.

At the hour of nine o'clock A. M., June 10, 1940, other business being suspended, the following proceedings were had:

Mr. JUSTICE STONE, presiding in the absence of Mr. CHIEF JUSTICE JONES:

This hour has been set aside for the purpose of receiving memorials for the late Justices Frank K. Dunn and Oscar E. Heard. The memorial for Mr. Justice Dunn will be presented on behalf of the Illinois State Bar Association by its president, Albert J. Harno, Dean of the College of Law of the University of Illinois.

Dean ALBERT J. HARNO:

May it please the court—I desire to present the following memorial:

"Frank Kershner Dunn was born November 13, 1854, in Mt. Gilead, Ohio, the son of Judge Andrew K. and Emily (Armen-trout) Dunn. He received the degree of Bachelor of Arts from Kenyon College in 1873, and the degree of Bachelor of Laws from Harvard Law School in the year 1875. In 1931, Kenyon College conferred upon him the honorary degree of Doctor of Laws. He was a member of Phi Beta Kappa, honorary scholastic fraternity.

"Returning to Mt. Gilead following completion of his law studies, he was admitted to the bar of Ohio in 1875, and for three years

was associated with his father in the practice of law. In 1878 he came to Charleston, Illinois, was admitted to the Illinois bar, and began the practice of law in this State.

"In 1897, he was elected judge of the fifth judicial circuit of Illinois, serving in that office until 1903. Upon the death of Mr. Justice Wilkin, he was elected to the Supreme Court of Illinois in 1907, representing the third supreme judicial district, and was twice re-elected. He retired from this office in 1933, having been a member of the court continuously for twenty-six years, during which time he served four terms as Chief Justice.

"Upon his retirement from the Supreme Court of Illinois, he re-entered the private practice of law at Charleston, Illinois, and remained active in that practice until shortly before his death on August 7, 1940. On June 13, 1940, the Illinois State Bar Association conferred upon him the title of Senior Counsellor, in recognition of his service for more than fifty years as a member of the Illinois bar.

"On June 1, 1882, he was united in marriage with Miss Alice Trimble, of Mt. Gilead, Ohio, who died in 1930. Three children were born of this union: Andrew, Ruth and Herbert. Herbert died in infancy, and Andrew was killed in action while in service of the American Expeditionary Force in France during the last World War. Miss Ruth Dunn, the daughter, survives."

This, if you please, is a brief and unembellished statement of the principal events in the life of Mr. Justice Dunn. For many years he was an active member of the Illinois State Bar Association. He was highly respected as a lawyer and a judge. He had a host of friends. In a sense his labors are over, but under a wider perspective the fruits of his labors are lasting. His opinions, rendered as a member of this court, are an enduring monument to his memory.

On behalf of the Illinois State Bar Association, I move that this memorial be spread upon the records of this court.

MR. JUSTICE STONE:

The court will now hear from Mr. Fred H. Kelly, of Mattoon.

MR. FRED H. KELLY:

May it please the court—On behalf of the Coles County Bar Association, and as its spokesman, I am pleased to participate in

these Memorial Exercises and to pay tribute to the life, character, and public service of former Mr. Justice Frank K. Dunn.

It has been my privilege to know Judge Dunn and his family for the past thirty years. His son Andrew, who lost his life in the service of his country, and his daughter Ruth, were among my boyhood friends, long before I was admitted to the bar or became acquainted with Judge Dunn in his judicial capacity. Thus I first knew him not as a judge, but as a father and husband, whose greatest pleasure was in his family life.

When I commenced the practice of law, Judge Dunn had been a member of this court for nine years. In our county he was regarded by both the bar and the people, generally, as a bulwark of justice, a judge not only of high attainment but one from whom all knew that every man would receive equal and fair treatment. This high public regard continued and increased throughout his entire life.

Judge Dunn resided in Coles county for over sixty years. Settling in Charleston early in his legal career, he at once became active in the political and civic life of that community. His ability soon becoming apparent, he was selected by his party as a proper candidate for circuit judge, and, upon being elected to that office, served with distinction until shortly before his election to this court. On the circuit bench, Judge Dunn was well known for his absolute impartiality and his unfailing courtesy to litigants, witnesses and counsel.

Upon the death of Mr. Justice Wilkin, Judge Dunn, who had resumed practice after his service on the circuit bench, was again called upon by his party as a candidate, this time for the Supreme Court. He was again successful, and thereafter served as a member of this court for twenty-six years until his retirement.

Judge Dunn was unusually well fitted by temperament for the duties of a judge. He was calm, studious, careful and of sound judgment. His respect for the law and the courts was profound. He well realized that a free judiciary is the defender of our liberties, that without courts uninfluenced by political expediency, executive desire or popular demand, the constitutional rights of our people would soon perish.

All who came to know him soon appreciated his wide knowledge of legal matters and his earnest devotion to duty. He was a strong

man of deep convictions, and did not hesitate to use all of his ability and power to convince others of what he believed to be right and just. Yet, notwithstanding his absorption in his work, he was of a most kindly disposition and enjoyed having his friends, especially local lawyers, drop in to his office at Charleston, where the door was always open. He was especially interested in young lawyers, and was always ready to give them the benefit of his vast knowledge and experience. They often asked him about matters, especially of procedure, at times when he was very busy writing opinions, and when he might well have dismissed them with a few short words. But, on the contrary, he would always make them feel that he was delighted to have them come into his office, and after a pleasant visit, they would depart not only wiser but cheered by their contact with him.

No man is held in higher esteem by those among whom he lived his long and useful life—his home folks—than Judge Dunn. His solid worth is indelibly written into the minds, hearts and lives of his family, his neighbors and his friends.

On behalf of the bar of Coles county, Illinois, I respectfully move that this memorial be received and spread upon the records of this court.

Mr. JUSTICE STONE:

The court will now be pleased to hear from Mr. R. Allan Stephens, secretary of the Illinois State Bar Association.

Mr. R. ALLAN STEPHENS:

May it please the court—Nearness to a mountain peak often distorts the total picture of the landscape, but as the traveller moves away, its details gradually fade while the contour of the entire range rises in grandeur, bringing out, here and there, some peaks towering above the others. In the morning of my professional life, the outstanding peak in the range of the intellectual mountains of the Illinois Supreme Court was Mr. Justice Wilkin. As I look back over the lengthening years, the contours of Justices James H. Cartwright, Orrin N. Carter, and soon thereafter Mr. Justice Duncan, emerge in the first group of members of the court whose personal acquaintance I enjoyed to the end of their days. Today

Mr. Justice Dunn, successor of Mr. Justice Wilkin, looms up in bold relief among the juristic peaks of my early days at the bar.

The year of Mr. Justice Dunn's admission to the Illinois bar was the year of my birth. Twenty-five years thereafter was the last year of his term as circuit judge and my first year at the bar. He presided over the first case in which I appeared in a court of record.

After four years of private practice, when he was a candidate to succeed Mr. Justice Wilkin, I had the honor of being a delegate in the convention which nominated him. Nine years afterwards, I became Secretary of the Illinois State Bar Association, and the following years brought me into many personal contacts with him and his family. He always called me by my first name as though I were a member of that family, and with his passing the cord of personal friendship, which was never strained in the least, has now been broken.

As I recall Judge Dunn as the presiding judge of our circuit court, it seems to me as though he sat on the bench with the actual scales of justice before him. On the one side of the scales he placed the plaintiff's pleadings, and on the other the defendant's pleadings. As the trial progressed, he allocated to the respective sides all the relevant facts produced by the plaintiff and the defendant. On these scales he placed the law applicable to the facts and patiently heard the arguments of counsel. At the close he decided the case the way the scales tipped, regardless of any extraneous, irrelevant facts or outside influences. To change the metaphor, to Judge Dunn a law suit was a mathematical problem, and when the cold figures or logic showed him the answer, he could enter no other judgment.

This trait of Judge Dunn caused his retirement from the circuit bench at the end of his first term. At the close of a case involving rival political factions, bitterly fought out by the best lawyers of that day, he could see only one answer. To his judicial eyes, the scales tipped toward the plaintiff. That was his judgment regardless of the fact that the defendant was allied with the stronger local political faction. At the close of his term, the nominating convention, controlled by that losing faction, chose another to succeed him.

During his twenty-six years on the Supreme Court, Mr. Justice Dunn wrote more than 1700 opinions, and his characteristic fearlessness in stating the law as he saw it is shown in the fact that

he participated in almost 250 dissents and wrote more than sixty of the minority opinions. Particularly significant of this element in his character are his classical opinions in *People v. Board of Education*, 245 Ill. 334, holding that children in public schools cannot be compelled to join in any particular form of religious worship, and *Scown v. Czarnecki*, 264 Ill. 305, upholding the constitutionality of the act which granted to women the right of suffrage in Illinois.

Thoroughness was also an outstanding characteristic of Mr. Justice Dunn. I once heard a lawyer congratulate him upon his opinion in one of the more difficult fields of law. The lawyer added that the bar considered Judge Dunn to be an expert in that field. Mr. Justice Dunn replied, in substance, that the lawyers were wrong. He told us that when he was assigned a case in that field, he first studied the facts carefully and then began to study the elementary principles of law just as though he had never before heard of that subject. Out of his study of the fundamentals, he would take those elements which he felt were applicable to the facts of the case, write the opinion, check it back both as to facts and law, and present it to his fellow-members of the court for their consideration. He added that after the case was decided he proceeded to forget it, and if in the next term he was assigned another case in the same field, he began all over and used the same procedure again as though he were ignorant of its elementary principles.

Any one reading his opinions will soon be struck with this thoroughness of preparation. There is no guesswork in his results. When the facts in the record or law might seem to be vague or uncertain, the law of logic is applied with the result that when we study his opinions we realize that we are reading the law as he sees it and not his personal opinion of what the law should be.

Upon Judge Dunn's retirement from the court, he became an active member of the committee on professional ethics of the Illinois State Bar Association, and by reason of his wide experience was delegated the duty of answering most of the ethical questions which troubled the individual members of the association. Almost invariably, within a day or two of the time the question reached him, an answer, written in his fine Spencerian hand, would be back in the association office settling the ethical question so clearly and positively that there could be no doubt thereafter as to the position

the inquiring lawyer should take on that matter. These opinions were never published, but the reading of any of them shows that there was never any question in Judge Dunn's mind of what was right or wrong when the proper professional attitude of a member of the bar was at issue.

A summary of the life of Mr. Justice Dunn would be incomplete without a reference to his family life. Mrs. Dunn will be remembered by all of us as the charming helpmeet of her distinguished husband. To them came a son who died in infancy, then a daughter, Ruth, and another son, who through their childhood and youth made his home indeed a happy one.

The son, Andrew, prepared to follow his father in the profession of the law, and had reached the point of admission to Harvard Law School when the call of his country took him to the military training camps, and he arrived on the soil of France a second lieutenant in the United States army. His life was snuffed out by an enemy bullet in the first charge as he led his men over the top, and his body still lies in France. For several years thereafter, Judge Dunn and his family made pilgrimages to visit his grave. While Judge Dunn was not reticent about his son Andrew, I never heard him complain or express any unkind feeling over this tragedy. Rather, he seemed to feel that it was a contribution which any American family might and should be required to make in defense of its country.

Mr. Justice Dunn lived the full span of his life in what was perhaps the greatest era of human progress on earth. More methods of improving the living conditions of men were devised and placed in use during his lifetime than in all the prior history of the human race. In these developments, he stands out as one of the outstanding leaders for his scholarly contributions to the progress and development of the law.

In his passing we should not grieve, but rather recount with pride and pleasure his achievements and be glad that he honored us by calling us his friends.

Mr. JUSTICE STONE, responding on behalf of the court:

In recognizing and appreciating the fitness of the resolution offered in memory of Mr. Justice Frank K. Dunn, this court likewise expresses its appreciation of his fine service here. He was

elected June 3, 1907, to fill the unexpired term of Mr. Justice Jacob W. Wilkin, deceased, and served until June 15, 1933. Opinions presented by him extend from volume 228 at page 605, of the reported opinions of this court, to and including volume 353 at page 248. Thus in 125 volumes of the Reports are his labors to be found. For twenty-six years this court and its traditions were his life's interest, to which he gave his entire and unselfish devotion. There can be no finer tribute paid to a judge than to say of him, as was true of Mr. Justice Dunn, that his friends, in thinking or speaking of him, had ever in mind the picture of a judge in all that that term implies and should imply. The best efforts of his life were given to the purposes of justice among men. As Addison put it: "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." To uphold this principle were his efforts given. He eschewed the excitement of public acclaim. He gave no attention or study to popular reaction to his judgments, but with a pronounced conviction as to the principles of justice underlying human relations and a determination to further those principles without that popular applause so satisfying to one in the discharge of a public duty, he sought, to the utmost of his ability, to be just.

There is usually but little known of the life-work of a judge. His efforts are found only in the confines of the records and books not read by the public, for in them the public has but little interest. These books are found only in the archives of the courts in which he sits and on the shelves of the lawyers' libraries. There is, therefore, in such a life but little to elicit public attention. Yet the advancement of civilization has ever been largely marked by her courts of justice. No statesmen or soldiers have rendered more signal service to civilization than have her great judges. True progress has always been orderly progress and always will be.

In times of stress there are those who say that courts are too slow and too much bound by precedent, but it is usually admitted after the crisis is past that the courts have been the anchor to the 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 readily catches a new or startling proposition and eagerly seeks its conclusion, but the constant observance of a high prin-

principle causes no comment, yet, by such adherence only, does truth obtain and justice become established.

Mr. Justice Dunn was a man imbued to a marked degree with the finest traditions of this court and he ever guarded them most jealously. That it should be all that is expected of a court of last resort in a great State, was at all times a matter of his most solicitous concern. His ideals were high; his pride in the standing of this court marked one of the chief characteristics of the man, and even in his last years, after he had declined to seek further service here, his interest in the court did not waver. He was one who read widely and was of a high order of culture, yet he was a man of marked simplicity of character.

It has always been the pride of the American people that our form of government contemplates an independent judiciary. A dependent judge cannot always give a just decision. If public confidence in the courts of the land be not maintained, free government itself is menaced. The confidence which the people of America want to have and must have in their courts embraces not so much a feeling as to the ability of the judges who administer the law, but, far more important, that in administering the rights of parties litigant the judges shall be moved solely by the purpose to declare the law and to do justice, wholly unaffected by personal or political considerations. This not only may the people expect but this must exist if confidence in the courts is to be maintained. I have not, in my acquaintance, known a man more profoundly devoted to that principle than Mr. Justice Dunn. His work in this court shall always stand as a most valuable contribution to the government of Illinois. His helpfulness was recognized and appreciated by all who served on this court with him. Always a logical thinker, conscientious and industrious, his life here was one of great gain to the work and traditions of the court. It was the fine service of a strong man and entitles him to a high place in the rank of strong men who have come and labored here in the interest of justice and have gone.

Mr. JUSTICE STONE:

The court is advised that the memorial for Mr. Justice Heard will be presented by Mr. Cairo A. Trimble of Princeton, a past president of the Illinois State Bar Association.

Mr. CAIRO A. TRIMBLE:

May it please the court—I desire to present the following memorial:

"Oscar Edwin Heard was born in Harlem township, Stephenson county, Illinois, on June 26, 1856, the son of William and Sarah Ann (Swanzy) Heard. He was educated in the public schools of Freeport, Illinois, and attended Northwestern University from 1874 to 1876. After reading law for two years, he was admitted to the bar of Illinois in 1879, immediately opening his office for the practice of law in Freeport.

"He served as State's attorney for Stephenson county from 1884 to 1900, and in 1903 was elected judge of the fifteenth judicial circuit of Illinois. During his successive terms as circuit judge, he was appointed and served as a member of the Appellate Court of Illinois for the Second District from 1919 to 1924. In 1924, he was elected to the Supreme Court of Illinois, representing the sixth supreme judicial district, twice holding the position of Chief Justice during the term which ended with his retirement from the court in 1933. Since 1933 he had engaged in the practice of law in association with his son, Oscar E. Heard, Jr., at Freeport.

"He was prominently identified with the affairs of his home community, having served as a member of the board of education and the public library board of the city of Freeport. He was active in the Odd Fellows and Masonic orders for more than fifty years, attaining the honor of the thirty-third degree in the latter organization. He was a charter member of the Freeport Country Club.

"Ever interested in the service of his profession, he served as president of the Stephenson County Bar Association, and from 1919 to 1924 was a member of the board of governors of the Illinois State Bar Association. On June 13, 1940, that association conferred upon him the title of Senior Counsellor, in recognition of service for more than fifty years as a member of the Illinois bar.

"On December 25, 1879, he married Miss Mary J. Peters, who preceded him in death on June 12, 1929. An only daughter, Mrs. A. T. Youngs, died on August 26, 1939. His son, Oscar Edwin Heard, Jr., survives.

"Judge Heard died at his home in Freeport on July 15, 1940."

On behalf of the Illinois State Bar Association, I move that this memorial be spread upon the records of this court.

MR. JUSTICE STONE:

The court will hear from Mr. Charles H. Green, president of the Stephenson County Bar Association:

MR. CHARLES H. GREEN:

May it please the court—Mr. Justice Oscar E. Heard—1856 to 1940—eighty-four years. What a long span of years to have been lived through by one man! Yet those are the years during which Judge Heard lived; the years during which he enjoyed life (and none enjoyed life to a greater degree than he) even up to his last years; the years during which he built his character and achieved his great success.

And what years they were! Years filled with industry, usefulness, achievement, friendships, kindness, charity, public and private service and devotion to family; years alive with activities in many fields of endeavor; years of greatness and accomplishment in the legal profession, both at the bar and on the bench; years during which no position of power attained as lawyer, judge or public servant could rob the man of the joy of living and of service to others.

The bar of Stephenson county, Illinois, the lifelong home of Judge Heard, asks what more could any man wish? An able lawyer, a fair, just and good judge, a loyal friend, a willing and useful public servant in other activities than the law, a devoted family man, and one who enjoyed life in all its aspects was Judge Heard. He also was a kind and good neighbor. I know. I have lived across the street from him for many years.

Now for fear I may be thought to have been overly influenced in my judgment of him by reason of the charm of his personality and my neighborly association I shall marshal other evidence of the qualities enumerated.

On June 13, 1940, a month before Judge Heard's death, the Illinois State Bar Association issued to Judge Heard a preferred privilege certificate of Senior Counsel, from which I quote:

"He has set an inspiring example of devotion and fidelity to the duties and obligations of an attorney and counsellor at law, of leadership and useful participation in the public affairs of his community, State and Nation and of those commendable personal qualities that characterize those who best exemplify the high ideals of

the profession of the bar as officers of the courts in the administration of justice."

Hanging in the office of Judge Heard during his lifetime was a resolution adopted by the Illinois State Bar Association at its fifty-seventh annual meeting held June 23, 1933, beautifully printed in long hand, which I personally know Judge Heard prized dearly. And well might he. I, therefore, your honors, ask permission to offer another exhibit of the worthiness, sterling qualities and character of Judge Heard. I quote from the resolution the portion bearing on those qualities, omitting, to save time, the felicitations extended him therein:

"WHEREAS, The Honorable Oscar Edwin Heard, Justice of the Supreme Court of Illinois, from the sixth judicial district, retired from the membership of that court during the June term, 1933, it therefore has become appropriate to make the record of our estimate of his character and career: * * *

"Both as Appellate and Supreme Court Justice it was only on very exceptional occasions that he appeared at conferences without written opinions prepared in all the cases assigned to him. His willingness to devote his time and energy to the work of the court proved most helpful during a period in which the docket was unusually heavy and the consequent burden most arduous. His many written opinions will ever remain as a monument to his fidelity to the constitution and laws of Illinois. Among these opinions those of *Fergus v. Marks*, holding that reapportionment is a specific legislative duty, for failure to perform which the legislature, alone, is responsible to the people, and *MacGregor v. Marks*, deciding that the primary interest to be considered in the location of a road is that of the State at large and not a particular locality, are typical of his love for justice to all.

"His unabated interest in his fellow-citizens has made him a leader in the civil activities of his community, and throughout his career he has participated with an inspiring enthusiasm in the activities of the organizations related to the profession of the bar. That the lawyer should and can take an active part in public affairs has been evidenced by the record of his life, giving to the profession a worthy example of its place in the conduct of human affairs.

"Coupled with this interest in public service, he possesses a congenial disposition that has won for him many friends throughout

the State. Although his life as a judge was an extremely busy one, he thoroughly believed in and always was interested in the organized bar. In this connection he served three terms as a member of the board of governors of the Illinois State Bar Association."

And now, in conclusion, may I submit that to me one of the most lovable traits of Judge Heard's admirable qualities was his loyalty to his friends and devotion to his home life. His friendship recalls to mind the following poem:

"Some friendships are like silver,
They shine when skies are gay,
But when the clouds have gathered,
They somehow turn to gray,
Some friendships keep their luster,
Through shadows, darkness, cold,
For friendships like you've given
Are made of purest gold."

MR. JUSTICE STONE:

The court will now be pleased to hear from Mr. William D. Knight, of Rockford.

MR. WILLIAM D. KNIGHT:

May it please the court—It is a privilege to speak at this memorial service for my friend, the late Mr. Justice Oscar E. Heard.

Born near Freeport in Stephenson county he lived his entire life of eighty-four years in that city and county, over sixty of which he served as a member of the bench and bar of this State.

Admitted to the bar at the age of twenty-three Judge Heard was elected State's attorney five years later. He served his county in that capacity, ably and well, for sixteen years. Probably no office in the State gives its incumbent a better understanding of the people of his county, their thoughts and their problems, than that of State's attorney, and this long service gave him this broad experience. During the twenty-one years Judge Heard served as a circuit judge he completely fulfilled his duties as a judge of his circuit, held court in Chicago a great deal and was on the Appellate Court for the Second District for five years. When Judge Heard was elected Justice of the Supreme Court for the sixth supreme judicial district in 1924 he came to the court in the full maturity of years and with the breadth of experience and knowledge

gained as a State's attorney, as circuit judge, and as a member of the Appellate Court.

A student by nature and methodical in his work, Judge Heard possessed the ability to work rapidly. As a Justice of the Supreme Court he was justifiably proud of the fact that he gained a reputation for always keeping up with the heavy demands upon a member of the court in the writing of opinions assigned to him, and also of the fact that he not infrequently assumed additional work when the occasion demanded. The Reports of this court covering the years he was a member have made this ability and reputation a matter of record. An omnivorous reader, Judge Heard did an immense amount of reading in fields outside of the law.

Judge Heard loved his profession. He showed this devotion by active service for it, serving as president of his county bar association, by serving for many years as an active member of committees of the Illinois State Bar Association and serving very faithfully as a member of the board of governors of the Illinois State Bar Association for several years.

A man of boundless energy Judge Heard seemed to be tireless in whatever activity he was engaged. To illustrate, three members of the bar, his juniors by a generation, recalled, at the time of his passing, a golf game in which they and Judge Heard participated as a foursome at the time of one of the State Bar meetings. It was a very warm day and the foursome had a prompt start and finished early. The other members were ready to stop when the eighteen holes were finished, but Judge Heard urged them to play nine holes more and led the way, leading his weary juniors for another hour and a half on the course. At another similar meeting in another city the golf of the afternoon was followed by a dinner dance. After a long, busy day, there were not many dancers on the floor and the ones there began to leave early. Judge Heard was the first person on the dance floor after dinner. He was the last to leave and when some of the others were ready to wend their weary way to their rooms Judge Heard was observed organizing a bridge game which continued for an hour or two after that.

Outstanding characteristics of Judge Heard were his gentleness, courtesy and kindness. The younger men at the bar had a friend in Judge Heard. He had time for them and many possess memories of his thoughtful suggestions and assistance. Judge

Heard understood and was fond of people. His friendly and sympathetic nature made him easy to approach by those who came to him with their problems. He was warm-hearted and magnanimous. He was most agreeable and companionable, socially and in sports.

Judge Heard was a respected and valuable citizen in his community. He had the particular admiration, respect and loyalty of the members of the bench and bar of his own county who had grown up with him and who knew him best.

In the passing of Judge Heard, Illinois lost a kindly gentleman, a good citizen and an able judge.

MR. JUSTICE STONE:

Mr. Justice Shaw will respond on behalf of the court.

MR. JUSTICE SHAW:

The other members of this court have deemed it appropriate that I be designated to respond to the memorial which has been presented for the late Mr. Justice Oscar E. Heard. This selection is based on the fact that I have had a longer personal acquaintance with Judge Heard than any other present member of the court; that for thirty years I lived as a neighbor to him; that I practiced as a lawyer before him in the circuit courts of our home community and the Appellate Court for the Second District where he served for a number of years. I am glad to accept this responsibility because of my long friendship with Judge Heard which was intimate and undisturbed from the year 1910 until his death in 1940.

Much has been said, and much more could be, concerning his work on this court. No special memorial concerning that work or his work in the Appellate Court is particularly needed. What he did in the Supreme Court and in the Appellate Court for the Second District is permanently a part of the official archives, for all to read who will. That part of his life which is not a part of the public records is mostly to be found in the recollections and minds of his fellow-citizens in the northern part of the State where he was so long a public servant. Few of these things are a matter of record, but I wish that some of them may be made so. All of those who read the published reports of decisions of this court know of his judicial attributes as a judge of a court of review. They know of

his great ability to analyze a case in which he was assigned to prepare an opinion. They know that he could reduce it to its essentials, bring it down to one or two decisive points, and decide those points directly and succinctly. They also know of his willingness to refrain from commenting on contingencies not before him in the record then under consideration, and to refrain from the use of *dictum*. These judicial attributes are now recorded, and well known to the profession. What I wish to do on this occasion is to place of record some account of his life and service to the people which is generally known only in that section of the State from which he came, and where he rendered forty years of public service before he became a member of this court.

Those things concerning Judge Heard which I am now desirous of placing of record are a matter of first hand knowledge with me in so far as they concern things subsequent to 1910; and as to prior years are well known as a matter of general reputation in Freeport and throughout the fifteenth judicial circuit. I know whereof I speak because I tried my first lawsuit before Judge Heard and many of them thereafter until he became a member of this court in 1924. I had the opportunity not only of knowing him personally and well, and observing his judicial conduct on the circuit bench, but of being entirely familiar with the general speech of the people and general opinion of the members of the bar concerning him. It is these things which may be lost from public recollection unless they are now recorded. Many of those who practiced before him are now dead; and of those who are left there are few, if any, who will have an opportunity to make this record while it is still fresh in the minds of those with personal recollections.

The outstanding characteristics of Judge Heard in the trial of lawsuits were fairness, brevity, promptness in ruling, and the preservation of absolute order and dignity in his courtroom. An objection before him brought a prompt and decisive "sustained" or "over-ruled," and nearly always without comment. With young and inexperienced lawyers he sometimes deviated from this to be helpful. If the young man found himself struggling with an improper form of question as to some competent or material matter, Judge Heard would sometimes say "You may ask him 'so-and-so,'" phrasing the question in proper form. It was his general rule of

conduct to let the lawyers try their own cases without interference from the bench, and, with the exception above noted, it was a very rare thing for him to make any interpolation of his own. As a result of these habits of judicial conduct he deservedly obtained a very enviable reputation as a trial judge and justly earned the confidence and respect of attorneys and litigants, but as to the attorneys he possessed one other attribute which was always deeply respected. In this I refer to his treatment of counsel before the bench. While he never forgot, nor permitted any one else to forget, the dignity of his position, he never took advantage of it. He accorded to each attorney who appeared before him that patient and respectful consideration which he exacted in return. Never did he fail to realize that the attorney before him was limited in what he might say to the court; that his position as judge was one of superior advantage, and his innate courtesy and consideration was such that he never for one moment took advantage of his superior position. Never did he say anything to an attorney before the bar which the attorney might not, with equal propriety, have said to him. Never did he say anything to the discomfort of a respectful and decorous counsel. His attitude was firm but friendly, and every lawyer who appeared before him felt that he had been treated courteously and amiably.

In his private life Judge Heard had thousands of friends, and the general reputation of having had no enemies. He was always a valued member of the community at Freeport where he lived, and was always interested in public and civic matters. He served for many years on the library board and board of education in Freeport, and was always prominent in Masonry, attaining the thirty-third and last degree in that fraternity. He was a devout member and regular attendant at the Presbyterian church. The core of his life, however, and the one thing to which he always gave all, was his family. Never at any time to the day of his death did he permit anything to remain undone which he might, by any possibility, do for any or either of them. He had children, grandchildren, and great-grandchildren, and each of them found warmth in his heart, a readiness to worry about their troubles coupled with a willingness and anxiety to be of service. He has left those of them who survive with a rich legacy of a memory of helpfulness and loving kindness from their distinguished ancestor.

Like all of those who survive to such a great age, his later years were necessarily clouded with grief. He was forced, as all aged people must be, to survive the death and endure the grief attendant on the passing of most of the friends and relatives of his youth. His wife preceded him by several years, and in the very closing years of his life he was forced to live through the critical and extreme illness of his son, and the sudden death of his only daughter. These things he apparently bore with fortitude, but those who knew him well could see that they had taken their toll, and on the fifteenth day of July, 1940, he died. His passing was as peaceful and painless as if a kindly nurse had drawn a protecting curtain around his weary couch. The people of his home community will always treasure his memory.

MR. JUSTICE STONE:

The memorials to the late Justices Frank K. Dunn and Oscar E. Heard, and the remarks relating thereto, will be spread upon the records of this court, and the Reporter of Decisions will publish them in the Reports. As a further mark of respect to their memory this court will now stand adjourned.

REPORTS
OF
Cases at Law and in Chancery

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VOLUME 375

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN DECEMBER,
1940, AND FEBRUARY, 1941, AND CASES WHEREIN REHEAR-
INGS WERE DENIED AT THE FEBRUARY, 1941, TERM.

SAMUEL PASHLEY IRWIN,
REPORTER OF DECISIONS.

BLOOMINGTON, ILL.
1941