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William W. Morrow

ON October 5, 1891, Judge Morrow was inducted into office as United States District Judge, in the presence of the leaders of the bench and bar. A few who were present on that occasion joined the judges and lawyers of the present generation to do honor to Judge Morrow on the thirtieth anniversary of his judicial career. Appropriate remarks were made by J. F. Sullivan, president of the San Francisco Bar Association, and E. J. McCutchen, a leader of the Federal bar, who referred felicitously not only to Judge Morrow's work on the bench, but to the many activities in which he has served his profession, his country, and his fellowmen. For this REVIEW Mr. Jury has written an appreciation of Judge Morrow's decisions.

An account of Judge Morrow in the CALIFORNIA LAW REVIEW would be incomplete unless it carried to him the expression of affection of the students whom he has made his friends. He has endeared himself to the school by his contributions to this REVIEW, his kindly responses to student requests, his unsolicited courtesies and favors, his presence at student gatherings, the soundness of his advice, the delightful reminiscences, the personal interest in individual students. Judge Morrow has often referred to his fellowship with young men and it is the best wish for the next generation of students that it may have Judge Morrow as the friend and companion that he has been to the past. *Editor.*

American history is replete with instances of men who, although coming from the humblest walks of life and experiencing most trying hardships in their boyhood and youth, yet have persevered in the pursuit of an ideal and earned for themselves positions of eminence in public life and the lasting esteem of their fellowmen. Something of romance must necessarily characterize the careers of men of such sturdy type as the subject of this sketch; and the sweep of events,

especially where it extends back into pioneer days, must add a special interest to the survey.

The history of William W. Morrow, the venerable jurist who has just completed thirty years of service on the Federal bench, is both unique and striking as an example of success achieved through service. When in 1862, young Morrow, then only eighteen years of age, rode with a party of adventurers from Santa Rosa to Oregon, and while lost, wandered along the Day River in Oregon and discovered there the rich placers that caused Canyon City to spring later into being, no one not endowed with the gift of prophecy could have seen in this hardy youth one who later would be an arbiter of many of the great issues that arise in the Federal courts.

Judge Morrow, in youth as in his later life, has ever been an indomitable worker. While it is true, no doubt, that

"There's a divinity that shapes our ends
Rough hew them how we will,"

nevertheless it is realized—and by youth especially—that without the "hewing" on its part even "divinity" cannot turn out a finished product. It is to be expected that one in whom devotion to duty has ever been a passion should not be found wanting in the various positions filled by him in the course of the years. A deep-grained, never-failing honesty of purpose, coupled with native good sense, helped Judge Morrow over many an obstacle that might have proved insuperable to those devoid of these qualities, although, perchance, better equipped in earlier life than he with the advantages that the higher educational institutions afford. Possessed of a strong body and a fund of almost uniform good health, and being scrupulously temperate in all his habits of life, he has always answered the call to service. And so, whether at work on an Illinois farm as a lad helping a widowed mother, or in the saddle among the Indians in Idaho, or following the "Old Chisholm trail," or mining gold in the mountains or on the rivers, or serving as a school teacher, or working as a treasury clerk, or representing the state as a congressman, or serving the nation as counsel or assistant United States attorney, or as a jurist, Judge Morrow performed every duty which devolved upon him, conscientiously and to the best of his more than ordinary ability.

The wide range of Judge Morrow's decisions, first as a United States District Judge and later as a United States Circuit Judge, is apparent when it is remembered that they are found here and there, throughout more than 200 of the 276 volumes of the Federal

Reporter. And these decisions must serve as a memorial of his contributions to American law. It is, of course, obvious that only a few of the decisions can be spoken of in a brief sketch such as this, and these can be touched upon only in a general way.

While presiding in the District Court of the northern district of California, Judge Morrow upheld the reputation established for that court by his eminent predecessor, Judge Ogden Hoffman. This court cares for the admiralty and maritime business of the port of San Francisco. But aside from cases in admiralty, the court has had to do with many intricate questions in other branches of the law.

One of the earliest cases decided by Judge Morrow involved many intricate problems in the law of extradition. This case, *In re Ezeta*,¹ harks back to the days of almost incessant revolutions in the southern republics and was an application by the republic of Salvador in Central America for the extradition of five persons variously charged—three with murder, one with attempt to murder, and one with robbery. The alleged offenders had been military officers of Salvador, who, at the time of, and as a result of the overthrow of the government by revolutionary forces, sought refuge on the American gunboat "Bennington" which was then in the port of Salvador. They claimed that their extradition was sought that they might be put to death by the revolutionary party then in control of the government. It appeared that all the alleged offenses except the one involving the charge of attempt to commit murder were offenses of a political nature, committed within the military law of Salvador, and hence not subject to extradition. Extradition, therefore, was granted only as to the offense of attempt to commit murder.

Another case involving certain revolutionary conditions is *McLeod v. 1600 Tons of Nitrate of Soda*,² in which it was held that where a Chilean port was blockaded by the de facto government, but where conditions did not operate to prevent the loading of a cargo on a ship, but where the cargo was not delivered because the sellers did not choose to take the possible risk of being required to pay the export duties a second time in case the de facto government should fall, the charterers were liable for demurrage and there was no actual vis major within the exceptions of the charter party which included "the act of God, political occurrences, fire," etc.

The Salton Sea cases³ were heard before Circuit Judges Gilbert,

¹ (1894) 62 Fed. 972.

² (1893) 55 Fed. 528.

³ (1909) 172 Fed. 792, 97 C. C. A. 214; 172 Fed. 820, 97 C. C. A. 242.

Ross and Morrow, Judge Morrow writing the opinions. These cases involved questions touching the right to divert waters from the Colorado River and to maintain works near the boundary line between Mexico and California. It was held that such works may be enjoined by a court of equity where, because of their improper construction, they cause the flooding and injury of lands within the jurisdiction of the court, notwithstanding that such works are located across the boundary line within the Republic of Mexico.

The law of conspiracy came into exhaustive review by Judge Morrow in *United States v. Cassidy*,⁴ a case which grew out of the famous Pullman strike in July, 1894. This case is a notable one in its application of the rule that when an unlawful end is sought to be effected, and two or more persons actuated by a common purpose of accomplishing that end work together in any way in furtherance of the unlawful scheme, every one of such persons becomes a member of the conspiracy, although the part he was to take in it was a subordinate one, or was to be executed at a remote distance from the other conspirators. The charge to the jury in this case is said to be the longest ever delivered in a criminal case in this country and only exceeded in any case by the charge of Lord Chief Justice Cockburn in the *Tichborne* case.

Perhaps the most famous case decided by Judge Morrow as district judge is *In re Wong Kim Ark*,⁵ in which it was decided that a child born in the United States of parents of Chinese descent who, at the time of his birth, are subjects of China but have a permanent domicile and residence in the United States and are there carrying on business, becomes at the time of his birth a citizen of the United States by virtue of the first clause of the Fourteenth Amendment of the Federal Constitution. This case was later affirmed by the United States Supreme Court on appeal.⁶

A series of interesting cases in which Judge Morrow participated as a member of the Circuit Court of Appeals are those generally known as the Nome cases.⁷ The thrilling facts of these cases gave rise to Rex Beach's famous book "The Spoilers." These cases arose out of efforts on the part of certain "jumpers" of mining claims on Anvil Creek, near Nome, to take over and control the mining properties through the aid of receiverships granted ex parte by Arthur

⁴ (1895) 67 Fed. 698.

⁵ (1896) 71 Fed. 382.

⁶ (1898) 169 U. S. 649, 42 L. Ed. 889, 18 Sup. Ct. Rep. 502.

⁷ *In re Noyes* (1902) 121 Fed. 209, 57 C. C. A. 445.

H. Noyes, Judge of the District Court at Nome, to an intimate friend, one Alexander McKenzie, who had acquired the "jumpers'" titles. The scheme worked successfully for a time, yet not without much turmoil in and about Nome. Applications for appeals were denied by Noyes, and petitions and their accompanying papers were later forwarded to the Circuit Court of Appeals at San Francisco. Judge Morrow passed upon these and allowed appeals in all the cases. In due course demand was made upon McKenzie for the restitution of the property in accordance with the directions of the writs, but McKenzie refused to obey the processes of the court, whereupon two deputy United States marshals proceeded to Nome, enforced the orders—not however without hearing threats of death—broke open vaults that McKenzie would not open and recovered over \$200,000 in gold-dust taken from the claims in controversy, and lastly arrested McKenzie and brought him to San Francisco to answer to an order to show cause why he should not be punished for contempt of court. McKenzie applied to the United States Supreme Court for a writ of certiorari but this was denied, and he was later convicted of the charge of contempt and suffered a term of imprisonment. Judge Noyes also was afterward punished by fine for contempt—sentence of imprisonment not having been imposed because this would effect a removal from office. His removal from office followed, however, after an investigation by the Department of Justice under the direction of the President. The full history of the Nome cases has been written up by Judge Morrow himself and appears in a previous number of the CALIFORNIA LAW REVIEW.⁸

Among the more recent decisions of Judge Morrow may be named the *Fireman's Fund Insurance Company v. Globe Navigation Company*,⁹ in which the questions as to constructive total loss in marine insurance are ably treated. A still more recent case is that entitled *Marconi Wireless Telegraphy Company of America v. Kilbourne & Clark Manufacturing Company*.¹⁰ This last-named case relates to the very technical subject of patents of wireless instruments and devices. The decision bristles with the technical terms of the new and important science of wireless telegraphy and reveals in a marked way the very accurate and painstaking quality of Judge Morrow's mind.

As to the method and viewpoint of Judge Morrow in writing

⁸ 4 California Law Review, 89.

⁹ (1916) 236 Fed. 618, 149 C. C. A. 640.

¹⁰ (1920) 265 Fed. 644.

a decision, it is to be noted, that he proceeds cautiously from point to point—never hastily nor impulsively—and hence it is that his decisions are as a rule buttressed with ample authorities. He is a judge and a gentleman of the old school, leaning rather toward precedent than toward experimentation, and choosing the tried and beaten paths of conservatism rather than those which lead into unexplored fields. It is not meant by this to disparage the work and ideals of many of those who do not regard the precedents of the past with quite as much reverence as judges are usually inclined to entertain. The world needs the bold and daring type of men as well as those whose allegiance is first to those institutions that have been tried by the fires of experience. No doubt this same general bent of mind affords a basis for Judge Morrow's expressed preference in his general reading for the works of such authors as Dickens, Thackeray, Irving, Bret Harte and Wilkie Collins. He is satisfied to let others decide upon the right of later writers, such as Ibsen, George Bernard Shaw, H. G. Wells, and others, to niches in the Hall of Fame; and he would be the last to deny them that right. Here also it is well that all types have their devotees; that in literature as in law there exist checks and balances to steady the impulsive flow.

In recognition of his learning and ability as a jurist, Judge Morrow was selected to write the introduction to "California Jurisprudence," an exhaustive work covering in a series of treatises on all subjects the laws and decisions of California from the time of the foundation of the state. Judge Morrow's article evidences an intimate knowledge of the development of the laws of the state both through legislative enactments and judicial decisions, and is regarded by the profession generally as a masterful and important contribution to our legal literature. Much valuable and authentic historical information was gathered for the article and an idea of its importance and scope may be given by noting that, aside from its historical matter, it traces and analyzes the state's contributions to the law on many vital subjects of present interest.

For his distinguished services in the law, Judge Morrow has been honored by the University of California and by an eastern college with the degree of Doctor of Laws. Besides, three presidents of the United States, Benjamin Harrison, William McKinley and William Howard Taft, have honored him, the first two named in the matter of his judicial appointments, and Mr. Taft in recognition of his services in Red Cross work.

On the completion of his thirty years of service on the Federal

bench, the San Francisco Bar Association tendered a reception to him in the courtroom of the United States Court of Appeals, on which occasion Jeremiah F. Sullivan, president of that Association, and Mr. Edward J. McCutchen, of the San Francisco bar and a member of the Association and one of the leaders of the Federal bar, reviewed the work and services of Judge Morrow in an able manner.

As an American, Judge Morrow has always manifested an exalted patriotism and his activities throughout the period of the great war in the various bond drives and in Red Cross work have been formally recognized by the American National Red Cross Society of which he was one of the incorporators. Valuable social service has been given by him also through the Carnegie Foundation of which he is a trustee. His interest in and devotion to the work of these great philanthropic organizations have kept him abreast of modern events and have made him keenly solicitous for the welfare of men everywhere.

While during the time of the writing of this article Judge Morrow has been indisposed, it is to be hoped that he will soon recover his usual good health and that he may be spared for added service in his many fields of earnest endeavor.

John G. Jury.