

On October 3, 1949, preceding the calling of the docket, the following proceedings were had:

MR. CHIEF JUSTICE HARVEY:

The court desires to hear the memorial to the late Mr. Justice Hoch which will be presented by Mr. Justice Parker

MR. JUSTICE PARKER:

The court pauses this morning to honor and pay respect to the memory of a departed colleague whose services and achievements on the bench, at the bar, and as a citizen are concededly so noteworthy and outstanding in nature as to warrant action resulting in the permanent preservation in its records of a fitting testimonial to his character.

Justice Hoch, of whom I speak and have the privilege of paying this tribute on behalf of the court, was born in Marion, Kansas, on July 4, 1879. His boyhood days were spent in Marion where he attended the public schools and graduated from the high school of that city in 1898. Later he attended Baker University where he graduated with high honors in 1902. The son of a newspaper man he then went back to Marion where he assisted his father in editing the *Marion Record* and might well have continued his career as the prospective promising publisher of one of the oldest and best known newspapers of his native state. However, the youth was not through with his education. Ever yearning for more knowledge and mindful of the opportunity it afforded for better and bigger things he left Marion at the end of a year and entered George Washington University at Washington, D. C., for the purpose of obtaining a legal degree. But this was not yet to be. Before he could achieve this goal he was called back to Topeka where he served as secretary to his illustrious father, E. W. Hoch, who had been elected governor during his absence, and ably assisted him in rounding out two successful terms as the chief executive of Kansas. Later he entered Washburn University where he was awarded a law degree and was admitted to the bar. He then returned to Marion prepared to embark upon what was destined to be a long and successful public career.

From 1909 until 1919 the young attorney practiced law in Marion and at the same time edited the *Marion Record*. Limits of time and space preclude extended reference to his achievements in that interim. It suffices to say that he was successful in both fields and soon attained a well-deserved reputation as a reputable practicing lawyer and as a promising journalist. With such a back-

ground it was only natural that he should be called to public service. In the fall of 1918 the people of the fourth Kansas congressional district elected him to the house of representatives where he served his district, his state, and his nation with honor and distinction for seven consecutive two-year terms until 1933. Returning to Kansas in that year he was appointed by Governor Alf M. Landon as a member of the state corporation commission. He was retained as a member of that body until 1938, serving as its chairman during the major portion of that time, when in recognition of the same high type of public service characterizing his tenure in congress he was nominated by the Republican party and later elected by the people of the entire state as a justice of the supreme court, assuming that position in January, 1939.

The newly elected justice brought with him to the court well-rounded experience in two of the three basic branches of constitutional government, legislative and administrative, which in and of itself was an admirable background for effective service in the third, judicial. This experience, coupled with a keen and penetrating mind, his legal training, his capacity for sustained productive work, his ability to develop the principles of decision by persuasive argument and to write easily with graceful lucidity, his complete fidelity to the highest interests of government as an institution and his innate desire to see justice done between his fellow men, early insured him of the success which was to be his as a jurist.

In his approach to a determination of the legal questions treated in his opinions, as well as those written by his fellow justices while he was a member of the court, Justice Hoch was industrious in his research. His views when expressed always reflected mature thought and deliberation and were the product of independent reasoning. Even when not in accord with those of the majority they were always fortified by legal precedent and supported by plausible argument. Once announced he was persistent in their advancement and adhered to them with tenacity. Notwithstanding he was never pugnacious in their assertion and ever ready to subscribe to the viewpoint of others upon honest conviction. Tolerant in conference, he never antagonized his associates and, even at the close of spirited discussion and argument, always retained their admiration, affection and friendship.

During his career of just twenty days more than a decade as a jurist Justice Hoch wrote 271 formal opinions for this court,

covering all phases of the law. He also wrote seventeen concurring and thirty-one dissenting opinions. Those opinions can be found in volumes 149 to 166, both inclusive, of the Kansas Reports. Always carefully prepared and fortified by logical discussion of the subject under consideration they are written in clear and vigorous English and are models of legal exposition.

Up to now, except for essential preliminary historical data, our attention has been limited strictly to what, for want of a more apt term, I choose to call the public career of our late friend and colleague. This memorial, however, would not be complete without some reference to his worth and work in everyday life as a man and private citizen.

Of his family life it can be said that in 1905 he was married to Edna Wharton who died in 1935. They were the parents of two children, a son, Wharton Hoch of Marion, now the editor of the *Marion Record-Review*, and a daughter, Jean, now Mrs. L. L. Saylor, of Topeka. In September, 1938, he married Ruth Harrison Beatie, now of Topeka, with whom he lived in happiness during the last ten years of his life. It should be added that throughout his entire career his home was the center of his life and that ever the loving husband and father he made it a true symbol of what is often referred to as the bulwark of the American Republic.

A scholar, gifted as a fluent public speaker and literary genius, he was ever ready and willing to share his talents with others. Those surviving him, who have listened to his public addresses and read his literary efforts and profited, are legion. One of many, but perhaps the most notable contribution made by him to Kansas literature, was his stirring tribute to Lincoln which has attained national renown and is now regarded as a classic American utterance. On the occasion of the one hundred and fourteenth anniversary of the Great Emancipator's birth he wrote:

"There is no new thing to be said of Lincoln. There is no new thing to be said of the mountains, or of the sea, or of the stars. The years go their way, but the same old mountains lift their granite shoulders above the drifting clouds, and the same mysterious sea beats upon the shore, and the same silent stars keep holy vigil above a tired world. But to mountain and sea and star men turn forever in unwearied homage. And thus, with Lincoln. For he was mountain in grandeur of spirit, he was sea in under-voice of mystic loneliness, he was star in steadfast purity of purpose and of service. And he, too, abides. The years go their way, but with the name of Lincoln childhood still learns to voice a patriot's devotion, and with the name of Lincoln tears are called from old men's eyes. And there is no new thing to be said of him. But while the republic endures, upon whose altar he laid

his great mind and heart, while liberty is cherished, while civic virtue and service and sacrifice are honored in the earth, the name of Lincoln will be spoken in undying love by the sons of men."

As a citizen Justice Hoch was clean, conscientious, public spirited and sincere. Always he was to be found on the right side of issues involving moral questions. Ever a student of government he was noted for his calm intellectual approach to all public questions. To him the constitution of the United States was an almost sacred document. In it he saw the deep wisdom of the founding fathers and fought to limit changes in the safeguards they had set up for the perpetuation of free government to the means therein provided. Under its mandates he had an abiding faith in the future of his country. As if in answer to those who might at some future time have the temerity to dare challenge that faith and confidence he once said:

"I voice to-day an abiding confidence that in the gracious guidance of the Over-ruling Providence that inspired the founders of the republic, America will not fail her trust. Somehow, through an organized planning of our economic life; through some better system of distribution; through better methods of coöperation; through some reorganization, it may be, of our financial system; through some new dealing with the problem of monopoly; through better means of equalizing the tax burdens; through social-welfare legislation that is fair and reasonable; through the leadings of an enlightened public conscience voiced in press and pulpit and forum; through trial and error and steady endeavor; and above all else through the leavening of public education, alive to the tendencies and consecrated to the work of spiritualizing—if I may use the term—the mighty forces of the classroom, America will meet the issue and keep the faith."

With all the activities to which I have referred it might be inferred that the one we honor today had no time for the spiritual side of life. Not so. He was a man of deep religious convictions, prominent in the councils of his church and freely participated in carrying on its work. More than that he lived his Christian beliefs from day to day and enhanced his religion with a cheerful practical application that brought comfort, joy and satisfaction to the members of his family and his countless friends.

In recognition of the value of his activities as a churchman the religious denomination to which he belonged honored him by making him a trustee of two of its important educational institutions, Baker University, of Baldwin, Kansas, and Southern Methodist University, of Dallas, Texas.

Early in the morning of January 31, 1949, the members of this court were shocked to learn that in the late hours of the preceding

evening our associate had been summoned by the omnipotent power that guides the destinies of us all to the mysteries of the great beyond. The vicissitudes of life had exacted their toll and the tired heart of him who had given so much to his family, his friends, his state and his nation, ceased to function. Our sorrow and the widespread grief occasioned by his death was intensified by the fact, that only sixty-nine years of age with mental faculties matured by long training and perseverance, he appeared to have many years of public service before him. Thus, cut off in midafternoon, as judicial careers are recognized, ended the career of our esteemed colleague.

Homer Hoch, son of Kansas, eminent jurist, distinguished statesman, gifted speaker and writer, successful editor and journalist, devoted husband and father, beloved friend and associate, christian gentleman, patriotic and outstanding citizen, has gone the way of all the earth—down the long, long trail. He has paid the debt which all the Sons and Daughters of Adam owe to nature. After life's fitful fever he sleeps—and well. Peace to his ashes; rest to his soul. We mourn his loss but in his passing glory in the thought that he left behind him a record of which this court, his family, and his fellow citizens may ever point with pride.

MR. CHIEF JUSTICE HARVEY:

The clerk is directed to file a copy of the memorial in the records of the court and to transmit a certified copy thereof to Mrs. Hoch. The reporter is directed to prepare and publish the memorial in the next bound volume of our reports.

MR. CHIEF JUSTICE HARVEY:

The court desires to hear the Memorial to the late Mr. Justice Cowan which will be presented by Mr. Justice Arn.

MR. JUSTICE ARN:

In this courtroom the destiny of our state has been and will be guided, and the fortunes, human successes and lots of life of its populace in a measure determined. Likewise, the thoughts and words of those of this court who have gone before will guide their colleagues who remain. So, it is most fitting and appropriate that we gather here to honor the memory of a former colleague, Justice Austin M. Cowan, who, though for a comparatively short period, served on this court with honor and distinction; and who, for some thirty-eight years in the practice of law, won the respect, esteem and affection of the bench and bar.