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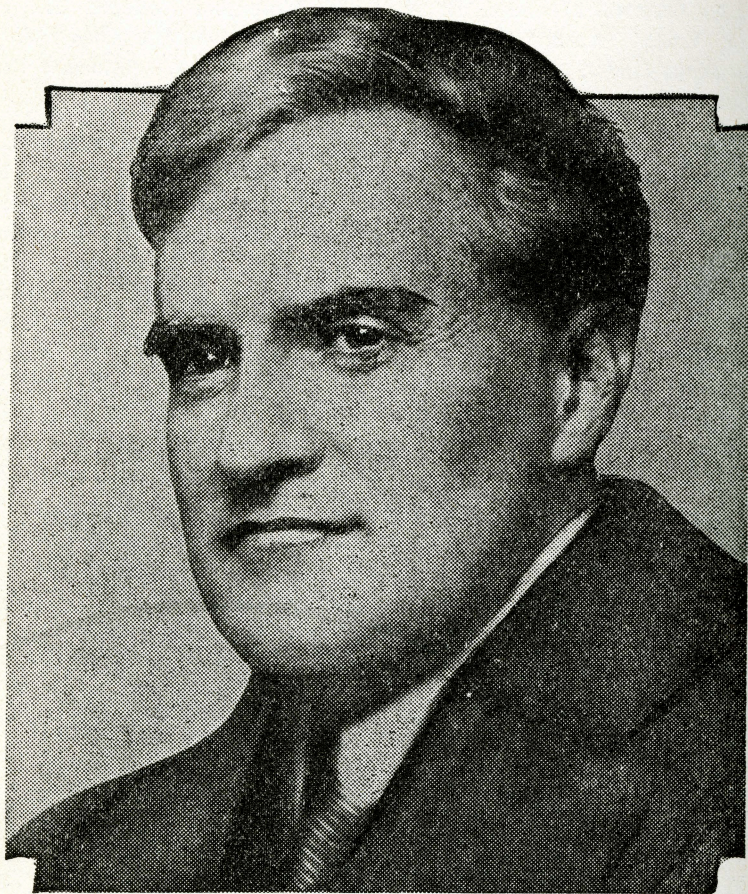
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JUSTICE BENJAMIN N. CARDOZO



“PHILOSOPHER, LIBERAL, HUMANITARIAN, CARDOZO
IS TO HOLMES AS HOLMES WAS TO MARSHALL.”

EDITORIAL

CARDOZO SUCCEEDS HOLMES

After Holmes—Cardozo. The nation's leading jurists resemble each other in so many respects that President Hoover would have found difficulty overlooking Benjamin N. Cardozo as successor to retired Oliver Wendell Holmes. Qualified to the letter Cardozo at sixty-one takes a place in the United States Supreme Court. The nation's gain has been New York's loss.

Since 1914 Cardozo has been the dominant power of the New York Court of Appeals. In the last five years its chief justice ex officio. Wielding a widespread influence, the reputation of the New York court has advanced materially in recent years largely because of the confidence placed in its most capable leader.

Philosopher, liberal, humanitarian, Cardozo is to Holmes as Holmes was to Marshall. These outstanding personalities have given tremendous prestige to American administrative justice. Given less to dissent than Holmes, Cardozo is reluctant to wander from standard rules. His expedite measures in quashing the unnecessary delays in administration have won him the admiration of conservatives. In his decisions freedom of thought and speech is defended in beautiful English. First and foremost he is a scholar.

Underlying his opinions is what might be called a human value formula; that law is servant of mankind and not the converse. He does not sacrifice this "human value" for logic. He has often voiced his attitude on third degree brutalities, pointing out evil consequences and their effects. In compensation cases his affiliation has been with the workman to the extent of allowing damages in cases where employees were injured going to and from work. He upheld acts forbidding night work for women in factories.

Cardozo had been on the bench but a short time when he rendered one of his most famous decisions.¹ The question of responsibility of a manufacturer of automobiles to remote purchasers had been a much debated issue with considerable argument to support both the liability and non-liability view. Contrary to the law as laid down in *Cadillac Motor Car Co. v. Johnson*,² Cardozo, in the *MacPherson v. Buick*

¹ *MacPherson v. Buick Motor Co.*, 111 N. E. 1050 (N. Y. 1916).

² 221 Fed. 801 (1915), rev'd in 261 Fed. 878 (1919) following the *MacPherson* case.

Motor Co. case,³ answered the question in the affirmative, maintaining that the manufacturer was liable. In part he said: "If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we are required to go for the decision of this case. There must be knowledge of a danger not merely possible but probable."⁴

In *Hynes v. New York Cent. R. Co.*⁵ he allowed the mother of a sixteen year old boy who was killed as the result of a flying electric wire which struck the lad as he was about to dive from a springboard, to recover. The case goes far to exemplify his attitude in justice regardless of pressure that might be brought to produce the opposite result. With all this he has the respect of every large corporation lawyer in New York who many times have found him unwilling to compromise his philosophic humanitarian views with their particular problems.

The New York Wrongful Death statute allowed recovery only to persons killed while driving within the state of New York. A resident of the state of New York on business traveling through Massachusetts was struck and killed by a Standard Oil truck.⁶ Cardozo upheld the Massachusetts act which allowed recovery; his persuasive controversion playing the major role in the concurring deduction of the other judges. This manifests vividly with what regard his foresight and reasoning is held.

When the Soldiers Bonus Issue presented itself in New York, Cardozo came to the defense of the War Veteran to show that the proposed bonus was not unconstitutional and not incongruous with a statute then in effect providing in substance that no state funds should be loaned to individuals or corporations. Openly taking sides with the "Dough-Boy" he said that nothing was to be inferred from the statute which would prevent the state from rewarding its public servants.

He has taken a constructive as well as a judicial stand on legislative matters, at times striking at fallacies of acts and at other times suggesting legislation. For example, he showed the aforesaid inade-

³ *Op. cit. supra* note 1.

⁴ *Op. cit. supra* note 1, at p. 1053.

⁵ 131 N. E. 898 (1921).

⁶ *Louchs v. Standard Oil Co.*, 120 N. E. 198 (N. Y. 1918).

quacy of the Dead Man's Statute and the misconstruction of the individual and corporation loans act. His proposal to make insanity a ground for divorce was subsequently acted upon by the legislature. In attempts to clear the slum districts in New York, to free them from spread of contagion, Cardozo in promoting the Multiple Dwelling Act ameliorated the living conditions of thousands of unfortunate people whose life theretofore had been at best a mere existence.

Cardozo's life has been a lesson in the value of American liberality. Like Spinoza, whose forefathers were driven from Spain, Cardozo's ancestors were forced to leave Portugal by the Inquisition. What the former has been to philosophy Cardozo is to law. His early legal adventures were appeals which he argued for busy lawyers. Exhaustive in research, profound in reading, aggressive in controversy he soon drew the respectful attention and later the unstinted praise of those with whom he came in contact. He is the author of three remarkable books: *Nature of Judicial Process* (1921); *The Growth of the Law* (1924); *Paradoxes of Legal Science* (1928). In these he illustrates his humane philosophy. He is forever seeking knowledge and like other careful judicious seekers is forever finding it. His works and decisions are fountains of diversified intelligence. From these rich sources the stream of the Cardozo influence flows out to enrich the whole field of American Law.

Francis Adams is said to have uttered a sigh of satisfaction as he reflected that he had gone through his life without making a conspicuous ass of himself. Says Cardozo: "This is my own *paen* of jubilation at the end of each Judicial year." To his *paen* of jubilation we enthusiastically join our own.

Edward C. Massa.