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## John G. Johnson, Lawyer

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it to a beneficial use is entitled to a priority of right to the use thereof as against the world. And further, that the same rules of law apply to the appropriation of underground waters which do not and cannot reach the stream and become a part thereof as are applied to the appropriation and adjudication of rights in the waters of surface streams.

Among the numerous decisions of our Supreme Court in which the foregoing rule was announced and applied, may be cited: Ripley vs. The Park Center Land & Water Co., 40 Colo. 129; San Luis Valley Irr. District vs. Rio Grande D. District, 84 Colo. 99; Leadville Mine Dev. Co., vs. Anderson, 91 Colo. 536; Dalpez vs. Nix, 96 Colo. 540; De Haas vs. Bennis, 116 Colo. 344.

In conclusion, it seems clear to me that the trial court in this proceeding has logically reasoned and accurately adopted and applied the existing rules of law to the specific problem with which it had to deal.

## John G. Johnson, Lawyer

By HENRY McALLISTER  
of the Denver Bar

I read in the March, 1948, *Dicta* a very interesting address on "Judah P. Benjamin, Lawyer and Statesman" by Hon. John W. Delehant, Judge of the United States District Court for Nebraska.

After reading it, I concluded that when time permitted I would submit to *Dicta* some remarks concerning a man who, in my opinion, was the greatest lawyer ever produced in America, measured by the magnitude of his labors in and out of the courts. That I undertake now.<sup>1</sup>

This man's career ended only by his death in 1917, about 30 years ago, and as indicative of the fleeting reputation of a great lawyer, I doubt whether prior to that time 10% of his contemporary Colorado attorneys ever heard of him. I reduce that percentage now to 5% of the present members of the bar.

His name was John G. Johnson, born in 1841, at Chestnut Hill, a suburb of Philadelphia, the son of a blacksmith and a milliner in straightened circumstances. He died at the age of 76, still active in his profession in Philadelphia. He graduated from a Philadelphia high school, studied law in a law office and before he was thirty years old, was one of the outstanding lawyers at the Philadelphia bar, proverbial for its eminence. From that time on, by extraordinary genius and labor, he advanced rapidly in his profession and when he died, was acknowledged by all who knew, or knew of, him as the unquestioned leader of the entire American bar. Upon his death many columns of Eastern newspapers, especially in Philadelphia and New

<sup>1</sup> For many statements in this article I am indebted to the biography of "John G. Johnson", by Barnie F. Winkelman of the Philadelphia bar. (Univ. of Pa. Press, 1942.)

York, including their editorial columns, were filled with eulogies of this marvelous man.

The limits of this article do not permit reference to all tributes respecting him. I mention only two. Chief Baron Palles, a renowned Irish jurist, on a trip to America, stated that he most wanted to meet the man who was the greatest lawyer in the English-speaking world. Mr. George Wharton Pepper, now probably the leader of the Philadelphia bar, in his work "Philadelphia Lawyer," states that John G. Johnson was the most stupendous man he had ever known. It is estimated that during his career at the bar, he appeared in from 1,500 to 2,000 cases, large and small, before the Supreme Court of Pennsylvania, covering the whole gamut of jurisprudence, though perhaps those involving estates, wills and trusts were the more numerous. Prior to the establishment in 1886 of the Atlantic Reporter (containing Pennsylvania decisions), he was repeatedly before that court. I venture to say that no volume of that Reporter (about 100 in number to the date of his death) failed to contain not only one but many of his cases. Recently, I selected at random one volume and found that he had been in 15 cases before that court. Many he won, others he lost, in some instances probably because he was called in after trial, and assumed a lost cause.

#### **More Than A Corporation Lawyer**

Many called him by a title which is anathema to me, "a corporation lawyer." As presently indicated he represented great corporations, but at the same time no case was too small for his advice and assistance. It is reported that the late and original J. P. Morgan arranged for special trains to take him from Philadelphia to New York for consultations. Finally this became monotonous to Johnson and he stated, in substance, that "if those New York fellows want to see me they can come to Philadelphia," and if they came, as they did, and Johnson was at the moment in conference with some poor washerwoman on her troubles, they would have to cool their heels in the anteroom until he got through.

Johnson appeared as counsel in many great cases in the federal courts and especially the Supreme Court of the United States, but his prominence there was emphasized in controversies arising out of the Sherman Anti-trust Act of 1890. One of the first cases reaching the Supreme Court was the *Knight* case raising the question as to whether a monopoly in sugar refining at Philadelphia constituted a violation of that act. While Johnson nominally represented the Knight Company, in fact he represented American Sugar Refining Company. In brief, the court held that the mere manufacture of sugar did not constitute interstate commerce (156 U. S. 1).

Johnson's victory in that case brought him into instant prominence in the later great anti-trust cases before the Supreme Court, and in all of which he was counsel. The first of these was the *Northern Securities* case involving

the practical merger of the Northern Pacific with the Great Northern (193 U. S. 197). Johnson represented the Northern Securities Company, but he lost by a 5-4 decision. It has been said (perhaps with exaggeration) that his argument before the Supreme Court in that case was the greatest ever delivered, and also that he received a fee of \$500,000.00 for his services. The loss of that case was somewhat compensated by his success in an aftermath which provided that the shares of stock of the railroad companies acquired by Northern Securities should be distributed to its stockholders pro rata and not, as Harriman demanded, to the two interests which had transferred them to the Securities Company (197 U. S. 244).

Johnson also appeared in the *Standard Oil and Tobacco Company* anti-trust cases (221 U. S. 1, 106); and also in behalf of *United States Steel Corporation* (223 Fed. 55), though he died before the Supreme Court's decision in that case (251 U. S. 417).

While the later decisions of the Supreme Court whittled away its first decision in the *Knight* case and practically overruled it *sub silentio*, Johnson never admitted or recognized that fact and in all of the later decisions above mentioned he relied upon that case, though without much success.

#### Laconic "John G."

But these prodigious labors in litigation were but a small part of the work conducted in his office involving transactions, some small and others of greatest importance, concerning corporate reorganizations, trust and a multitude of others. His preeminence at the bar was so well-recognized that many prospective litigants would get together and say let us submit this to "John G." This was done, and his decision was final. His opinions were often laconic but convincing. It is reported that on one occasion when he was vacationing in Europe certain prominent financiers were considering a large corporate merger and cabled him for his opinion. His reply was "Merger possible, conviction sure."

Of course, he had a number of able assistants in his Philadelphia office, but the office was simplicity itself. His door was always open for either rich or poor.

In marked contrast with this is the story included in an address by Robert T. Swaine, one of the present leaders of the New York bar, before the Law Club of Chicago in December last, and repeated in *American Bar Association Journal* of February, 1949. Referring to a story which went the rounds in New York in the '20's, he said:

\*\*\*In the new multifloored offices of a large firm the soft green walls of the reception hall had just the right number of oil paintings, the lighting was subdued; the rugs were deep-piled; and the managing partner took great pride in the pulchritude of his feminine clerical staff. One day, so the story goes, a brusque but successful oil

prospector from Oklahoma came in. As he was kept waiting, he became restless but also interested in the beautiful young stenographers passing through the reception hall to an upper floor. Turning on her most seductive smile, the receptionist asked if she could not get him a drink, assuring him that if he wanted a highball it was available. 'Yes,' said the client, 'I guess I will have a drink, but I don't think I'll go upstairs'."

### Foibles and Fables

Johnson was a man of great physical as well as mental stature. He was not a polished orator or speaker, but his arguments were powerful and were limited to hammering on the points which he considered controlling.

Like all great mentalities, Johnson had his eccentricities or foibles, some of which might not appeal to American lawyers. Twice he was offered a place on the Supreme Court of the United States and twice he declined, when he was comparatively young at the bar. He never joined the American Bar Association. Often when he finished his argument in a court he would pick up his papers and go out without waiting to hear from his adversary. He shunned publicity. When he received a form from "Who's Who in America" for his autobiography he would throw it in the waste basket and the publisher would be required to prepare a home-made biography reading "Johnson—John G.— corporation lawyer, Land Title Building, Philadelphia, Pennsylvania." His charges for services were the plague of those associated with him who were required to restrict their charges by those he fixed for himself. He received large compensations along with small amounts, but upon some occasions he would return a check for his services, and the trembling clients would apologize and state that they would pay whatever he asked. He would say "send me one-half of that amount, my service did not justify the amount you have sent me."

His one avocation was the assembling of rare paintings and portraits, many of which he personally collected on vacations in Europe. These he placed on every wall and in every nook and corner of his plain house on Broad Street, Philadelphia, a few blocks from his office. On occasions he ordered certain of these placed on the ceiling over his bed in order that he might study them. In his will he left this collection valued at millions of dollars, to the city of Philadelphia, to be preserved in his house. This became impossible because of the change in the character of the neighborhood and the insufficiency of the facilities for public inspection. Apparently under the principle of *cy pres* they were established as the Johnson Collection in the Philadelphia Art Museum.

If Johnson could awaken to all that has happened since his death, the growth of administrative law, the creation of innumerable boards and bureaus, tax courts, etc., he would lament the past but doubtless apply his great in-

tellect, restricted though it would be, to the far less attractive field than the one he had left.

Consecrating himself to the law he did not attain prominence in the public eye as such contemporaries as Joseph H. Choate, Elihu Root or Charles Evans Hughes, to name but a few, who achieved great reputations in public service, but in the magnitude of his labors in the pure field of law he surpassed them all.

The bar will never see his like again.

### San Luis Valley Elects New Officers

Information has been received from retiring-president Richard E. Conour that the following new officers were elected for the San Luis Valley Bar Association on May 9: John I. Green, president; and Gordon H. Rowe, vice-president. For the 27th consecutive time, Ralph C. Ellithorpe, court reporter for the 12th Judicial District, was elected secretary-treasurer.

After a long period in the military service, Eugene A. Bond has resumed his practice in the Bank Annex Building, Leadville.

Henry P. Hays of Pueblo has moved his office from 420 Colorado Building to 311 Thatcher Bldg.

Hugh B. Kellogg of Denver has moved his offices from 808 E&C Bldg., to the new Service Investment Co. Bldg., at 1421 Court Place.

James A. Sweeney has moved his offices from the Patterson Bldg., in Denver to 1537 Wadsworth Avenue, Lakewood.

Worth Allen, Frank P. Lynch, Jr., and Philip A. Rouse have all moved their offices from their former suite in the E&C Bldg., to 322 Majestic Bldg.

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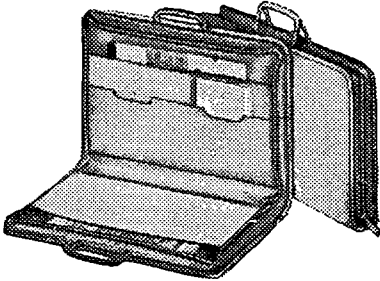
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