

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

DOCUMENT No. 144

MEMORIAL OF JOSEPH PARKER KIRLIN

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ASSOCIATION.

Joseph Parker Kirlin, a member of this Association since its foundation in 1899, died in the City of New York on December 22, 1927.

Mr. Kirlin was born in Scranton, Pennsylvania, on December 5, 1861, and was the son of Elias Hiram Kirlin and Elizabeth Roberts Kirlin.

His early education was secured at a high school at Scranton, and at Keystone Academy at Factoryville, Pennsylvania.

Before commencing his college course he had acted as business manager for the late Frank Hefright at Huntington in the construction of Government improvements on the Great Kanawha River in West Virginia in 1877 and 1878.

Mr. Kirlin's father was a civil engineer and in 1880 when Mr. Kirlin arrived at college age he was living at Parkersburg, West Virginia, and was engaged on the construction of a railroad in West Virginia. Consequently it was quite natural that Mr. Kirlin should enter the University of Virginia and commence his college course there. He did this in the autumn of 1880, and he always looked back with the greatest delight on the two years he spent there.

Mr. Kirlin was at the University of Virginia from 1880 to 1882. He did not take a degree there, but came north in 1882 and entered Columbia. There he took the degree of Ph.B. in 1883, and the decree of LL.B. with honors from the Columbia Law School in 1884.

After his graduation from Columbia, Mr. Kirlin continued the study of law, first in the office of Charles Swan at Charles-

ton, West Virginia, and later in the office of Charles E. Crowell and Edward S. Hatch in New York City.

In the Fall of 1884, Mr. Kirlin entered the office of Ebenezer Buckingham Convers, who was just commencing to represent British shipping interests here, and there Mr. Kirlin began the life-long association with admiralty and maritime law with which he was continuously and actively identified until he suffered a stroke in March of 1922.

In 1889 Mr. Kirlin became a partner of Mr. Convers under the firm name of Convers & Kirlin.

On January 7, 1891, he was married to Elizabeth Burt, by whom he had two children, Ralph Kirlin, now resident in Santa Fé, New Mexico, and Elizabeth Louise Kirlin, now the wife of Cletus Keating.

The firm of Convers & Kirlin continued until Mr. Convers' death in 1905. Thereafter the style of the firm remained unchanged, although in 1908 John Munro Woolsey and Charles Ralph Hickox were taken in as members. In 1915 the firm name was changed to Kirlin, Woolsey & Hickox, and in 1917 Cletus Keating became a member of the firm.

In 1920 Ira Alexander Campbell, who had practiced law in San Francisco, joined the firm and the name was changed to Kirlin, Woolsey, Campbell, Hickox & Keating. William H. McGrann, Charles T. Cowenhoven, Jr., Robert S. Erskine and Leslie deG. Potter, who had long been associated with the firm, were then taken into partnership.

From the beginning of his association with Mr. Convers it became clear that Mr. Kirlin had found the specialty for which he had a peculiar aptitude.

During his long career at the admiralty bar, Mr. Kirlin came into contact with practically every kind of case that could arise under our maritime practice.

There were many opportunities open for a man who commenced the practice of maritime law at the time when Mr. Kirlin joined Mr. Convers. Maritime law was fast developing both its substantive and procedural aspects during the years immediately following.

Various changes in the maritime law were being made, and changes in the law always mean litigation.

After a series of international conferences new international rules for avoiding collisions at sea were embodied in a statute approved on August 19, 1890, and on February 13, 1893, the so-called Harter Act was enacted.

By the establishment of the Circuit Court of Appeals in 1891 as the final court to which appeals in admiralty cases could be taken as of right, a new forum was created, and consequently new questions of procedure arose.

The Harter Act, especially, because it involved the relation between ship and cargo, necessitated much litigation in order to construe its scope and meaning.

Mr. Kirlin had many cases in the United States Supreme Court which involved the construction of this act, but it was on a matter of practice that he made his first appearance there. His first case in the Supreme Court was *In re New York & Porto Rico Steamship Company*, 155 U. S. 523 (1895), and involved an application for a writ of prohibition against the Honorable Addison Brown, United States District Judge for the Southern District of New York, who was developing a practice in admiralty for which there was not any specific authority in any rule or decision of the Supreme Court by which he brought in third parties who might be considered to be liable for the damage complained of by the libellant, or from whom the respondent claimed to be entitled to indemnity.

Mr. Kirlin was successful in this case and from it grew the third party practice in admiralty which is one of the important characteristics of our admiralty procedure. The decision which Mr. Kirlin secured in the New York & Porto Rico case has been crystallized by the present rules of the Supreme Court.

When the Spanish War broke out, Mr. Kirlin found himself suddenly and unexpectedly called on to defend many Spanish vessels in the Prize Courts of the United States. His successful defense of the coastwise fishing vessels in the case of *The Paquete Habana*, 175 U. S. 677 (1900), in which he secured damages against the United States for wrongful capture, 189 U. S. 453 (1903), constituted, perhaps, his greatest contribution to international maritime law. The opinion by Mr. Justice Gray, which sustained Mr. Kirlin's contention and freed the fishing vessels,

was largely based on authorities submitted in Mr. Kirlin's brief, and has since been often cited as one of the great international law cases.

In another celebrated Spanish War case, *The Styria*, 186 U. S. 1 (1902), Mr. Kirlin sustained the position that a ship-master who had reasonable ground to fear capture if he sailed with contraband on board was justified for the safety of his ship and other cargo in discharging the contraband before starting on his voyage.

Mr. Kirlin was always a master of the facts in his cases. In the art of direct examination which is usually somewhat disparaged in favor of its somewhat more showy sister art—cross-examination—Mr. Kirlin shone. When he had finished the examination of one of his own witnesses the facts were concrete things visible “in the round”—and not mere shadows, or even mere bas-reliefs.

Mr. Kirlin was exceedingly thorough in his preparation for trial and in getting a comprehensive grasp of the material facts of his cases.

An illustration of his thoroughness in everything which he undertook is that he read and made digests of every collision case in the Supreme Court reports before he had ever had a collision case in his practice.

As time went on Mr. Kirlin became better and better known as a collision lawyer, for collision cases involve many detailed and complicated questions of fact.

His first collision case in the Supreme Court was *The Victory and The Plymothian*, 168 U. S. 410 (1897), in which he succeeded in reversing a decision of the Circuit Court of Appeals in which Mr. Chief Justice Fuller had sat and for which he had written the opinion. It is perhaps unnecessary to state that the opinion of the Supreme Court reversing the Circuit Court of Appeals was also written by Mr. Chief Justice Fuller.

Mr. Kirlin's reputation in collision cases resulted in his often being engaged as counsel in other important maritime litigations.

He had the unique distinction of having been counsel in the cases arising out of the three greatest maritime disasters of the past generation. He was counsel for the passengers and others

who were claiming damages in the case of *LaBourgogne*, 210 U. S. 95 (1908); for the White Star Line in the case of *The Titanic, Oceanic Steam Navigation Company, Ltd. v. Mellor*, 233 U. S. 718 (1914); and in the case of *The Lusitania*, 251 Fed. 715 (1918).

He was unsuccessful in the case of *LaBourgogne*, but in the other two cases maintained his contentions.

His last collision case in the United States Supreme Court was *Lie v. San Francisco & Portland S.S. Co.*, 243 U. S. 291 (1917), in which he was counsel for San Francisco lawyers.

Mr. Kirlin's experience in and knowledge of marine insurance and general average law was great. He was chairman of the Association of Average Adjusters of the United States in 1918-1919.

One of his most celebrated cases was *The Jason*, 225 U. S. 32 (1911), in which he succeeded in maintaining the validity of a general average clause in which cargo agreed to pay general average in case of a general average arising as the result of negligent navigation with respect to which the shipowner was relieved from liability by statute.

In the early part of 1914, Mr. Kirlin was thrown from a train on the Long Island Railroad as it went around a curve near Glen Cove, Long Island. He fell on his neck and shoulder on a grassy slope. It was remarkable that this fall was not fatal to him. Fortunately, however, he escaped with only a very severe shock which kept him confined to his house for some weeks. It is believed, however, by many of his friends that the jar of this accident was what led to the stroke he suffered in March, 1922.

Mr. Kirlin was just recovering from this accident when the Great War began in August, 1914. Its coming apparently stimulated him into renewed activity and from the very commencement of hostilities he was continuously in demand to advise on subjects of international law and international trade.

He represented the shipowner in the first case in which the British captured a prize. That was the case of *The Leda*, condemned in Bermuda, and subsequently released by the British as an act of grace, owing to the fact that although *The Leda*

was registered as owned by a German company, her real owner was an American company which was the only stockholder in the German company. This was the first recorded instance of a belligerent's releasing a prize under such circumstances.

In the early days of 1918, following the breakdown of the Government shipping program, the Secretary of War and the United States Shipping Board created the Shipping Control Committee, of which Mr. P. A. S. Franklin was made Chairman. To the end of the war this committee operated the Government fleets with the success that is now history. From the time of its creation until the end, Mr. Kirlin was general counsel to this committee. The success of this committee was largely due to its charter of powers. Mr. Kirlin drew up this charter, and persuaded Mr. Franklin to insist upon it before accepting the post of chairman. This charter successfully withstood attacks arising out of all kinds of departmental jealousies and encroachments. It gave the Shipping Control Committee the free hand which enabled it to mobilize without interference from our authorities a bridge of ships between the United States and France.

After the war he was frequently called on for advice on shipping questions of international importance as between this country and England.

During his connection with the large and important matters which only can be mentioned in a memorial of this kind, Mr. Kirlin was constantly engaged in the trial of every kind of litigation that could arise, out of, or in connection with, shipping matters and in writing opinions for clients on every aspect of maritime law.

Your committee believes that, having regard to his multifarious experience in shipping cases and the important part which he took from a legal standpoint in both the Spanish War and the Great War, Mr. Kirlin probably had more experience as a maritime lawyer than any American has ever had. Indeed, in view of the division of interests between solicitors and barristers in England, it seems to your committee that the statement could be made even broader, that he had the greatest experience of any maritime lawyer of modern times.

For it will be found on reflection that most of our great maritime lawyers have either achieved their distinction in this branch of law after being put on the bench, or else after an active career in maritime law at the bar they have gone on the bench of a court which does not deal with maritime matters. Thus, Mr. Kirlin practically stood alone as the great American maritime lawyer and he was almost as well known in England as he was here owing to the great number of his English clients and his success with their litigations here.

Mention of the cases which a man has argued in the Supreme Court of the United States, of which Mr. Kirlin had upwards of thirty, or of the great trials in which he has taken part, or of the positions which he has held, does not in any way convey the impression of the personality of the man himself, and only those who were privileged to be associated with Mr. Kirlin, day in and day out, can realize what unusual personal qualities he possessed.

He had a temperament which was peculiarly suited to the life of litigation which he had to lead. He was the most even-tempered man imaginable. Work, however arduous, did not seem to disturb him, and he maintained up to his last illness a boyish freshness of outlook which was as unusual as it was delightful. He felt the savor of life to a peculiar extent and enjoyed every incident in his work and in his pleasure with a poignancy that was pleasant to watch.

One day Mr. Kirlin made a remark to Mr. Woolsey which he will always remember because it contained such a happy summary of Mr. Kirlin's attitude towards life. He said: "The secret of a happy life is to work hard and to cultivate the art of small delights"!

He had found the secret, and had embodied it in a memorable phrase.

To a very busy man, such as he, it must have meant a great deal to have been able in the ordinary routine of his days to have taken such keen pleasure in the little things of which, after all, life is largely made up. This boyish quality of almost poignant contemporaneous enjoyment of everything enabled him to accomplish an immense amount of work with the least possible

friction, and made him a most delightful companion in his hours of ease.

It was noteworthy that he never made enemies of lawyers who were opposed to him. In fact it was not uncommon for a lawyer who had been against him in one case to come around with his next maritime case and engage Mr. Kirlin as his counsel.

He was not only, therefore, a very happily constituted man, but was a very happy man, and it seemed almost incredible to those who knew him best that he should have been stricken so early, and that an active and happy spirit such as his should have had to undergo the suffering and helplessness of an illness of almost six years before he died.

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