

Frank K. Dunn 1907-1933

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Frank Kershner Dunn was born November 13, 1854, in Mt. Gilead, Ohio. He was the son of Judge Andrew Kershner and Emily Armentrout Dunn. He attended public schools there until his enrollment at Kenyon College in 1869. While there he was accepted into the Phi Beta Kappa scholastic fraternity. He graduated from Kenyon College with a Bachelor of Arts degree in 1873, and then went to Harvard Law School, from which he received a Bachelor of Laws degree in 1875. He was admitted to the bar in Ohio that same year and practiced law with his father in Mt. Gilead. In 1878, he moved to Charleston, Illinois, to join his uncle James A.



Connolly in the practice of law. He was admitted to the Illinois bar the same year. He would remain a citizen of Charleston for the remaining sixty-two years of his life.¹

His father Andrew also graduated from Kenyon College where he was a classmate of Rutherford B. Hayes. When Hayes was governor of Ohio he appointed Andrew Dunn to the bench of the Court of Common Pleas in 1876. Although an established life was waiting for him in the community where his father enjoyed prominence, Frank decided to make his career in Illinois.²

He did not cut his ties to his hometown in Ohio. He returned to Mt. Gilead for his June 1, 1882, wedding to Alice (Stroh) Trimble, who was from one of Mt. Gilead's oldest families.

Their marriage produced three children. The oldest, Herbert Kershner Dunn, died in infancy. A second son, Andrew Kershner Dunn, was born in June 1894. Instead of enrolling at Harvard Law School where he had been accepted in order to follow in his father's footsteps, Andrew joined the American Expeditionary Force as an infantry lieutenant in World War I. He was killed in action in France in his first engagement with the enemy in 1918. Frank and Alice's daughter Ruth was born in August 1896.³

Dunn became involved in Republican politics in Illinois. After practicing privately for more than twenty years, he won election as judge of the Fifth Judicial Circuit in 1897. He served on the circuit bench until 1903, when he lost in a reelection bid. Some years later it became generally accepted in the Charleston community that Dunn was not reelected to the bench because his ruling in a particular case found disfavor with a dominant political faction. Although he failed in his reelection bid, his success as an impartial and rigorous jurist boosted the esteem of his supporters. In 1907, the death of Supreme Court Justice Jacob W. Wilkin created a vacancy in the district. After 142 ballots Dunn won the nomination to run as the Republican candidate in the June special election.⁴ He was successful and won reelection two more times. He retired from the court in 1933 and returned to private practice in Charleston. During his twenty-six years on the Supreme Court he served as Chief Justice for four separate terms.⁵

During and after his years on the bench he was always actively pursuing improvements in the laws of the state and the legal profession. He wrote articles and book reviews for law journals. He was very active in the Illinois State Bar Association, even after his retirement from the bench.⁶ His philosophy of the law was explicit in his published articles and public speeches. It was not necessary to analyze the more than 1,700 opinions he wrote. Beginning in 1922, the court instituted the practice of presenting successful candidates for bar admission to the Supreme

Court and had a member of the court address them. On such an occasion in Springfield that December, Dunn told an audience of new lawyers that law is a science and explained that “the lawyer owes a great duty to the profession, but he should not forget that, in proportion to opportunities, he also owes a great deal to his country.” He added that “law is a profession where success is measured by service rather than money.”⁷ His philosophy of law included the notion that the people make the laws. In a debate at the 1916 annual meeting of the Illinois State Bar Association, he argued that laws “are the expression of the public will, or public opinions, and the people have the right to criticize them or to amend or repeal them in the manner authorized by law and the constitution.”⁸ In 1919, at the end of the Progressive Era a post-World War I surge of anti-radicalism questioned idea of initiative and referendum, which permitted a majority of voters to propose or repeal legislation when legislatures declined to act. Dunn felt that such measures would destroy constitutional limitations and would “empower the majority with autocratic control” that could damage the independence of the judiciary. There had actually been some public sentiment in support of judicial recall following some unpopular court decisions.⁹

In addition to his ideas about jurisprudence, he also involved himself in questions of practice. In an article that created something of a stir in the legal profession around the nation, Dunn claimed that the reasons for delays in proceedings and crowded dockets was not found in the laws or courts, but with lawyers who used technicalities to prolong cases.¹⁰ He, along with other justices on the court, was also active in the effort to establish a new state constitution in 1922 and 1923. Although the justices could have only limited participation in the campaign for the constitution, they made their views public. Four of the seven justices including Dunn supported the proposed document. He supported it because of the provisions to do away with

minority representation in favor of single-representative districts and the reduction of the number of representatives for areas with great population density like Cook County and Chicago. The electorate, however, voted to reject the proposal.¹¹

During his two and a half decades on the Supreme Court, Dunn was an active participant in the transition from one era to another. It was the responsibility of the court to determine justice in a changing world. The results of their judicial and cultural struggles are found in the court's opinions. In addition to the large number of his opinions, Dunn also authored almost 250 dissents and more than sixty minority opinions. Particularly significant among them are *People v. Board of Education* and *Scown v. Czarnecki*. In the former he held that children in public schools cannot be compelled to join in any particular form of religious worship.¹² *Scown* came to the court holding that portions of the "Illinois Woman's Suffrage Act," that granted women the right to vote in certain elections was unconstitutional. In February 1913, Dunn wrote the majority opinion reversing the lower court and upholding the validity of the law seven years before the women's suffrage amendment to the United States Constitution.¹³

Sentiment was never an influence in Dunn's opinions. His opinion in *Scown* was based entirely upon the logic of the law, not an affinity for a popular political movement. Similarly, during the Great Depression, Dunn agreed in a per curiam Supreme Court decision to declare unconstitutional a state sales tax that Governor Henry Horner wanted to raise money for relief efforts.¹⁴

After leaving the Supreme Court in 1933, he returned home to Charleston to resume the practice of law. His health declined rapidly after December 1939, but he was able to remain active. He died August 7, 1940, at his home at 924 Sixth Street, not quite two months after the Illinois State Bar Association conferred the title of Senior Counselor in recognition of his service

of more than sixty years as a member of the Illinois bar. His Presbyterian pastor officiated at his funeral service, which ended with his burial at Mound Cemetery. His daughter Ruth Dunn survived him, his wife having preceded him in death in 1929.¹⁵

¹ 375 Ill. 11-19; Abraham Baughman and Robert F. Bartlett, *History of Morrow County, Ohio*, v. 2 (Chicago and New York: Lewis Publishing Company, 1911), pp. 413-16; E. Duane Elbert, "Smile, Work, and Serve, the Legacy of an Illinois Officer in World War I," *Illinois History Journal*, 79 (Spring 1986), p. 36.

² Baughman and Bartlett, *History of Morrow County*, pp. 413-16.

³ 375 Ill. 11-19; John M. Palmer, *Bench and Bar of Illinois*, 2 Vols. (Chicago: Lewis Publishing Company, 1899), Vol. 2, p. 942.

⁴ *Chicago Tribune*, 1 May 1907, p. 6.

⁵ *Charleston Daily Courier*, 8 August 1940, p. 1; 375 Ill. 11-19.

⁶ *Charleston Daily Courier*, 8 August 1940, p. 1; 375 Ill. 11-19.

⁷ Frank K. Dunn, "The Lawyer's Duty and Function," *Illinois Law Review* 18 (February 1923), p. 414.

⁸ "Fortieth Annual Meeting, Illinois State Bar Association," *Illinois Law Review* 11 (November 1916), pp. 194-195.

⁹ *Chicago Tribune*, 30 November 1919, p. 4; *Chicago Tribune*, 20 May 1913, p. 4.

¹⁰ Frank K. Dunn, "Delays in Courts of Review in Criminal Cases," *Journal of Criminal Law and Criminology* 2, (May-March 1912), pp. 843-48.

¹¹ *Chicago Tribune*, 23 November 1922, p. 6.

¹² *People ex rel. Ring v. Board of Education*, 245 Ill. 334 (1910).

¹³ *Scown v. Czarnecki*, 264 Ill. 305 (1914); 375 Ill. 16; *The Public* 17, (16 January 1914), p. 586.

¹⁴ *Chicago Tribune*, 11 May 1933, p. 1; *Winter v. Barrett*, 352 Ill. 441 (1933).

¹⁵ 375 Ill. 12; *Charleston Daily Courier*, 8 August 1940, p. 1.