

MEMORANDUM PREPARED BY THE CLERK OF THE CHIEF JUSTICE AT HIS REQUEST AT THE TIME THERE WAS SOME OBJECTION BY JUSTICE ROBERTS TO THE CHIEF'S PARTICIPATING IN THE HOLDING COMPANY CASES. THE MEMO WAS SENT TO ME BY GENE NICKERSON, THE CHIEF'S CLERK, DURING HIS LAST TERM OF COURT. GENE ENCLOSED THE MEMO IN A LETTER WHICH HE WROTE ME ON JUNE 11 and which IS HERETO ATTACHED.

MEMORANDUM TO THE CHIEF JUSTICE

Re: Practices of Judges of this Court in Disqualifying Themselves from Cases Involving Former Clients.

Mr. Justice Roberts

According to WHO'S WHO IN AMERICA, 1942-3, p. 1860, Justice Roberts was from 1927 to 1929 a director of the A.T. & T. Nevertheless he sat in A.T. & T. Co. v. U.S., 299 U.S. 232, a decision on the merits.

From the same source it appears that he was a director from 1920 to 1929 of the Bell Telephone Company of Pennsylvania. And from Hubbell's Law Director, 1930, p. 698, it appears that that company was a client of the firm of Roberts & Montgomery. Nevertheless he apparently sat in Bell Telephone of America v. Public Utilities Commission, 309 U. S. 30, an appeal dismissed as insubstantial after argument.

Hubbell also lists as one of the firm's clients the Pennsylvania Railroad. Nevertheless he sat in Pennsylvania R. R. v. Chamberlain, 288 U. S. 333; Pennsylvania R.R. v. Public Utilities Commission, 298 U.S. 170; Pennsylvania R. R. v. Illinois Brick Co., 297 U.S. 447; Mid-state Horticultural Co. v. Pennsylvania R.R., 320 U.S. 356, all decided on the merits, and he also participated in the following denials of certiorari: 280 U.S. 574; 283 U.S. 827; 284 U.S. 640; 287 U.S. 647; 290 U.S. 643; 299 U.S. 572; 306 U.S. 640; 308 U.S. 585; 314 U.S. 632; 316 U.S. 676.

In Terminal Warehouse v. Pennsylvania R.R. Co., 297 U.S. 500, he did not participate. That was apparently because Robert T. McCracken and George G. Chandler, both former partners, were of counsel for Merchants' Warehouse Company, which was also an appellee, and McCracken argued part of the case.

Justice Roberts also took himself out of Merchants' Warehouse Co. v. United States, 283 U.S. 501, although I cannot find that any of his former partners were of counsel.

Hubbell also lists the Ocean Accident and Guarantee Corp., Ltd. as a client. In Baizley Iron Works and The Ocean Accident and Guarantee Corp. v. Span, 281 U.S. 222, a workman's compensation case in which Ocean, as the insurer, was held liable below,

Roberts and Montgomery were counsel for appellants and the case was argued by Justice Roberts. Yet he participated in denials of cert. in Ocean Accident and Guarantee Corp. v. Brandeis, 295 U.S. 764; Same v. Torres, 302 U.S. 741; Same v. Southwestern Bell, 306 U.S. 656.

Hubbell lists Pennsylvania Salt Mfg. Co. as a client. Yet Justice Roberts participated in the denial of cert. in Pennsylvania Salt Mfg. Co. v. U.S., 306 U. S. 646, in which his former partner, Robert T. McCracken was counsel.

Hubbell lists the Warner Company as a client. Justice Roberts took himself out of Warner Company v. Loverich, 313 U. S. 577, a denial of Cert. But he is apparently sitting in Norton v. Warner Company, argued this week.

Hubbell lists Corn Exchange National Bank & Trust Co. as a client. Yet he wrote a dissenting opinion in Corn Exchange National Bank and Trust Co. v. Klauder, 318 U.S. 434.