ADDRESS OF WILLIAM P. BYNUM, JR.

Presenting the Portrait of Judge Thomas Settle to the Supreme Court, 7 November, 1905.

May It Please Your Honors:

An eminent lawyer in a recent address has truly said that every declaration by a court of the unconstitutionality of a statute is a test of the loyalty of the people to the majesty of the law, and the acquiescence of the people is a magnificent tribute to the judiciary. The people pay this tribute, in his opinion, because of the acknowledged power of the courts vested in them by the Constitution. "The Constitution rests upon public opinion, and in matters pertaining to law, public opinion rests upon the opinion of the bar, and the bar recognizes and sustains the authority of the courts. The judiciary," he declares, is therefore "the strongest department of our government. It is the most permanent. It has amplified its power and jurisdiction. It was never stronger than today."

The Supreme Court of North Carolina, from its organization nearly ninety years ago, has justly held the respect and confidence of the people more steadfastly than any other branch of the State government. This is due not only to its power and its exalted function as the head of one of the great departments of government established by the Constitution, but in an especial sense to the character and achievements of the thirty-eight judges who, during that period, have been members of this Court. Coming from the different walks of life, with varied talents and experience, they have performed the duties of their office with that uniform wisdom and fidelity which have endeared them to the State and justly entitled them to be numbered among the great builders and interpreters of our law. Their splendid services need not be recounted here. The record and result of their labors may be read in the decisions of this Court, the judicial chronicles of their time, and their names will be revered as long as the profession which they ennobled shall endure.

What stranger, even, entering this hall and beholding the faces which adorn its walls, does not realize that he is in the presence of extraordinary men? He finds not here the stern countenance, the severe eye of the typical judge of old, but a company of gentlemen whose dignified and scholarly, yet mild, benignant features show clearly the warm heart, the broad, charitable spirit of just, magnanimous men—judges who were not feared, but loved.

Into this splendid company of the dead, and their worthy successors, the living, the portrait of Thomas Settle today is brought by his devoted children and presented to the Court that it may take its place in this stately gallery of our judges. Elevated to the bench at the age of thirty-seven, the youngest judge that ever sat in this Court, his term of service altogether was seven years, and his qualities of mind and heart were such as to endear him throughout not only to his associates on the bench, but to the bar generally, and won for him the admiration and affection of all who knew him.

The family to which he belonged is of pure English origin. Near the middle of the eighteenth century his great-grandfather, Josiah Settle, came from England and established a home in the borders of this State, in the beautiful region along the foothills of the Blue Ridge, in what is now Rockingham County. He was one of a colony of men who, as Bancroft says, came "from

civilized life and scattered among forests; hermits with wives and children, resting upon the bosom of nature in perfect harmony with the wilderness of their gentle clime. Careless of religious sects or unmolested by oppressive laws, they enjoyed liberty of conscience and personal independence, freedom of the forest and of the river. The children of nature listened to the inspirations of nature. They desired no greater happiness than they enjoyed."

The scenery, soil and climate of that locality were all that could be desired by the early emigrant, and there among the hills of the Dan came many whose descendants have made honorable records in the service of the State. In that favored region the Settle family lived for more than a hundred years—first Josiah, then David, then Thomas, father of him of whom I speak, who was born in Rockingham, 9 March, 1789. The family even in those days possessed ample means and the graces and comforts of life. Thomas Settle, the elder, was liberally educated, and by nature generously endowed. He became a lawyer, and was successfull in his practice. In 1816, at the age of twenty-seven, he was elected a member of the House of Commons, where he served with dignity and ability. The next year he was the Whig candidate for Congress in the district composed of Caswell, Rockingham, Guilford and Stokes, and was elected, succeeding Bartlett Yancey, Democrat, as the representative of that district in the Fifteenth Congress. At the expiration of his term he was re-elected and served until 1821, when he declined re-election, and was succeeded by Romulous M. Saunders,

Mr. Settle then returned to the practice of his profession and to the ease and dignity of a retired life, which he much preferred. But in 1826 he was again called to the public service, and for three successive years was a member of the House of Commons, of which, from a number of able Whigs, he was chosen Speaker at the session of 1828. In the General Assembly and among the people considerable political excitement then prevailed. It was the year of General Jackson's first election to the Presidency, and marked the beginning of a new era in the political history of the country. The hostile feeling generally prevalent against the Bank of the United States showed itself here also against the banks of the State. They were the State Bank of North Carolina, the Bank of New Bern, and the Bank of Cape Fear. Judge Ruffin was president of the first and William Gaston of the second. It was claimed that the stock of these banks had not been paid for as required by their charters; that they had issued more bills or notes than they were authorized to issue, and had refused to pay them in specie on demand; that their debts exceeded the amount limited by law; that they had dealt and traded in articles other than those authorized; had charged usurious interest, bought and speculated upon their own paper, and were in the habit of exacting exorbitant charges as conditions of discounting. By these and other practices it was alleged that they had drawn from the people a profit of about four million dollars on their stock, three-fourths of which, it was claimed, had been issued in a fictitious and fraudulent manner; and that having received from the people this sum, exceeding four times the amount of actual capital paid into the banks according to law, they still held the notes of the people for more than five million dollars, about four times the amount of the circulating medium of the State. Thus it was claimed that it was in the power of these banks to extinguish absolutely the currency of the State and still hold a debt against the people of about four million dollars. And this, it was urged, the banks were threatening to do; that having for years continued by illegal practices to draw from the people the profits of their labor, thus reducing them to such an impoverished condition that they could no longer pay their exorbi-

tant demands, these grasping institutions, their accusers declared, were now preparing to extort from the people their actual means of subsistance. By reason of these practices it was insisted that the banks had forfeited the powers and privileges granted in their charters.

The subject was discussed in the Governor's message, and a joint select committee of eighteen was raised, to whom the whole matter was referred. Robert Potter, of Granville, was chairman. Mr. Gaston was named a member of the committee, but declined to serve on account of his connection with one of the banks under investigation. Other prominent members were David L. Swain, of Buncombe; James H. Ruffin, of Caswell; Gearge E. Spruill, of Halifax, and George C. Mendenhall, of Guilford. A majority of the committee, including the members named, examined the banks and their officers and recommended merely the passage of a law imposing a penalty on all banks of the State which, after a certain day, refused to pay specie on demand for their notes. The minority, however, led by Potter, reported a resolution, followed by a bill, declaring that the banks had violated and forfeited their charters, and directing the Attorney-General forthwith to institute a judicial inquiry into their conduct and to prosecute such inquiry by writ of *quo warranto* or other legal process. The bill was a drastic measure virtually confiscating the property of the banks, providing for the appointment of commissioners or receivers to wind up their affairs and for the arrest and prosecution of their officers before the Supreme Court. The debate on the bill was able and acrimonious. Its leading advocates were William J. Alexander, of Mecklenburg; Charles Fisher, of Salisbury, and Jesse A. Bynum, of Halifax. Potter himself, the author of the bill, made many speeches in support of it. The debate in opposition was opened with a dignified, convincing argument by Mr. Gaston, who was followed by George E. Spruill, David L. Swain, H. C. Jones, of Rowan, and Frederick Nash, of Orange, on the same side. The question on the third reading was "loudly called for," and, being taken by *ayes* and *noes*, fifty-nine votes were cast for the bill and fifty-eight against it. The Speaker, Mr. Settle, was thus placed in a situation of great responsibility, but did not seek to evade it. Declaring his belief that the bill should not pass, he promptly placed his vote with those of the minority, and thus the bill was lost.

The sequel proved that the Speaker was right. The attack on the banks was due largely to their suspension of specie payments, a condition which for several years after the War of 1812 prevailed in all banks south of New York. To have passed the bill would have destroyed the banks, and this in turn would have destroyed public confidence, and resulted surely in financial disaster and distress.

The three succeeding years were spent by Mr. Settle at his home in Rockingham in the practice of his profession and in attending to his farming interests, which his father belonged, had won its last victory in the election of General 'cal life, and resolutely rejected all solicitations looking to further political preferment. He was soon called, however, to a service more congenial to his disposition and tastes. In 1832 he was elected Judge of the Superior Courts of Law and Equity, and spent nearly all the remainder of his life in that office, resigning in 1857, the year of his death, after twenty-five years of faithful, efficient service.

Judge Settle was a man of fine sense, simple manners and dignified, courtly bearing. He was regarded as an upright, able, conscientious lawyer, a wise, patient, urbane judge, and a lovable Christian gentleman. A correct estimate of his life and character may be derived from its influence on those around him.

Among his law students were Alfred M. Scales and John M. Morehead, both afterwards Governors of the State, the one a brave general, the other the great, constructive statesman of North Corolina.

Like the Moreheads, Judge Settle was an old-line Whig, with free soil proclivities. He believed that slavery was wrong and should be abolished by gradual emancipation under proper regulations, and with fair compensation provided by law, the course so earnestly urged by Mr. Lincoln in 1862.

During his long service on the bench he tried many important cases, and always with the utmost patience and impartiality. "Four things," said Socrates, "belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." These were Judge Settle's characteristics.*

From 1826 to his death he was a trustee of the University of this State, where his sons were educated. He was a devoted member of the Baptist Church, and for many years a trustee of Wake Forest College. Dying at the age of sixty-eight, half of his entire life was spent in the public service, and not a word of calumny was ever uttered against his name.

Judge Settle was fortunate in his marriage. Henrietta Graves, who became his wife, belonged to a family eminent for its sturdy moral and intellectual qualities. Her father, Azariah Graves, was a prominent citizen of Caswell County, which for seven consecutive years he represented in the State Senate. Her brother, Calvin Graves, was a member of the Constitutional Convention of 1835, and later a member of the House of Commons for three years and of the Senate for two, where, by his courageous action as Speaker, the bill for the construction of the North Carolina Railroad, a measure of the utmost importance for the internal improvement and development of the State, finally became a law.

Thomas Settle and Henrietta Graves were rich enough and happy enough in the possession of their children. Married 21 September, 1820, they spent their lives in the country at their hospitable home in Rockingham County. Two sons and five daughters constituted the family. Two of the daughters, Elizabeth and Rebecca, died in girlhood; one, Henrietta, became the wife of David S. Reid, afterwards Governor of the State, and one of its Senators in Congress; another Caroline, married Hugh Reid, Esquire, brother of the Governor, and a highly useful citizen of Rockingham; and the third Fannie, married Col. J. W. Covington, a gentleman of wealth and prominence from Richmond County, and after his death the Honorable Oliver H. Dockery, of this State. All except Mrs. David S. Reid and the youngest child, Col. David Settle, of Wentworth, are dead.

The devotion of these parents to their children was beautiful. I have read some of the letters of the father and mother to their sons—letters full of wise counsel, unselfish devotion and the tenderest solicitude for their proper guidance and protection. They were justly proud of their family and its connection, and seldom has one less numerous possessed more interesting

*In April, 1828, at Salisbury, James I. Long handed Richmond M. Pearson a challenge from Thomas J. Green to fight a duel. The trouble arose from Pearson's denunciation of Green for language reflecting on the character of Mrs. Adams, wife of the President. Mr. Pearson informed Mr. Long that he "bore a challenge from a scoundrel," and while he would not notice Green, if Long felt in the least affronted, he would answer any call *he* might make. Mr. Long then challenged Mr. Pearson, the challenge was accepted and the necessary arrangements made. Before the meeting, however, Long was bound to the peace in another matter and he raised the question whether, if he and Pearson should fight in another State, it would forfeit his bond. It was agreed that this question should be referred to "two disinterested lawyers of standing," and if their opinion was in the affirmative, "the matter should not be urged further for the present. The lawyers selected were John M. Morehead and Thomas Settle. Their written opinion answered the question in the affirmative and the matter was ended.

characters. Among its members and immediate connections were two United States Senators, four members of the House of Representatives, three judges, a Governor of the State, a formidable candidate for the Presidency, and many others of distinguished virtues and ability.

Thomas Settle, the second of that name and fourth child of Thomas Settle and Henrietta Graves, was born in Rockingham County, 23 January, 1831. He received his academic training at the excellent school of Samuel Smith near Madison. He was educated at the University where he was graduated with distinction in 1850, at the age of nineteen. There he devoted himself with much avidity to general reading and the exercises of his literary society, the Dialectic, and was less attentive to Latin, Greek and mathematics, the chief studies of that day. Hence he was a capital debater and a popular society leader, and was honored with all the offices from president down. In his graduating address he made a marked impression. His ideas were clear, his manner animated and forcible, his appearance handsome, gracious and commanding. The year of his graduation David S. Reid, his brother-in-law, was elected Governor of the State, and the young graduate made his entrance into political life as private secretary to the Governor. Here he formed the acquaintance of many eminent men, who were pleased by his courtesy and affability, and whose example stimulated his ambition for an honorable career.

He was then in his twenty-first year. His early associations had fostered a love of politics. The honorable record of his father in Congress, in the Legislature and on the bench; the popularity of Governor Reid, then in the full tide of his phenomenal career; his own inclinations and surroundings, as well as the very spirit of the times, strengthened his preference for active participation in the political struggles and contentions of the time. The war with Mexico had lately added to the public domain a large territory north and south of the line fixed by the Missouri compromise, and thus revived more bitterly than ever the question of the extension or the restriction of slavery. The Whig party, to which his father belonged, had won its last victory in the election of General Taylor three years before, and was already showing signs of early disintegration. Free-soil Whigs and free-soil Democrats already had their representatives in Congress, voicing the aggressive purposes of a new and more radical party. The Democrats of the South were maintaining the constitutional right to take slaves, as any other property, into the territories, and to be protected therein by the laws of Congress, a doctrine later affirmed by the Supreme Court of the United States. The free-soil Whigs and Democrats of the North, on the other hand, declared the common domain to be devoted to justice and liberty, not only by the Constitution, but by a law higher than the Constitution, and avowed their conviction that slavery must give way "to the salutary instructions of economy and to the refining influences of humanity"; while the Abolitionists, with their bitter contempt for the compromises of Congress and the Constitution, and their ruthless program of abolition, with or without constitutional warrant, were ready for a separation from the South should abolition prove impossible. To allay these fierce antagonisms, and if possible save from disruption his party and the country, Henry Clay had come forward the year before, with the dignity of age upon him, to urge measures of compromise. Disheartened at the hopeless outlook, but abating nothing of his conviction that the Federal Government was supreme and must be obeyed, he had put away his old-time imperiousness and pleaded as he had never pleaded before for mutual accommodation and agreement. Mr. Webster slackened a little in his constitutional convictions, and also urged compromise and concession at the risk of his own political existence. Mr. Seward, for the free-soil Whigs, and Mr. Chase,

for the free-soil Democrats, repudiated all compromise and denied the possibility of any equilibrium between the sections. The President himself opposed the compromise, and exerted the influence of the administration against it. But the President was removed by death, and the measures as urged by the committee of Congress were passed and approved by his friendly successor. California was admitted as a free State; Utah and New Mexico, including all the remainder of the Mexican cession, were organized as territories without restriction as to slavery; the boundary line of Texas was adjusted; a stringent fugitive slave law was enacted, and the buying and selling of slaves in the District of Columbia was prohibited. The first and fifth of these enactments were to satisfy the North; the second and fourth were to pacify the South. They were passed chiefly by Southern votes, and framed to meet the demands of Southern men and to obviate every reasonable Southern objection. Free-soilers and many Whigs of the North opposed them on the ground that they were a surrender to the slave power; extreme Democrats of the South opposed them because they believed them a waiver of the right to take slaves into the new territories and be protected in their ownership as of any other property.

In the main however, both of the great political parties loyally supported the compromise and seemed to believe that the slavery question had been settled by it. Their platforms of 1852 contained strong assertions of their complete acceptance of those measures and their determination to take them as a final settlement of the struggle between the slave and the free States. Thousands of Whigs in the North, alienated by the efforts of the party thus to ignore the great question of slavery, and its failure to take up boldly the cause of liberty, left its ranks or refused to vote; while many of its Southern members, especially the younger ones, dissatisfied or repelled by its wavering policy, showed little interest for its success. Before election day Mr. Clay and Mr. Webster, its two great leaders and the champions of the compromise, had passed away, and the party received its deathblow in the election of Franklin Pierce.

In this situation it was not unnatural that Mr. Settle, after reaching his majority in 1852, should have departed from the political faith of his father, and like many Southern young men of that day allied himself with the Democratic party. A controlling reason also was his belief in free suffrage, the popular Democratic doctrine on which his kinsman, Governor Reid, had recently been elected. Two years later he received his license to practice law. He had studied under Judge Pearson at Richmond Hill, and it was during those days that he first met Mary Glenn, who afterwards became his wife. The same year his love of debate and the allurements of political life led him to look with favor upon the solicitations of his party friends to become a candidate for the House of Commons from Rockingham County. His popularity assured his election, and for five successive years—1854 to 1859—he was an accomplished member of that body, and the latter year was chosen its Speaker. His service in the Legislature increased his knowledge and his love for political affairs, and gave him the reputation of an astute political manager and debater. Accordingly, in 1856, he was placed on the national Democratic ticket as elector for his district, and cast the electoral vote of the State for Mr. Buchanan.

A Democrat, born and reared in the South, firm in his advocacy of Southern rights, Mr. Settle was an ardent supporter of the Constitution, a staunch believer in the union, and opposed to secession in any form so long as the Constitution and the laws enacted by its authority could be upheld and obeyed. Consequently when later the expediency of withdrawing from the Union became involved in the presidential contest of 1860, he wisely advocated the election of Mr. Douglas as the surest way to forestall that calamity.

But the controversy between the North and the South could not be settled by the ballot. The cause of it was too deep-seated to be reached by that peaceful remedy. It remained one of those unsettled questions which have no pity for the repose of nations. Mr. Lincoln's election alarmed and angered the South. Despite his majority in the electoral college, he had received little more than one-third of the votes cast by the people, and they came entirely from the Northern States. His triumphant party was led by many whom the South regarded as her bitter enemies as well as deliberate violators of the Constitution and the laws of Congress, which had been enacted to protect the rights of Southern men. Those laws, though upheld by the Supreme Court, were frequently disregarded in the North. The Court itself was ridiculed and denounced by Northern Abolitionists and Republicans, and the Constitution—the supreme law of the land—was held to be binding and entitled to respect only when it conformed to their ideas of justice and right. One of the prime objects of the government established by our forefathers had been to insure domestic tranquility. That condition had not prevailed in the United States for many years, and the prospect was now no better. In spite, therefore, of their love for the Union and its Constitution, which the people of the South had shown from the beginning, many of them sincerely believed and were determined that, rather than suffer the imposition, the humiliation of remaining in a government whose Constitution and laws were disobeyed at will, they would withdraw from it and form a government of their own. The question with them was not so much the retention of their property in the slave: they were tired of Northern criticism, and as they conceived, of Northern insult and wrong. The accusation of moral guilt in the matter of slavery had stung them most intolerably. "They knew," says Woodrow Wilson in his *History of the American People*, "with what motives and principles they administered slavery, and felt to the quick the deep injustice of imputing to them pleasure or passion, or brutal pride of mastery in maintaining their hold upon the slaves. Many a thoughtful man amongst them saw with keen disquietude how like an incubus slavery lay upon the South; how it demoralized masters who were weak, burdened masters who were strong, and brought upon all alike enormous, hopeless economic loss . . . That very fact, their very consciousness that they exercised a good conscience in these matters, made them the more keenly sensitive to the bitter attacks made upon them at the North, the more determined now to assert themselves, though it were by revolution, when they saw a party whose chief tenet seemed to be the iniquity of the South about to take possession of the Federal Government. Probably not more than one white man out of every five in the South was a slaveholder; not more than half had even the use or direction of slaves. Hundreds of the merchants, lawyers, physicians and ministers, who were the natural ruling spirits of the towns, owned none. But the men who were slave owners were the masters of politics and society. Their sensibilities were for all practical purposes the sensibilities of the South; and for close upon forty years now it had seemed as if at every turn of the country's history these sensibilities must be put upon the rack. The Missouri compromise of 1820 had treated the institution of slavery, which they maintained, as an infection to be shut out by a line as if of quarantine. The alarming insurrection of the slaves of Southeastern Virginia, under Nat Turner in 1831; the English Act of Emancipation and the formation of the American Anti-Slavery Society in 1833; the slow and dangerous Seminole War, which dragged from 1832 to 1839, and was as much a war to destroy the easy refuge of runaway and marauding negroes in Florida as to bring the Indians, their confederates, to submission; the critical Texas question; the Mexican War, and the

debatable Wilmot Proviso; the Kansas-Nebraska Act, the 'free-soil' campaign, the break-up of the Whigs and the rise and triumph of the Republicans: it had been a culminating series of events whose wounds and perplexities were always for the South. Southerners might have looked upon the election of Mr. Lincoln as only a casual party defeat, to be outlived and reversed, had it not come like a dramatic *denouement* at the end of the series. As it was, it seemed the last, intolerable step in their humiliation."

South Carolina took the first step in December, following the election, and Mississippi, Florida, Alabama, Georgia and Louisiana followed in the order named. By 18 February, 1861, a Confederate Government had been formed at Montgomery, and its president and vice-president inaugurated amid scenes of the wildest enthusiasm. On 12 April Fort Sumter was bombarded, and in two days it surrendered. The President of the United States issued his call for troops, and the President of the Confederate States prepared to meet them. North Carolina, Virginia, Arkansas and Tennessee still remained in the Union, but their Governors refused to respond to Mr. Lincoln's call, holding that a State had the right to withdraw from the Union and could not rightfully be compelled to return. Virginia yielded to her Southern sympathies in April, Arkansas early in May, and both promptly joined the Confederacy, leaving North Carolina and Tennessee still in the Union and still hoping that the united efforts of patriotic men in every part of the nation might avert the dangers threatening it and again unite the States in a common bond of fraternal and perpetual union.

The decisive action of South Carolina in withdrawing from the Union in December, and the certainty that the States south of her would follow, at once disclosed to the people of North Carolina that they must decide the momentous question whether this State would go with those of the South or remain with those of the North. This perilous condition, in the judgment of the General Assembly, then in session, demanded a convention of the people to effect, if possible, as it declared, "an honorable adjustment of existing difficulties whereby the Federal Union was endangered or otherwise to determine what action would best preserve the honor and promise the interests of North Carolina." Accordingly an act was passed 1 January, 1861, requiring the Governor to cause an election to be held in the several counties of the State 28 February following, to determine whether such convention should assemble, and at the same time to choose one hundred and twenty delegates who should compose its membership. The real question was not so much the right of secession; that had time and again been conceded North and South. It was rather the expediency of withdrawing from the Union so long as there was hope of remaining in it with peace and honor. Like Morehead, Graham, Badger, Ruffin, Gilmer and others in this State, and Stephens, Johnson and Hill of Georgia, Mr. Settle believed that secession at that time was premature; that our troubles might and should be settled within the Union rather than out of it. As a union Democrat he therefore became a candidate in Rockingham against the convention, and after a spirited campaign was elected over his opponent, Mr. A. M. Scales, who, like Toombs and Davis, favored secession. But the people by a narrow majority of 651 (the exact vote being 46,672 to 47,323) decided against the convention, and the delegates elected were never called upon to assemble. Thus the people of North Carolina refused even to consider the question of withdrawing from the Union, although seven of her sister States had already decided to leave it.

But though still in the Union, the State was rapidly assuming a military status. Organized companies of militia were called out and new companies

formed from volunteers and sent to garrison our forts and protect our coasts from invasion. The secession of Virginia in April left North Carolina hemmed in between the two opposing governments, and, after the secession of Arkansas, the only Southern State, save Tennessee, remaining in the Union. On 27 April, 1861, the President of the United States declared the ports of Virginia and North Carolina blockaded, and this the Supreme Court subsequently held, in the case of the *Protector*, was legally the beginning of the war in those States. The General Assembly, still in session, by an act, concurred in by two-thirds of the members of each House, on 1 May peremptorily required the Governor to call an election to be held on the thirteenth of that month for delegates to a convention of the people of the State, to be assembled on the twentieth. Nothing whatever was said in the act as to the purpose or powers of the convention, but these were well understood. The election was held, the delegates chosen, and the convention met in the city of Raleigh, 20 May, 1861, and immediately repealed, rescinded and abrogated the ordinance adopted by North Carolina in the Convention of 1789, whereby the Constitution of the United States was ratified and adopted, and also all acts of the General Assembly ratifying and adopting amendments to that Constitution, dissolved the Union subsisting between this State and the other States under the title of the United States of America, and declared the State of North Carolina in full possession and exercise of all those rights of sovereignty which belong and appertain to a free and independent State. On the same day the convention ratified the Constitution of the provisional government of the Confederate States, and thus North Carolina, next to the last of the original States to enter the Union, was the last of them to leave it.

The popularity of Mr. Settle during this period was strikingly illustrated by the fact that, though a Union man and opposed to Mr. Breckinridge's election to the Presidency, he was elected early in 1861 solicitor of the Fourth Judicial Circuit by a Legislature, the majority of whose members were Breckinridge Democrats. On Monday, 12 April, he was prosecuting for the State at Danbury, in Stokes County, Judge Howard presiding. He joined James Madison Leach, a Union Whig, in a request for the use of the courtroom for political speaking during the noon recess. The request was granted, and between Mr. Settle, Mr. Leach and the Honorable John A. Gilmer, as Unionists, on the one side, and Mr. A. M. Scales and Mr. Robert McLean, as Secessionists, on the other, there followed a political debate of intense feeling and marked ability. In a few days the court adjourned, and the judge and solicitor left for the latter's home in Rockingham—the one as strong for immediate secession as the other was against it. On the way, as they approached Madison, a strong Union town, they discerned a flag floating from a building in the village. They saw at once it was not the flag of the Union. Several persons were riding toward them reading newspapers. Hailing one of them the solicitor inquired what was the matter. Promptly the answer came: Haven't you heard the news? Sumter has been attacked. President Lincoln has called for 75,000 troops. Everybody is for war. Governor Reid is speaking at Madison and volunteers are enlisting." The solicitor turned to the judge and exclaimed: "They are right! I must go to Madison and go with them." They turned out of their way and drove to the village. As they approached they heard the voice of Governor Reid speaking in the upper room of a building while a large crowd was gathered in and around it. The solicitor sprang up, and waving his hand aloft declared that they were right, and leaping from the buggy, mounted a doorstep and poured forth a passionate appeal for every man to stand by the South.

"We then went on to his home," says the judge, "and on the way he declared he must resign his office and go into the war. I pressed him not to do so until the end of the circuit, but he would listen to no delay, insisting that he must resign and recommending his successor. The next Monday at Rockingham, soon after court met, the sound of fife and drum was heard from several directions, and soon there marched into Wentworth one hundred and fifty volunteers, and at recess I noticed both Scales and Settle in the ranks. Two companies were formed and Scales was elected captain of one and Settle of the other."

"In a week or two," continues the judge, "I returned to Greensboro. As I was passing the residence of the Honorable John A. Gilmer he called to me, and coming out to the buggy said, with deep emotion: 'On my return home I found that at the very hour I was speaking in Danbury my son was donning his uniform and hastening away to Fort Macon. We are all one now.'"

Leach too had "heard the news" and had already raised a company of one hundred chosen men from Davidson, of whom he had likewise been elected captain. Such was the effect upon the Union men of the South of the attack on Fort Sumter and the call of President Lincoln for troops!

Mr. Settle and Mr. Scales, late antagonists on the stump, were now enlisted as comrades in a common cause, and as captains were placed with their respective companies in the Third, afterward the Thirteenth Regiment of North Carolina troops, which earned a proud record in the subsequent struggle. The term of their enlistment was twelve months, and on its expiration Mr. Settle returned to his home and was again elected solicitor of his district, and held that office until his election to the Reconstruction Convention of 1865, winning for himself the reputation of an able lawyer and a fair, impartial officer.

Sixty days after General Lee's surrender there was not a Confederate soldier in arms. They had fought to the point of exhaustion, and when they gave their parole the war indeed was over. Throughout the Confederacy the surrender was complete. The Southern people were anxious to renew their allegiance to the United States and submit to its authority. There was no law on the statute books providing a way for their return to the Union. They could not resume their old relations of their own accord; their State governments had been destroyed or abandoned, and they were compelled to look to Washington for the manner, the terms and conditions of their restoration. And there the trouble arose.

Congress, in July, 1861, had declared that the war was not prosecuted by the United States in any spirit of oppression, nor for the purpose of conquest or subjugation or for overthrowing or interfering with the established institutions of the Southern States, "but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality and rights of the several States unimpaired"; and that so soon as these purposes were accomplished the war should cease.

Adhering to these resolutions whenever, during the progress of the war, the Federal forces gained a foothold in a Southern State, Mr. Lincoln endeavored to aid and encourage the people of such State to establish a civil government loyal to the United States, which he recognized as the true government of the State, and thus, as far as possible, he allowed them to resume their practical relations with the Union. This power he exercised as Commander-in-Chief of the Army and Navy, and under that provision of the Constitution imposing the duty upon the United States to guarantee to every State a republican form of government. The instruments he used to this end were military or provisional

governors appointed by him with power to call conventions of those people ascertained by a prescribed oath to be loyal, and these conventions were to provide for the election, by the loyal people of the State, of a Legislature and State officers who should put in motion all the machinery of civil government as it existed in the States before the war. They might also elect representatives to Congress, but Mr. Lincoln did not assume to say that they would be admitted, each House being the judge of the election and qualifications of its own members. He was anxious from the beginning, says Mr. Blaine, "to re-establish civil government in any and every one of the Confederate States when actual resistance should cease. A military autocracy, controlling people who were engaged in the ordinary avocations of life, was altogether contrary to his views of expediency, altogether repugnant to his conceptions of right."

In February, 1862, the Confederate forces abandoned Nashville, the capital of Tennessee. The Federal army occupied the city and martial law was declared over the western part of the State. On 5 March Andrew Jackson was appointed Military Governor of the State and confirmed by the Senate. He was appointed, as he said, on account of "the absence of the regular and established State authorities" and "for the purpose of restoring her government to the same condition as before the existing rebellion."

The Federal forces obtained a footing in eastern North Carolina in the spring of 1862 sufficient in the view of Mr. Lincoln to warrant the attempt to set up a loyal government in this State. Accordingly Edward Stanley was appointed Military Governor of the State, and instructions issued to him from the Secretary of War 2 May, 1862, similar to those which had been given to Governor Johnson, of Tennessee. "The great purpose of your appointment," he was told, "is to reëstablish the authority of the Federal government in the State of North Carolina and to provide the means of maintaining peace and security to the loyal inhabitants of that State until they shall be able to establish civil government." The Governor delivered a public address to the people on 17 June following but they were not persuaded by his appeals to resume their allegiance and the war came to an end without his effecting any progress towards the restoration of this State.

Likewise, when the national forces captured New Orleans in the spring of 1862 and obtained a firm foothold in Louisiana, a movement was made to establish there a civil government that would be loyal to the Union. In July of that year Mr. Lincoln wrote to a Southern gentleman that the people of Louisiana who wished protection to personal property had but to reach forth their hands and take it. "Let them in good faith," said he, "re-inaugurate the national authority and set up a State government conforming thereto under the Constitution. They know how to do it and can have the protection of the army while doing it. The army will be withdrawn so soon as such State government can dispense with its presence; and the people of the State can then, upon the old constitutional terms, govern themselves to their own liking. This is simple and easy."

In accordance with that suggestion a government was soon organized and on 3 December, 1862, at an election ordered by the Military Governor of Louisiana, two members of Congress, old citizens of the State, were chosen who, on 9 February, 1863, before the close of the Thirty-seventh Congress, were admitted to their seats. On 21 November, a few days before that election was held, in a note to the Provisional Governor warning him that Federal office-holders not citizens of Louisiana should not be chosen to represent the State in Congress, Mr. Lincoln referring to the Southern States, said: "We do not particularly need members of Congress from those States to enable us to get

along with legislation here. What we do want is the conclusive evidence that respectable citizens of Louisiana are willing to be members of Congress and to swear support to the Constitution, and that other respectable citizens are willing to vote for them and send them. To send a parcel of Northern men here as Representatives, elected as would be understood (and perhaps really so) at the point of the bayonet, would be disgraceful and outrageous, and were I a member of Congress here, I would vote against admitting any such man to a seat."

The action of Mr. Lincoln in assuming the power to restore Louisiana to the Union so far as her State government was concerned was not approved by the leaders of his party in Congress. They held that the rights of the seceding States under the Constitution had been destroyed by their own action and when they should be conquered it would be for the conqueror to determine *then* what terms it would be expedient to impose. Indeed, the very theory of the Crittendon resolutions passed by Congress in July, 1861, when presented for reaffirmation in December, 1862, was defeated by a party vote. Between the position of the President and that of Congress a serious divergence was developing.

In his message to Congress 8 December, 1863, Mr. Lincoln proposed a definite plan of restoration. "The constitutional obligation of the United States," said he, "to guarantee to every State in the Union a republican form of government and to protest the State in such cases is explicit and full. This section of the Constitution contemplates a case wherein the element within a State favorable to republican government in the Union may be too feeble for an opposite and hostile element external to or even within the State, and such are precisely the cases with which we are now dealing. An attempt to guarantee and protect a revived State government constructed in whole or in preponderating part from the very element against whose hostility and violence it is to be protected is simply absurd. There must be a test by which to separate the opposing elements so as to build only from the sound, and that test is a sufficiently liberal one which accepts as sound whoever will make a sworn recantation of his former unsoundness."

He accompanied the message with a proclamation in which he granted full pardon with restoration of all rights of property, except as to slaves, to all persons who had directly or by implication participated in the Confederacy, upon condition that every such person should take and subscribe and thenceforward maintain inviolate an oath to faithfully support and defend the Constitution and the Union of the States thereunder and to abide by all laws and proclamations made during the existence of the Confederacy, having reference to slaves, "so long and so far as not modified or declared void by decisions of the Supreme Court."

Excepted from the benefits of this pardon were, first, the civil and diplomatic officers or agents of the Confederate government; second, those who left judicial stations in the United States government to aid the Confederacy; third, military officers of the Confederacy above the rank of colonel and naval officers above the rank of lieutenant; fourth, all who left seats in the Congress of the United States to aid the Confederacy; fifth, all who resigned commissions in the National Army and Navy and afterwards aided the Confederacy; sixth, all who had engaged in treating colored persons, or white persons in charge of them, found in the military or naval service of the United States, otherwise than as prisoners of war.

The task of establishing a State government was thus entrusted by Mr. Lincoln's plan to the loyal people of the State, tested by taking the prescribed

oath. He required that enough should take it in any State to cast one-tenth as many votes as were cast in the State for President in 1860. The qualifications of voters should be the same as those existing by the law of the State immediately before the act of secession. A government thus established in any seceding State should "be recognized as the true government of the State" and the State should "receive thereunder the benefits of the constitutional provision which declares that the United States shall guarantee to every State in this Union a republican form of government." Clearly, then, such States were not altogether, in his opinion, outside of the Constitution or the Union.

Any provision which might be adopted by such State government recognizing the permanent freedom of the colored people and providing for their education consistently with their condition as a laboring, landless and homeless class would not, said he, "be objected to by the National Executive." The question of the admission of Senators and Representatives was to be decided by the respective Houses of Congress. The President took pains to say that his proclamation was intended to present to the people of the States wherein the national authority had been suspended and loyal State governments subverted, "a mode by which the national authority and loyal State governments might be reëstablished within such States"; and while the mode presented was the best the Executive could suggest with his present impressions, it should not be understood that no other possible mode would be acceptable.

In pursuance of the President's proclamation State governments were established during the following year in Louisiana, Arkansas and Tennessee and constitutions were adopted abolishing slavery.

This plan of Mr. Lincoln's was not favorably received by the leaders of his party in Congress. They thought so important a matter should have been determined by legislation and not by mere executive proclamation. A sharp issue was drawn between the President and Congress. The Senators and Representatives chosen by the reorganized State governments, which he had declared he would recognize, were refused admission to seats. This conflict rendered the situation doubly confusing. According to the Democratic and Southern theory those States were in the Union; according to the Congressional theory they were out of the Union. Under the operation of the President's plan they were partly in and partly out of the Union. So far as executive recognition had validity they were in; but so far as the important function of representation in Congress was concerned, they were out.

The leaders of Congress proceeded to answer the President's position with a bill passed 4 July, 1864, the first reconstruction act of Congress. It set forth the congressional plan of reconstruction and was known as the Wade-Davis bill. It provided that the President should appoint a Provisional Governor in each of the seceding States and that so soon as resistance to the national authority had ceased in any State, the Governor should enroll the white male citizens; and if a majority of them should take an oath to support the Constitution of the United States, then the election of delegates to a constitutional convention should be ordered. The State Constitution should contain provisions imposing disabilities upon certain civil and military officers of the Confederacy, prohibiting the payment of all debts incurred in aid of the Confederacy, and abolishing slavery. When all requirements had been complied with *to the satisfaction of Congress*, the President should recognize the State government and the State should thereupon become entitled to representation in Congress. The measure contained no provision for negro suffrage.

The bill did not reach the President until a few hours before the *sine die* adjournment of Congress. He did not sign it and it failed to become a law.

He gave his reasons in a public proclamation in which he said that he did not wish by signing the bill "to be inflexibly committed to any single plan of restoration" or to declare that the State governments already established should be "set aside and held for naught, thereby repelling and discouraging the loyal citizens who have set up the same as to further effort, or to declare a constitutional competency in Congress to abolish slavery in the States." At the same time he was "satisfied with the system contained in the bill, as one very proper for the loyal people of *any State choosing to adopt it*," and to that end he would give executive aid and assistance to any such people as soon as military resistance to the United States was suppressed in such State and the people thereof returned to their obedience to the Constitution and laws of the United States, in which case military governors would be appointed with directions to proceed according to the bill."

The President was answered by the authors of the bill in a paper personally vituperative, in which his motives were impeached and his action characterized as "a studied outrage on the legislative rights of the people." The issue was squarely made whether the President by military order was to restore, or Congress by law to reconstruct, the insurrectionary States. Mr. Lincoln had been renominated by President in June and in August a conference of leading men of his party was held in New York and a committee appointed to request him to withdraw and to bring about a new convention to nominate a Union Candidate. Mr. Sumner writing to Cobden says: "The 'Tribune,' 'Evening Post,' 'Independent,' and 'Cincinnati Gazette' were all represented in it, but as soon as they read the platform, (adopted by the Democrats at Chicago) they ranged in support of Mr. Lincoln."

On all the great questions which finally stood forth in the process of reconstruction, namely, the legal status of the seceded States, by whose authority they should be allowed to resume their place in the Union, the status and punishment of the individuals who joined the Confederacy, and the legal and political status to be given to the negro, the President held one view and Congress another. Four days before his death, in the last public address he made, he declared that his plan of restoration had been submitted in advance to his cabinet and "distinctly approved by every member of it" and that while no exclusive and inflexible plan could safely be presented as to details, the important principles involved were and must be inflexible. His closing words were: "In the present situation it may be my duty to make some new announcement to the people of the South. I am considering and shall not fail to act when satisfied that action will be proper."

That "new announcement," according to General Grant and Mr. McCulloch, a member of both Cabinets, was the proclamation of amnesty and pardon which had already been prepared by Mr. Lincoln and which was subsequently, on 29, May, 1865, issued by his successor, Mr. Johnson. This proclamation was similar to that of 8 December, 1863, except that fourteen classes of persons instead of six were excepted from the privileges of the amnesty. The theory was the same.

On the same day, 29 May, 1865, President Johnson appointed William W. Holden, Provisional Governor of North Carolina and required him "at the earliest practicable period to prescribe such rules and regulations as might be necessary and proper for convening a convention composed of delegates to be chosen by that portion of the people of the State who were loyal to the United States, for the purpose of *altering* or *amending* its constitution; and with authority to exercise, within the limits of the State, all the powers neces-

sary and proper to enable the loyal people of the State to restore it to its constitutional relations to the Federal Government."

In the election of delegates to the convention no person was to be a qualified elector or eligible as a member unless he had previously taken the oath of amnesty set forth in the President's proclamation and was a qualified voter under the Constitution and laws of the State in force immediately before 20 May, 1861. The President further directed that the convention or the Legislature that might thereafter assemble should prescribe the qualifications of electors and the eligibility of persons to hold office under the Constitution and laws of the State, "a power," said he, "the people of the several States composing the Federal Union have rightfully exercised from the origin of the government to the present time."

The heads of the several departments of the national government were directed to put in force in North Carolina all laws of the United States, the administration of which belonged to their respective departments; and in making appointments they were directed to give preference to qualified loyal persons residing within the State. The United States Judge for the district in which North Carolina was included was directed to hold courts within the State in accordance with the provisions of the act of Congress, and the Attorney-General was instructed to enforce the administration of justice in the State in all matters within the cognizance and jurisdiction of the Federal courts. Mr. Seward accompanied the order with a circular directing that the prescribed oath might be taken and subscribed before any commissioned officer, civil, military or naval, in the service of the United States, or any civil or military officer of the State who by the laws thereof, might be qualified for administering oaths.

In performance of the duty imposed by the order of his appointment Governor Holden, on 8 August, 1865, ordered an election to be held on 2 September for delegates to a convention to assemble in Raleigh on 2 October following, for the purpose specified in the order of the President appointing him. The number of delegates to be chosen was 120. Mr. Settle was elected from Rockingham.

The first Southern reconstruction assemblies were severely criticized and condemned by the North. Thaddeus Stevens spoke of them at the time as an "aggregation of whitewashed rebels who, without any legal authority, have assembled in the capitols of the late rebel States and simulated legislative bodies." And Mr. Blaine, in his *Twenty Years of Congress*, refers to them as "an assemblage of oligarchs . . . little else than consulting bodies of Confederate officers under the rank of brigadier-general, actually sitting throughout their deliberations in the uniforms of the rebel service and apparently dicating to the Government of the Union the grounds on which they would consent to resume representation in the National Congress"; and their official acts, he asserts, were "inspired by a spirit of apparently irreconcilable hatred of the Union," and were intended practically to reënslave the negro. Passing by the question of the justice of these criticisms, as they relate to the conventions and Legislatures of other Southern States, let us see whether or not they are justly applicable to those of North Carolina.

The first reconstruction convention of North Carolina was composed of men who were nearly all old-line Whigs and Union Democrats originally opposed to secession. Of its members nine, namely, Giles Mebane, of Alamance; E. J. Warren, of Beaufort; D. D. Ferebee, of Camden; Bedford Brown, of Caswell; George Howard, of Edgecombe; R. P. Dick, of Guilford; W. A. Smith, of Johnston; John Berry, of Orange; and A. H. Joyce, of Stokes, had been mem-

bers of the secession convention in 1861. Bedford Brown had been a United States Senator, and two other members, John Pool and Thomas J. Jarvis, afterwards became United States Senators from this State: six, Nathaniel Boyden, Gen. Alfred Dockery, Alexander H. Jones, I. G. Lash, Edwin G. Reade and W. A. Smith, had been or were afterwards members of Congress from this State; three, C. C. Clark, Jesse R. Stubbs and Samuel H. Walkup, were elected members of the Thirty-ninth Congress but were not allowed to take their seats; two, Tod R. Caldwell and Thomas J. Jarvis, were afterwards Governors of the State; one, M. E. Manly, had been a Justice of this Court, and seven others, Boyden, Bynum, Dick, Faircloth, Furches, Reade and Settle, became Justices of this Court, two of whom, Faircloth and Furches, became Chief Justices; three, Brooks, Dick and Settle, became United States District Judges; six, Buxton, Furches, Gilliam, Howard, Warren and McCoy, had been or afterwards became Judges of the Superior Courts of North Carolina. In addition to these the convention numbered among its members such eminent lawyers as B. F. Moore, of Wake; Samuel F. Phillips, of Orange; William A. Wright, of New Hanover; Patrick H. Winston, of Franklin; D. H. Starbuck, of Forsyth; William Eaton, Jr., of Warren; Neill McKay, of Cumberland; R. S. Donnell, of Beaufort; Edward Conigland, of Halifax; Neal A. McLean, of Robeson; R. H. Winburne, of Chowan; W. A. Allen, of Duplin, and A. H. Joyce, of Stokes; and such prominent professional and business men as E. M. Stevenson, of Alexander; Lewis Thompson, of Bertie; D. F. Caldwell, of Guilford; J. R. Love, of Jackson; Dr. Eugene Grissom, of Granville; Dr. William Sloan, of Gaston; Montford McGehee, of Person; Daniel L. Russell, Sr., of Brunswick; Giles Mebane, of Alamance; L. L. Polk, of Anson; R. L. Patterson, of Caldwell; Thomas I. Faison, of Sampson; J. S. Spencer, of Montgomery; James McCorkle, of Stanly, and others who were eminent and useful citizens of the State.

The convention met in the hall of the House of Commons in Raleigh at noon 2 October, 1865, and its first act was to have administered to its members the oath to support the Constitution of the United States and to direct the flag of the Nation to be raised over the capitol during the deliberations of the convention. Edwin G. Reade was unanimously elected president. One paragraph in his address on assuming the chair showed the spirit and sentiment of the convention. "Fellow citizens," said he, "*we are going home.* Let painful reflections upon our late separation and pleasant memories of our early union quicken our footsteps toward the old mansion, that we may grasp hard again the hand of friendship which stands at the door, and sheltered by the old homestead which was built upon a rock and has weathered the storm, enjoy together the long, bright future which awaits us."

The Provisional Governor quoted this paragraph approvingly in his message, which likewise was conciliatory in tone and temper. Mr. Settle was among the younger members but was active in the discussion of all matters of public interest that came before the convention. He was chairman of the committee on the abolition of slavery and the author of the ordinance forever abolishing slavery in this State. He was also chairman of the special committee on the state debt and a member of other important committees of the convention. He was described at that time by a Northern spectator as "a man about six feet in height, 190 pounds in weight and 34 years of age; erect, broad-shouldered, with full face, firm mouth, bronzed and rosy cheeks, large brown eyes, dark-brown hair and whiskers. He speaks with force and unmistakable emphasis, gesticulates with a full sweep from the shoulder, and adds a sincere love of

the Union to a hearty hatred of secession." Mr. Moore, Chairman of the Committee on the Revision of the Constitution; Mr. Boyden, Chairman of the Committee on the Ordinance of Secession; Mr. Phillips, Chairman of the Committee on the Acts of the Convention, the Legislature and the Courts since 1861, and Mr. Settle, were the leaders of the majority in the convention.

By a vote of one hundred and five to nine an ordinance was passed on the fourth day of the convention declaring the ordinance of secession null and void from the beginning. Those voting in the negative objected merely to the form of the ordinance. They were willing to vote for a resolution declaring that the arbitrament of the sword had decided against the right of a State to secede, but to declare the ordinance of secession null and void from the beginning was in their opinion a grave reflection upon the able body that passed that ordinance; and they distinctly stated that in opposing the proposed ordinance they were not to be considered secessionists. On the fifth day, by a vote of one hundred and nine in the affirmative and none in the negative, an ordinance was passed forever prohibiting slavery in the State. At the urgent request of President Johnson an ordinance was also passed forbidding the payment of the debts created or incurred by the State in aid of the war. As to the negroes, the Governor, by authority of the convention, appointed B. F. Moore, W. S. Mason and R. S. Donnell commissioners to prepare and report to the Legislature next elected a system of laws upon the subject of freedmen and to designate such laws then in force as should be repealed in order to conform the statutes of the State to the ordinance of the convention abolishing slavery. All the machinery of civil government was provided and established; the State was divided into congressional districts and an election for governor and other executive officers and for members of the General Assembly and of Congress was ordered to be held on the second Thursday of November following, and on 19 October the convention adjourned until 24 May, 1866. Judge Reade, its president temporarily dismissing the delegates, declared: "Our work is finished. The breach in our government so far as the same was by force, has been overcome by force; and so far as the same had the sanction of the Legislature, the legislation has been declared null and void. So that there remains nothing to be done except the withdrawal of military force, when all our governmental relations will be restored without further asking on the part of the State or giving on the part of the United States . . . It remains for us to return to our constituents and engage with them in the great work of restoring our beloved State to order and prosperity."

Admirable optimism, but how mistaken! More than a month before Charles Sumner, leader of the Senate, addressing the Republicans of Massachusetts, had declared: "It is *impartial* suffrage that I claim, without distinction of color, so that there shall be one equal rule for all men. And this, too, must be placed under the safeguard of constitutional law . . . As those who fought against us should be for the present disfranchised, so those who fought for us should be enfranchised. All these guaranties should be completed and crowned by an amendment of the Constitution of the United States especially providing that hereafter there shall be no denial of the electoral franchise or any exclusion of any kind on account of race or color, but all persons shall be equal before the law." At the same time Thaddeus Stevens, the master spirit of Congress and of the period, writing to Sumner about the Republican State Convention of Pennsylvania recently held, complained that negro suffrage had been passed over by it as "heavy and premature." But, said he, "get the Rebel States into a *territorial condition* and it

can be easily dealt with. That, I think, should be our great aim. Then congress can manage it." Here were foreshadowed the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and it was predetermined that the work of our convention, whatever it might be, if it fell short of establishing and securing impartial or universal suffrage, should come to naught. The plan of Lincoln and of Johnson was already doomed to defeat by the great leaders of their party in Congress.

The election was held 9 November, 1865. The anti-secession and anti-slavery ordinances adopted by the convention were ratified by the people, the former by a vote of 20,870 for, and 1,983 against it, and the latter by a vote of 19,039 for, and 3,970 against it. Seven members of Congress were elected, among them Charles C. Clark from the second district, Thomas C. Fuller from the third, and Josiah Turner from the fourth, the Raleigh district. A General Assembly and State officers were also elected.

Interest centered largely in the contest for Governor. It was the ambition of Mr. Holden to be elected Governor by the people. He had been a member of the convention of 1861 and voted for the ordinance of secession. He was a Democrat who strongly favored the war when it began, but by 1864 had become an avowed Union man who favored the immediate termination of the war and the speedy restoration of the State to the Union. That year he had been a candidate against Mr. Vance for Governor but was defeated. He was a personal acquaintance and friend of President Johnson and had been appointed by him Provisional Governor for this reason and also because of his acknowledged ability and pronounced unionism. He was intensely hated by the Democrats. Considerable indignation had arisen in the convention from the belief that President Johnson's telegram to him urging the convention to repudiate the State war debt was sent at his instigation. Notwithstanding the urgent request of the President, Mr. Moore had proposed to leave the whole matter to the people and this proposition was defeated by only four majority, the vote being 46 to 50.

Jonathan Worth was then State Treasurer in the provisional government. His record for unionism was good. He was a Whig and had opposed secession. He believed, as he afterwards said in his message, that the war ought never to have occurred—that it never would have occurred if the masses of the people of the two sections could have met in council and freely interchanged opinions and information. He was satisfied that the jealousy, hatred and distrust engendered by the struggle prevailed among politicians with far more intensity than among the citizens, including the late soldiers in either section. But he was squarely in favor of paying the debts created by the State in aid of the Confederacy, while Holden was one of the leading spirits who opposed it.

A powerful opponent of Mr. Holden was Josiah Turner, then editor of the Raleigh *Sentinel*. Mr. Turner came within one of these classes excepted by the President in his proclamation of amnesty and it was necessary for him to have his disabilities removed by pardon or otherwise before he could vote or be eligible to office. Pardons were secured by petition to the President approved by the Governor. Mr. Turner prepared his own petition and being an ardent Whig and a Union man, it was nothing less than a severe arraignment of the Provisional Governor and the party to which he belonged at the commencement of the war. It was forwarded to the President with a recommendation by the Provisional Governor that it be held up. Mr. Turner went to Washington to inquire about the delay and was shown the endorsement of

the Provisional Governor on the petition. He returned to Raleigh and the night afterwards, by appointment, delivered a characteristic speech in the courthouse, bitterly denouncing Holden and urging the nomination and election of Mr. Worth. Within twenty-five days of the election Worth was prevailed upon and his candidacy for Governor announced. Mr. Turner supported him powerfully in his newspaper and on the stump and as effectually opposed Mr. Holden. Mr. Worth was supported largely by those who had been secessionists and Mr. Holden by the unionists. Mr. Settle, always a consistent Union man and the champion of the ordinance forbidding the payment of the State war debt, in which he was aided by the President and Governor Holden, naturally supported the latter in his candidacy as he had also done in 1864. Holden was defeated by a majority of 5,930, his vote being 25,704 and Worth's 31,643, showing a loyal qualified electorate of 57,347 in the State, while the total vote cast for President in 1860 was 96,230, thus meeting many times over the requirement of Mr. Lincoln that the loyal electorate should be as many as one-tenth of the actual voting population in 1860.

To complete the work of restoration required by the President the General Assembly met 30 November, 1865. Many of its members were also members of the convention which had recently adjourned. Mr. Settle had been elected from Rockingham and was chosen Speaker of the Senate, thus, before his thirty-fifth year, attaining the speakership of both branches of the Legislature. The convention had already repealed the ordinance of secession, abolished slavery and prohibited the payment of the debts created by the State in aid of the Confederacy; and the Legislature was now requested to take the only remaining step necessary for complete restoration by ratifying the Thirteenth Article of Amendment to the Constitution of the United States which had been submitted by Congress in February before. Though out of the Union, according to the view of Congress, the State was thus called upon to exercise and did exercise one of the highest functions of an American State in the Union. On 21 November Governor Holden had received the following telegram from Mr. Seward, Secretary of State:

"The President sincerely trusts that North Carolina will, by her Legislature, promptly accept the Congressional Amendment of the Constitution of the United States abolishing slavery.

"He relies upon you to exercise all your functions as heretofore, with the same wisdom and in the same spirit of loyalty and devotion to the Union that has marked your administration hitherto.

"The President desires you to feel entirely assured that your efforts to sustain the administration of the Government and give effect to its policy are fully appreciated and that they will, in no case, be forgotten."

The proposed amendment was almost unanimously ratified 4 December, On the same day Congress met and the loyalty of the Southern people and their right to representation in that body were denied. The representatives from the Southern States were denied their seats. William A. Graham and John Pool, both Whigs and original Union men, were elected Senators from this State. A joint committee of fifteen, six Senators and nine Representatives, was appointed by Congress to inquire into the condition of the Southern States and report whether they or any of them were entitled to be represented in either House of Congress. General Grant, who had recently been in the South, reported in effect that they were, and General Schurz, fresh from the same country, reported substantially that they were not. These reports accompanied a special message from the President to the Senate in

response to a call for information on the progress of reconstruction in the South and furnished arguments respectively to the friends and opponents of the President in his efforts to restore civil government in the Southern States. The twenty-seventh of November the President had sent Governor Holden the following telegram, which was published in the *Standard*.

"Accept my thanks for the noble and efficient manner in which you have discharged your duty as a Provisional Governor. You will be sustained by the Government.

"The results of the recent elections in North Carolina have greatly damaged the prospects of the State in the restoration of its governmental relations. Should the action and the spirit of the Legislature be in the same direction, it will greatly increase the mischief already done and might be fatal.

"It is hoped the action and spirit manifested by the Legislature will be so directed, as rather to repair than increase the difficulties under which the State has already placed itself."

To correct the impressions indicated by that message the General Assembly on the ninth unanimously passed the following resolutions and transmitted a copy of them to the President and Congress:

"*Resolved*, That the people of North Carolina have accepted the terms offered them by the President of the United States, and have complied with the conditions laid down by him as necessary to restore our constitutional relations with the other States of the Union; and that they have done so in good faith, and with the intention and determination to preserve and maintain them.

"*Resolved*, That the people of North Carolina are loyal to the government of the United States, and are ready to make any concessions not inconsistent with their honor and safety, for the restoration of that harmony upon which their prosperity and security depend.

"*Resolved*, That we have confidence in the ability, integrity and patriotism of Andrew Johnson, President of the United States; and that in behalf of the people of North Carolina, we return our thanks to him for the kindness, liberality and magnanimity which he has displayed towards them."

About the middle of December the Legislature adjourned until February, but was called to meet in extra session by Governor Worth 18 January, 1866. Before adjournment, however, it presented to the President of the United States the following Memorial, in the preparation and sentiments of which Mr. Settle heartily shared, and asked that the same be laid before Congress:

"The Memorial of the General Assembly of the State of North Carolina respectfully shows that this assembly was appointed, elected and convened in strict accordance with your Excellency's plan for reorganizing the States lately at war with the United States. The people of North Carolina embraced with zeal and with a loyal spirit your Excellency's plan for the restoration of the State to the rights of a member of the Federal Union, and since the surrender of General Johnson, they have been universally actuated by a fixed and honest desire to be faithful citizens of the United States.

"According to your Excellency's instructions, a convention of the people was held in October, which repealed the ordinance of secession, declaring it never to have been in force; abolished forever the institution of slavery, and forbade the Legislature ever to assume or provide for debts contracted for the war. The convention also provided for an election for Governor, for members of this Assembly, and for various local officers, and immediately after the meeting of this Assembly, the amendment to the Constitution of the United States, abolishing and prohibiting slavery, was ratified with almost perfect unanimity.

"The late elections were held without excitement or tumult, and in good faith towards the government and Constitution of the United States, and whatever differences of opinion there may have been as to men, the people were a unit in their desire to do all that your Excellency required them to do, and to live in peace under and in obedience to the Constitution and laws of the general Government of the United States.

"Your memorialists therefore respectfully desire that the civil law may be restored and the State permitted to resume its position as a member of the Federal Union. They make no complaint of the military authority here, but on the contrary, would bear cheerful testimony to the wise regard of your Excellency for the interest of the people, and to the efficiency and courtesy of the officers who are, and have been, in command in North Carolina. But it is respectfully and earnestly submitted, that the wisest and best system of military rule alone will necessarily fail in accomplishing what the circumstances of this people require.

"They have for generations been accustomed to the exercise of civil law, to the machinery of a State with a Governor, Legislature, courts of various grades, and county organizations. Hundreds of important and vital interests are waiting the care of local legislation and of local officers, and the said desolations of war, material and moral, demand that life and energy should be immediately imparted to every agency of society. The interests of the people of North Carolina are the interests of the people of the United States; it is important to the whole country that the great resources of the region should be developed; that the soil should be cultivated with hopeful energy and thrift; that trade should be revived; that schools should be established; that crime should be punished and a healthful moral tone promoted. No human being in North Carolina anticipates the possibility or the desire of renewed rebellion here, and all the inhabitants of the State desire to perform their obligations to the country and to have the national credit sustained.

"But the present State of suspense and insecurity of long continuance will necessarily result in the most deplorable injuries. It is natural that the late tremendous contest should make sad breaches in society and open a way for a fearful harvest of ruin and crime. The people so severely crippled in their pecuniary resources and in the loss of nearly all their implements of industry are in danger of becoming hopeless and heartless. Honest and useful enterprise is at a stand, works of internal improvement are likely to be arrested and go to decay, moral agencies of every kind are languishing, the tendency to immigration is checked, and the all-pervading power of the civil law, executed by numerous and efficient agents, being no longer felt, there is no security in the dealings between man and man; the passions of the evil-disposed are not held in check, and oppression, fraud, violence and wrong, in all their countless forms, are left to prey on every community. If the threatened process of demoralization is not speedily checked by the life-infusing power of efficient civil authority and by the restoration of moral power, North Carolina, instead of being a useful and profitable member of the Federal Union, will be scouraged by the outlaw and bandit and will fall into a condition in which she will be only a burden to the general government. In view of these considerations so important to the entire Nation, your memorialists respectfully ask that the machinery of the civil government of the State may be restored to vitality and set in motion, with full authority to protect our rights and punish all crime, and be thereby enabled to preserve our ancient fame as a moral, pure and law-abiding people. And they would ask this much, even if, for

reasons that seem good to your Excellency, North Carolina is not permitted to resume her position in the Federal Union.

"When North Carolina gives her pledge she does it honestly. She has again tendered her plighted faith to the Government of the United States and she has manifested her spirit by acts that speak for themselves. There is no disloyalty among her people, no thought or dream of another rebellion. They are not ashamed of their courage, however, nor of their honest tenacity of purpose and desire to be free, and they feel assured that the brave and generous people of the North will respect in them that manhood which, upon an hundred fields, has won the applause of a gazing world.

"They have cheerfully given up their slaves and they are now actuated by a sincere desire of promoting the welfare and happiness of the unfortunate negro between whom and them there are very many old and tender ties.

"Your memorialists present themselves to your Excellency and to the representatives of this great nation with as honorable a purpose as ever actuated any people."

Pursuant to this request the President directed Governor Holden to discontinue the Provisional Government, and on 28 December, 1865, by direction of the President, he turned over to Governor Worth the Great Seal of the State and its other property and effects in the capitol, and Governor Worth entered upon the discharge of his duties as Civil Governor. The General Assembly met in extra session 18 January, 1866, to perfect the organization of civil government in which there had been discovered some defects. On 22 January the learned commissioners appointed by the convention to conform the statutes of the State to the changed conditions resulting from the emancipation of the slaves submitted an able and thorough report recommending an enlargement of the rights and privileges of the freedmen and abolishing discriminations against them. The report was substantially enacted into law. It conferred upon persons of color the same rights and subjected them to the same disabilities as by the laws of the State were conferred on or attached to free persons of color prior to emancipation. The courts were fully opened to them for the protection of their persons and property, by permitting them to sue and be sued in any court of the State and to be heard as witnesses whenever their rights were in controversy. In civil cases their evidence was allowed only where their rights of person or property were put in issue and would be concluded by the judgment or decree to be rendered, and in criminal cases only where the violence, fraud or injury alleged was charged to have been done by or to persons of color. In all other civil and criminal cases such evidence remained inadmissible unless by consent of the parties of record. When a colored person was a party he might call to the witness stand any other persons, white or colored, not otherwise incompetent; while in cases where white persons alone were parties, white persons only were competent as witnesses.

This enlargement of the rights of colored persons, however, was not to be effectual until jurisdiction of matters relating to them should be fully committed to the courts of this State; that is, until the Freedmen's Bureau relinquished its exclusive jurisdiction in matters relating to them. This provision was subsequently repealed by the convention. The laws of marriage and, in general, all laws affecting white persons were, with few exceptions, made applicable to colored persons. They were protected in the making and enforcement of contracts, and with the exception of suffrage were placed upon an equality before the law with white people.

Neither the convention nor the Legislature touched the question of suffrage. They were not required by the President to do so. It was left as it was be-

fore the war. It was no part of the plan of Mr. Lincoln or of Mr. Johnson to compel the Southern States to adopt any particular form of suffrage or to trail under any particular political banner as a prerequisite to the resumption of their practical relations with the Union. In their opinion the question was one solely for the States themselves, the Federal Government having no power in the premises. Mr. Lincoln's idea is thus expressed in a letter to Governor Hahn, of Louisiana, 13 March, 1864: "Now you are about to have a convention which, among other things, will probably define the elective franchise. I *barely suggest for your private consideration* whether some of the colored people may not be let in, as for instance, the very intelligent and especially those who have fought gallantly in our ranks. They will probably help in some trying time to come to keep the jewel of liberty within the family of freedom. *But this is only a suggestion, not to the public, but to you alone.*"

President Johnson, in August, 1865, had written the Provisional Governor of Mississippi *suggesting* that the convention of that State, then in session, extend the elective franchise to all persons of color who could read the Constitution of the United States in English and write their names, and who owned real estate valued at not less than $250, and paid taxes thereon. "This," said he, "you can do with perfect safety, and thus place the Southern States, with reference to free persons of color, on the same basis with free States."

The Legislature adjourned in March. The convention met again on 24 May and amended the Constitution of 1835 so as to embrace in it, among other things, the prohibition of slavery and the establishment of a strictly white basis for representation in the House of Commons, and submitted it thus amended to the people for ratification and adoption. The convention adjourned 25 June. It had performed its duties in a spirit of loyalty to the Union, and it was for the people to confirm or reject what it had done.

In the meantime, on 16 June, 1866, the Fourteenth Amendment had been submitted to the State for ratification the second time during this period, when the State was treated by Congress as out of the Union, that it had been called upon to exercise the high function of accepting or rejecting an amendment to the Constitution of the Union. The proposed amendment would disfranchise many of the leading citizens of the State. A Legislature was to be elected in August, before whom the question of its ratification would be presented. This amendment and the new State Constitution were the great issues in the campaign in North Carolina that year. The Freedmen's Bureau, with its separate courts for controversies affecting the colored people, had created great friction and irritation among the people. The great debate on reconstruction, begun in Congress in December before, was still going on. In it the Southern States were declared by the leaders of the dominant party to be out of the Union, without loyal civil governments, and with no power in the Executive to restore or readmit them except upon terms satisfactory to Congress. Yet all the machinery of civil government was in full operation throughout this State, and order and quiet prevailed. Judges of the Supreme and Superior Courts and all local officers had been elected, and were performing their duties. Governor Worth, in his message to the General Assembly of 1866-67, declared that not a single instance had occurred where a sheriff had occasion since the surrender to require a posse or other aid to civil process. "Our judges," said he, "have executed their duties in a manner which would have given luster to the judiciary of any period in the history of the world. The steadiness with which they have held the scales of justice has at last extorted praise even from those who at first studied to malign them." Lamenting the action of a few agents of the Freedmen's Bureau, and some of our own people, in seeking

to make the impression at the North that freedmen and Union men could not get justice at the hands of our courts, he declared that these machinations were well understood at home, and that no murmur was then heard against the fairness with which justice was administered in our courts; that increase of crime was being rapidly repressed and reverence for justice was having its triumph.

Referring to the rejection of our Senators and Representatives in Congress, he declared that every citizen who had advocated the doctrine of secession before the war, or taken conspicuous part in the military conflict, had delicately foreborne to ask for a seat in Congress; that no one who had favored the initiation of the war or distinguished himself in the field during its progress had asked to be made a member of Congress; that "every Senator and Representative elected had always opposed secession until the United States could no longer protect his personal property." "The people of this State, with a singular approach to unanimity," said he, "are sincerely desirous of a restoration of their constitutional relations with the American Union. In the face of circumstances rendering it nearly impossible, they have paid its government the taxes of former years, laid when another *de facto* government, whose powers they could not have resisted if they would, was making levies in money and in kind almost greater than they could bear; they have acquiesced in the extinction of slavery which annihilated more than half their wealth; they have borne with patience the exclusion of their Senators and Representatives from the House of Congress, where they have had no one to contradict or explain the most exaggerated misrepresentations or even to make known their grievances. How long this unnatural condition of our relations is to continue, it seems we shall be allowed to have no share of determining." He unhesitatingly recommended the rejection of the Fourteenth Amendment.

In his opposition to this amendment, and also to the new Constitution submitted by the convention, Governor Worth followed the leadership of the two most eminent citizens of the State, Chief Justice Ruffin and Governor Graham. Early in July, 1866, the Chief Justice published an elaborate argument against the whole program of restoration adopted by President Johnson, and particularly against the convention and the Constitution framed by it. "I consider," said he, "that this is no Constitution, because your convention was not a legitimate convention and had no power to make a Constitution for us or to alter that which we had and have; and that it cannot be made a Constitution even by popular sanction." The convention, he maintained, was called without the consent of the people of the State, by the President of the United States or under his orders; "an act of clear and despotic usurpation, which could not give that body any authority to bind the State or its inhabitants." The delegates were not the choice of the people, he said, because of the unlawful restrictions placed on the qualifications of those persons who were eligible and those who might vote for them. They were not authorized by the President to frame a Constitution, and were not chosen for that purpose. The modes of amendment prescribed by the old Constitution had not been followed by the convention, and its acts in this respect were void. "It had no powers and could not make a Constitution," he declared; "for the same reason the people have no powers, and that, as neither the convention nor the people have any power in the premises, by consequence both together are equally destitute of the requisite power. The convention was an unauthorized body, and therefore no more than a voluntary collection of so many men—a caucus recommending to the people to adopt by their vote a certain instrument as our Con-

stitution, a thing which the people, under our Constitution, are not competent to do on that recommendation, and therefore the conjoint resolutions and votes of the two bodies have no more effect than that of either by itself." For these and other reasons the great Chief Justice concluded that the proposed instrument was no Constitution, and could not be made one by what had been done or by what could be done, and he therefore earnestly urged the people to reject it. His opinion was accepted and acted upon by a majority of the people. The Constitution was rejected by a vote of 19,570 to 21,552, and at the same time a Legislature was elected who rejected the XIV Amendment on 14 December, 1866.

Mr. Settle earnestly advocated the adoption of the Constitution and the acceptance of the XIV Amendment as the assured and promised way to end our anamolous situation and gain admission to the Union of the States. The failure of these measures was a deep disappointment to him. In the defeat of the former the work of the convention, as well as the friendly attitude and intercession of President Johnson, were in a measure disapproved, and in the rejection of the latter the State had gone counter to the expressed will of Congress, which now was supreme; and on 2 March, 1867, nearly two years after the surrender, the second Reconstruction Act was passed over the President's veto, by which the governments of the Southern States were destroyed, and they were remitted to military rule until they should adopt the XIV Amendment and incorporate in their organic law the principle of free and impartial suffrage. Stevens and Sumner had at last triumphed. Johnson and the South, too sure of success, and too chary, perhaps, of compromise and concession, were defeated, *but only for a generation.*

I will not stop to inquire which were right, legally or practically. "The war," says Mr. Hart, in his *Life of Chief Justice Chase*, "begun in 1861, on the theory that it was impossible for a State to withdraw from the Union, ended in the plain fact that the seceded States were practically out of the Union. . . . . The Southern people supposed that an oath of allegiance to the United States would readmit them into its fellowship; Johnson took the ground that all the important participants in the rebellion should be punished by the loss of the suffrage until he should restore the privilege by individual pardons; Congress intended that it was to decide what persons might take part in reviving the State government, and was determined that the States as communities should be punished by the imposition of humiliating conditions of restoration. The only logical and consistent theory was that of the Southerners, and that was impracticable, because it did not secure to the country the objects for which the war had been fought."

"After this long lapse of time," says John Sherman in his *Recollections*, "I am convinced that Mr. Johnson's scheme of reorganization was wise and judicious. It was unfortunate that it had not the sanction of Congress and that events soon brought the President and Congress into hostility. Who doubts that if there had been a law upon the statute book by which the people of the Southern States could have been guided in their effort to come back into the Union, they would have cheerfully followed it, although the conditions had been hard? In the absence of law both Lincoln and Johnson did substantially right when they adopted a plan of their own and endeavored to carry it into execution."

A definite and certain way of return having at last been prepared, the practical question was the acceptance or rejection of it. To accept it meant immediate readmission with all the rights of an American State; to reject it, continued military rule. Mr. Settle, like many of his friends, acquiesced in

the stern measures prescribed by Congress. He was deeply convinced that the interests of the State required the prompt acceptance of these terms, with a resolute purpose on the part of the people of making the best they could of the dark and troublesome situation. Accordingly on 27 March, 1867, he attended a convention at Raleigh, whose object was the organization of a party with that end in view. Upon his motion it assumed the name of the Republican party, and allied itself with that political organization. Its cardinal principles were Liberty, Union and Equality before the law, and it advocated the acceptance of the plan of reconstruction proposed by Congress. Shortly afterwards, by request of his neighbors and friends, he set forth his views on public affairs in a speech at Spring Garden, Rockingham County. He had participated in the war and had held a judicial office under a Confederate State Government, and was himself disfranchised under the recent act. His audience was composed of both white and colored people. He had no arguments for one that could not properly be addressed to the other.

Their rights and duties, he declared, were mutual and the sooner they understood them the better it would be for both. The scene was a novel one. Those who were lately slaves, and those who but lately owned them, were there as equals before the law, inquiring as to the best policy for governing their common country. "We did not exactly get out of the Union," said he, "though I confess it is somewhat difficult to define precisely where we are. Of one thing I am quite certain; some of us are trying to get back."

Addressing the colored people, he said: "To whom then are you indebted for freedom? To Him in whose hands is power and might. . . . You are free men and citizens of the greatest Government on earth, clothed with power to protect that freedom, and if you use it aright, and not abuse it, the Government is on a higher road to prosperity today than any she has ever yet traveled. For whatever may have been said in other days, it will hardly be pretended, in the light of present events, that freedmen, animated by all the hopes of life, and knowing that their wives and children enjoy the proceeds of their labor, will not develop the resources of a country faster than slaves, who have no objects or aims in life and no incentive to labor, save fear. If any portion of my audience has not surrendered old prejudices on this subject, let me inquire of them why have the Northern States, with a poorer soil and a colder climate, so far surpassed their Southern sisters? Why do the bleak and naturally barren hills of New England bloom like gardens while our fertile slopes are covered with broom sedge and are commonly and properly described as 'old fields?' Why do churches, schoolhouses, railroads, factories, cities and towns exist and flourish there while poverty and pride constitute our fortune here? One is the result of free labor, the other of slavery, which has been a blight and a mildew upon every land it has ever touched."

He strongly urged the necessity of industrial education for both races, and that machinery and educated labor were especially needed at that time. "Heretofore," said he, "we have not used the most improved implements of farming, but have contented ourselves to drudge along with rude and awkward tools. Those who have experimented with labor-saving machines on the farm have thrown them aside for various reasons, but the truth is they did not know how to operate them, and when the least part was broken or out of order they could not repair them. To remedy this we must at once educate our laboring classes. We are now taking a new start in the world. The future weal or woe of our country depends upon the foundations we are now laying. If we are to have prosperity we must make up our minds to look at several things in a light very different from that in which we have been accustomed

to view them. We must bury a thousand fathoms deep all those ideas and feelings that prompted the cruel laws against teaching these people, and must quicken our diligence to see that the means of light and knowledge are placed within the reach of every one of them. Then may we hope that those who were a curse to the country as ignorant slaves will prove a blessing as intelligent freemen."

He discouraged the denunciation of Northern men and Northern notions. They were what was needed in the South. "We want their capital," said he, "to build factories and workshops and railroads, and to develop our magnificent water powers, which are today monuments of God's bounty and of man's indolence and ignorance. We want their intelligence, their energy and enterprise to operate these factories and to teach us how to operate them. . . . In starting afresh, let us start new interests. We can do it by kindly inviting our Northern friends, who are seeking investments for their surplus capital, to come here by showing them that they and their families are welcome in our midst; that we want them here as neighbors and friends and not as enemies. We should never again, in public or private, indulge in an expression calculated to call up the bitter memories of the past. Let the dead past bury its dead. Our thoughts and hopes should be on the future. We should teach our people to love the whole Union. . . . Sectional appeals are unpatriotic. . . . This is a new business, and our success and prosperity depend upon the good feeling that ought to exist between the white and the colored people. We want no white party or colored party, and I warn my colored friends against that idea. The Southern man who says or does anything to create bad feeling towards the North at this critical time is no patriot, and the Northern man who tries to stir up one portion of our people against the other is equally lacking in patriotism. There is no reason why the two races should be at enmity, but many good reasons why they should be friends. Our common interests demand it, and I trust our hearts feel it. Surely slave owners can enertain no unworthy prejudice against a people who remained with them faithfully to the last, and forebore to participate in a struggle which, after 1863, was avowedly for their freedom."

He advised white men to be kind and just to the negro, to make fair and liberal contracts with him and stand up to them, even to their own hurt. His advise was the same to the colored man. Heretofore he had been given little opportunity to form general character; it would not be so hereafter. The broad world was now before him, and he would soon make some sort of mark upon it. His general bearing and dealings with men would soon make for him a general character. He could make it good or bad, just as he saw proper. Honesty, industry, economy, sobriety, truth, virture and intelligence would secure for him all that any man could desire. He should look to the virture and integrity of his children and teach them to speak the truth from the time they first began to lisp. . . . The duties and responsibilities of freedom and of citizenship were important, and he must now qualify himself to discharge them honestly and intelligently. If he failed to do so he would soon find a level which would not be very much higher than slavery."

Speaking further to the colored men he said: "Let me also say to you, beware of any man, whether of Northern or Southern birth, who tries to influence your passions and prejudices against the white race or to build up a colored party on these passions and prejudices. He who does it is an enemy, alike to the white man and to the colored man, and is seeking some personal advantage at the expense of his country, to say nothing of right and wrong.

See what madness it would be for you to undertake to form a party on such a basis in North Carolina! You constitute only one-third of our population, and unless you can get a large portion of the white people to join you you will be in a helpless and hopeless minority. . . . Let hate and prejudice have no place here. Elevate yourselves, but pull nobody else down. Go for the education and progress of mankind, without regard to race or color, and invite all to come forward and assist in the development of our common country. These principles are founded upon a rock, and cannot be moved."

Except the time he served in the war and in the convention and Legislature of 1865-66, Mr. Settle was solicitor of his district continuously from 1861 to 1868. In April, 1868, he was elected Associate Justice of this Court, and served till his appointment as minister to Peru in February, 1871, when he was succeeded by Nathaniel Boyden. The climate of Peru severely threatened his health. Besides, his heart was with his family and in his friends in North Carolina, and he was not satisfied to remain away. In the spring of 1872 he resigned and came home. The same year he was chosen president of the National Republican Convention at Philadelphia, which nominated General Grant for his second term, the only Southern Republican ever honored with the presidency of a national convention of his party. He accepted the distinction, "not so much as a tribute to himself, but as the right hand of fellowship extended from our magnanimous sisters of the North to their punished, regenerated, but patriotic, sisters of the South." The same year he also became unwillingly the candidate of his party for Congress from the Greensboro district, against General James M. Leach, the incumbent, and after a joint canvass of great ability was defeated by the narrow majority of 268. Associate Justice Dick having resigned his membership of this Court in the summer of 1872, Judge Settle, on 5 December of that year, was reappointed to this Court, where he served as Associate Justice till June, 1876, when he resigned to accept the nomination of his party for Governor of the State.

Judge Settle was nominated for Governor on 12 July, 1876. Governor Vance had already been nominated as the Democratic candidate. Immediately after his nomination Judge Settle announced that he would invite his opponent to a joint discussion. On 14 July Governor Vance was the guest of the Tilden and Vance Club of Raleigh, and had an appointment to speak in that city at 11 o'clock. Judge Settle was also in Raleigh and addressed a note to Governor Vance, asking a division of time on such terms as they might arrange. Governor Vance answered, stating his situation as the guest of the club, but that he was authorized by it to agree to a division of time on this wise: Vance to open in a speech of an hour and a half, Settle to reply in a speech of the same length, and Vance to rejoin in a speech of an hour, which should close the discussion. Judge Settle declined any proposition that would not give an equal division of time between the disputants, and expressed an anxiety for a joint canvass of the whole State on the usual terms. The notes of each were in fine spirit and admirably courteous, but no joint discussion was arranged that day. The newspapers of the same morning announced appointments of Governor Vance and General Leach to speak in various parts of the State in July and August. Judge Settle, through the chairman of the Republican Executive Committee, asked that these appointments be recalled and arrangements made for a joint discussion in every county of the State. This was declined by the Democratic chairman on the ground that since the war such had not been the custom, but he cheerfully offered to arrange for joint discussions at the times and places designated in the list referred to, which was agreed upon. This is all he would consent to, preferring to leave

the matter entirely to the candidates themselves, in accordance with the practice theretofore prevailing in regard to candidates on the State ticket. The candidates agreed on a joint canvass of the State. Their debates are historical in North Carolina. They were conducted with splendid dignity, each candidate treating the other with fine courtesy throughout the discussions. It was a return to the spirit of older times when such men as Graham and Hoke, Gilmer and Bragg, Badger and Miller led the opposing hosts in the field of political contest. In all that makes political speaking instructive, impressive and convincing these discussions were in no respect less masterful than the debates between Lincoln and Douglas in 1858. The sentiment of a large majority of the white people was with Vance. On this account Judge Settle was continually at a disadvantage, but after each debate his political adversaries were forced to acknowledge his power and that there were laurels won on either side. But, practically, the joint discussions were disastrous to the Republican cause, just as they were in the campaign with Leach four years before, and as they have usually been in the South since the war. The white people were stirred to the depths, as otherwise they might not have been, and they thus became a power so irresistible that only an equal number of white men could withstand them. No braver, fairer, manlier political battle was ever fought on American soil than that which was fought by Judge Settle in 1876. But success was impossible. He was defeated, but in his defeat he received the plaudits and the respect even of his bitterest political foes.

Judge Settle was a personal friend of General Grant. They had met in Raleigh the last of November, 1865, when General Grant was traveling through the South to ascertain the condition of the Southern people and their feeling toward the Union. After Judge Settle's defeat for Governor, President Grant, on 30 January, 1877, tendered him the appointment of United States Judge for the District of Florida, which he accepted and filled with great distinction until his tragic death in the judge's room of the government building in the city of Greensboro, 1 December, 1888.

Judge Settle possessed in an eminent degree the qualities of courage and independence of character. He was bold in the enunciation of his views and fearless in performing the duties of the important positions to which he was called. Though his official stations were occupied for the most part in times trying and troublesome, when men's feelings were most bitter, such were the dignity of his presence and manner, the firmness of his resolution and the magnanimity of his actions that, whether sitting as a judge or presiding over the deliberations of Legislatures or conventions, unquestioning obedience was rendered to his authority. So good a heart had he, so kind and benignant were his words and deeds, that even his enemies at last became his friends. At the time of his death he was the foremost man of his party in the South, and the end came when his fine abilities were in their prime. Many eyes all over the country were looking for him to be called to Washington as a member of the Cabinet in the new administration. With his knowledge and ability, and, above all, with his kind, unselfish heart, he would undoubtedly have accomplished much good for his country.

As a lawyer Judge Settle was fair, able, just and honorable. His mind was quick and he readily caught the point. In statement he was clear and incisive; in argument, logical; in manner and expression, forcible and effective. As a prosecuting officer he comprehended the depth and meaning of his oath of office, and strove to administer the criminal law fairly and impartially, not harshly nor with oppression. He observed the golden rule of the law: he lived honorably, injured nobody and gave to every one his due. On the bench, here

and in Florida, he was beloved by his associate judges as well as by the bar, and was popular amongst all classes of people. One of the judges who sat with him in this Court thus spoke of him: "On the bench his relations with his associates were always cordial and intimate. We regarded him as a younger brother, and were greatly aided and benefited by his wise suggestions and well-considered counsels in those troublous times that required cautious action, courage of opinion and judicious adjudication in settling new and difficult questions arising out of the disturbed condition of public affairs, resulting from the reconstruction of the State government and from the new modes of pleading and procedure in the courts. As a judge he was affable and courteous, patient and attentive in hearing argument, firm and impartial in his rulings. He presided in court with impressive dignity, and his integrity was stainless. He possessed in a high degree the genius of common sense, and seemed to have an intuitive knowledge of the eternal principles of reason, justice and truth. He relied more upon the principles and reasons of the law than upon the speculative and conflicting decisions of the courts. In any case argued before him his quick and clear apprehension of the merits and the questions of law involved generally enabled him to render a just and correct decision."

Personally Judge Settle was unusually magnetic and lovable. He commanded admiration if not affection instantly and without effort. He was a perfect specimen of a man cast in a mould as perfect as nature ever uses. He was naturally a superb, exquisite gentleman. His features were always illumined with the light of intelligence and the glow of a warm, generous noble heart. He was tall and erect and his movements were firm, graceful and elastic. His genial presence in the social circle always inspired pleasant thoughts and feelings. The kindliness of his nature was as diffusive as the sunshine. His manners were easy, cordial, sincere, and provoked a feeling of cheerfulness and happiness in those around him. He had no feeling of envy or jealousy, and was free from malice and guile. His humor was sunny and playful, and he had a large fund of amusing anecdotes which he appropriately applied to illustrate a story of an argument. His wit was sparkling and racy, and, in the excitement of controversy, keen and caustic, but had no venom in its sting. As a conversationalist and companion he had an individuality that was inimitable.

In public life his generosity, courage and intellectual force made him easily a leader among men. Though not at the bar many years he developed forensic powers of the highest order, and showed the qualities of a great advocate.

As a politician he was valiant in advocating the principles and policies in which he believed. He was straightforward and truthful in his dealings with his party friends and associates. There was no hypocrisy, deception or double dealing about him. He despised petty politics, and refused to submit to the dictation or rule of the petty politician in the guise of a party boss. He believed in government by parties, but not solely for parties, and much less for the special benefit of a few in those parties. He was not unduly biased by partisan prejudices or animosities. While firm in his convictions and fearless in the expression of his opinions, he was tolerant of the opinions of others and generous in his judgement of their conduct and purposes.

As a political debater he was powerful and commanding, and specially adroit in the conduct of discussions.

As a legislator he possessed a large fund of useful information and practical knowledge. He was familiar with the subjects of legislation and the rules

and proceedings of deliberative assemblies over which he presided with charming dignity and impartiality.

His reputation was not confined to the State. He was as well known and as well loved in other States as in North Carolina. His views upon State and national questions were enlightened, comprehensive and eminently patriotic. He was sanguine in his anticipations of the future, and indulged in no gloomy forebodings of coming disaster. Experiences of the past had not caused him to distrust the patriotism, the wise conservation of the American people. He recognized the fact that time—social and business intercourse, and the pride and love of a common country—had subdued the passions and prejudices of other days; and he believed that such just and liberal policies would be pursued as would shortly overcome all animosities lingering with the people of the two sections of our country, and cement them together in the bonds of perpetual friendship and union. His faith in the advancement and glory of the Republic was unfaltering and sublime.

The greatness of men is usually estimated from their public career and services. This is not always a true test. It was in the family and among his intimate friends that the shining qualities of Judge Settle's character were most apparent. His social traits were beyond compare. He had a pleasant word and a kind look and a smile for every one. He was benevolent to the poor. His generosity usually outstripped his means. The lowly and humble venerated him for his tender heart. He loved little children and was patient with them. He was not a promoter of strife or discord. He was a peacemaker. He had gathered around him his children and grandchildren, and they all looked up to him with pride and affection as their leader and adviser. Yet he was their friend and companion. He was thoughtful for the comfort and happiness of all—of sons and daughters of adult years, and of the little toddlers who understood his gentle word and caress. All knew his unselfishness and loved his patience and charity. To them indeed

"He lived
Considerate to his kind. His love bestowed
Was not a thing of fractions, half-way done,
But with a mellow goodness like the sun
He shone o'er mortal hearts, and brought their buds
To blossom early—thence to fruits and seeds."

A more upright, lovable, chivalric gentleman never lived in this land. May it please your Honors, in behalf of his children, I have the honor to present his portrait to the Court.

RESPONSE OF CHIEF JUSTICE CLARK.

North Carolina has few statues, but her people have memories, and in them long live her illustrious dead. The Court gratefully accepts this portrait of an honored member of this bench, who served his State with fidelity and marked ability. He lived amid stirring times and when his views on public issues were often bitterly antagonized, but no one ever questioned his ability, his integrity or his patriotism. The youngest man who has ever ascended this bench, and a member of one of the most distinguished families of the State, he has shed an added luster upon both.

Both bench and bar are gratified to see his portrait assume its place on the walls of this chamber by the side of those of Pearson, Reade, Rodman and Bynum, with whom he so long, so well, and so faithfully served.

The clerk will note on the records our acceptance of the gift of the portrait, and the marshal will cause it to be hung in its appropriate place.