

PRESENTATION OF PORTRAIT
OF
JUDGE JOHN D. TOOMER

BY
MR. EDWARD J. HALE

Mr. Chief Justice and Associate Justices, Most Honorable Sirs:

By your authority, I have the privilege of presenting to you a portrait of a distinguished North Carolinian, once a member of this great Court, and, by your invitation, to speak some brief words concerning him.

There is a sketch of Judge Toomer's life in the *Green Bag*, which I believe is the literary organ of the bar in America, written by the present Chief Justice in 1892, which describes in the finished and forcible style for which its author is distinguished, the career of Judge Toomer, from the viewpoint of one of his professional brethren. If it be the practice to make record of proceedings of the kind now taking place, I ask that Judge Clark's sketch of Judge Toomer may be made a part of the record.

Assuming that my request is not repugnant to usage and that it will be granted because consonant with your own sentiments, I shall briefly recite the salient features of Judge Toomer's life and public services as they occur to a layman, bound to him as I am by the ties of inherited affection and esteem.

John Duncan Toomer was born in Wilmington 13 March (617) 1784. He was the son of Henry Toomer, and his wife Magdalen Mary DeRossett. The name is Welsh, and his father was descended from one of the companions of Sir John Yeamans, in the Cape Fear Settlement of the Clarendon Colony, who accompanied Yeamans when he went to Charleston as Governor of Carolina. There his grandfather Joshua Toomer was born 12 September, 1712; there also his father Henry Toomer was born 7 August, 1738. Henry Toomer was married thrice—first to Mary Vanderhorst, of Charleston; next to Mary Grainage; and then to Miss DeRossett, of Wilmington, who was the mother of Judge Toomer, as I have said.

The family of Toomer, included Joshua, Anthony, and Anthony Bonneau, who was prominent in the social and political annals of South Carolina before the Revolution, and the intercourse between the Charleston part of Old Clarendon and the lower Cape Fear part led to many intermarriages between the prominent families in them. The older

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branch of the Rhetts, of South Carolina, were connected with these Toomers in many ways, and the name frequently crops out in studying their pedigree. I believe that Judge Toomer was descended from them, as was the fact in the case of his wife; but while the family pedigree in my possession shows the latter, that of the Toomers has not followed out the mother lines so completely. It is perhaps worth noting that the name Rhett became extinct in one, at least, of its lines, about the time of the maternal grandfather of our Governor Benjamin Smith. Governor Smith was the son of Thomas Smith and Sarah Moore, daughter of Roger Moore and Katherine Rhett. Governor Smith's brother, James moved to South Carolina and assumed, under the law, the family name of his grandmother, Catherine Rhett. From him the post-Revolutionary Rhetts of South Carolina were descended.

Judge Toomer's wife was Marie Rhett Swann, daughter of John Swann, of the Rocky Point Settlement on the northeast Cape Fear, famed in Colonial and latter days for its culture and refinement, (618) probably unequaled in America, and for the splendor of its hospitality. She was the lineal descendant of Sir John Yeamans, or, as he is described in the Moore family pedigree, "Sir John Yeamans, Baronet and Governor of Carolina." Yeamans' successor as Governor of Carolina was James Moore, who married his daughter Margaret. From the latter's sons, Maurice, Roger and Nathaniel, a number of the distinguished families of the lower Cape Fear were descended. Judge Toomer's wife was descended from Maurice Moore. Their children were: Henry, a planter of Georgia, who died unmarried; Sarah, who married Albert Torrence, of Fayetteville; Mary Ivey, who married Warren Winslow; John, who died in youth; Eliza Yeamans, who married Thomas Hill, of Hailbron; Duncan Alexander, who married Betsey Swann; Lucy, who married Frederick Swann Davis; Catherine De-Rossett, who married Nathaniel Moore Hill, and Frederick Armand, a planter of Georgia, who died unmarried. Thomas Hill and Nathaniel M. Hill were descendants of Yeamans through his grandson, Nathaniel Moore.

Judge Toomer was educated at the University of North Carolina; was a trustee thereof from 1818 to his death in 1856, and was a member of the committee, 1833, James Iredell, chairman, which reported against removal of the University to Raleigh. He studied law under Judge Joshua G. Wright, of Wilmington. In 1817 he moved to Fayetteville. In 1818 he was elected a judge of the Superior Court, but resigned that office in 1819. In June, 1829, he was appointed by Governor Owen as Associate Justice of the Supreme Court on the death of Chief Justice Taylor, but he was not elected by the Legislature when it met in December. He was Senator from Cumberland in 1831, and again in 1832.

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In 1836 he was again elected a judge of the Superior Court, which office, from ill health, he resigned in 1840. He moved to Pittsboro shortly before his retiring from the bench, and lived there, at his country-seat, in ease and dignity during the remainder of his life.

Wheeler said (1851) in his account of Judge Toomer's career: (619) "He is considered a most eloquent speaker, an agreeable and interesting writer, of profound literary attainments, and an amiable and urbane gentleman."

Mr. Belden, in his "Reminiscences of Fayetteville" (1893) speaking of Judge Toomer's address of welcome to Lafayette (1825), said: "He was then in the autumn of life, but still sustained the reputation he has always had of being the most eloquent orator Fayetteville has ever had." His address, which was published in full in the *Fayetteville Observer* 10 March, 1825, is a model of eloquence appropriate to the occasion.

The late Edward J. Hale, in his editorial obituary in the *Observer* 2 October, 1856, said:

"We have known Judge Toomer intimately for nearly thirty years past, and we can truly say that a more courteous and dignified gentleman, a more entertaining conversationalist, a more upright and conscientious man, a truer friend, we never knew. He has passed through life without a spot upon his bright escutcheon. He has gone to the grave in a ripe old age, mourned by thousands to whom in the course of a long career of professional labor, his manly form and eloquent voice had become familiar. He was emphatically an old school gentleman—a link between the past and present—whose very presence in the court room inspired a kindly and courteous feeling among his brethren. Before him impertinence shrunk abashed, and the bitterness of professional zeal was calmed into courtesy. The quiet influence thus exercised by him made him a universal favorite, and to the cordiality with which he was everywhere received was it owing, we doubt not, that he continued his circuit for some years after his health would have justified retirement, and long after the necessity of exertion for the sake of its emoluments had ceased. He was both a learned lawyer and an eloquent advocate. Earnest and indefatigable, he was always fair; but it was less in his professional than in his social life that we knew him; and we will leave some professional pen to speak more particularly (620) as to that. Among the first graduates of the University of North Carolina, he was one who profited by the education he there received, and he continued a student for the love of literature and law, to the day of his death. A remarkably tenacious memory had enabled him to retain not only his classical and legal reading, but to gather many anecdotes of remarkable men and things which had come under his observation in the course of an extensive practice, and these he was wont to relate to

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his friends with most impressive eloquence. We have often regretted that his arduous labors left him no time to commit to writing these observations and experiences of a long and active life. They would have formed valuable, and altogether reliable contributions to history and biography. . . . The profession mourns its venerable head; and the State a citizen without fear and without reproach."

Elsewhere, in the same article, Mr. Hale said: "Office sought him—he never sought office."

The late Governor Winslow, in the same issue of the *Observer*, said: "He was the last connecting link between the lawyers of this and the early age of the Republic. He pursued his studies with Wright, of Wilmington; was the friend and youthful associate of Jocelyn, and had known Hooper and the eminent men of that day. When we first knew the bar of Fayetteville, its entire business was in the hands of Toomer, and Strange, and Eccles and Henry. They leave behind them to the aspiring youth of the profession examples for imitation."

It will be noticed that both Mr. Hale and Mr. Winslow speak of Judge Toomer as the connecting link between the public men of that day and of the early age of the Republic. I have dwelt somewhat at length upon Judge Toomer's ancestry and social environment for the purpose of illustrating this circumstance. He had been taught that men of his kind should not seek office, but that nevertheless they owed the State service when called upon, like the youths at Oxford and (621) Cambridge, who officered so gallantly the raw levies which joined Wellington at Brussels. The late Mr. Nathan A. Stedman, sometime Comptroller of North Carolina, said that it was in vain that Judge Toomer's friends appealed to him on the assembling of the Legislature in 1829, to make some sign that he desired to be continued in office; and that it was due entirely to this attitude on his part, which some of the legislators regarded as out of keeping with the spirit of the age, that his appointment six months before by Governor Owen was not followed by election at the hands of the Legislature.

The state of mind of Judge Toomer and his congeners on the subject of seeking office is little comprehended in the present day, when the evolution of Democracy has rendered it important to the public welfare that good men should seek office, within reasonable limits, lest the grade of its incumbents should be lowered. Not far back of Judge Toomer, in our own land, were appointments to judicial position by the crown; in his day, election by the people's representatives in the Legislature, but for life; later, as with us, election by the people and for a limited number of years.

I have spoken of Judge Toomer's remarkable gifts of eloquence. His speech in the State Senate, 8 December, 1831, upon the bill for appoint-

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ing commissioners for rebuilding the capitol at Raleigh and appropriating \$30,000 therefor, exhibits him as an orator and cogent reasoner of the first rank. The question of holding a convention was involved, and a quotation from this speech will show what a progressive Republican he was, notwithstanding his inherited views on the subject of office-seeking. Answering Judge Seawell's contentions, he said:

"Why should we fear to trust the people in Convention, or more correctly, why should the people fear to trust themselves. All power emanates from them; the basis of our government is their virtue and intelligence. This position is now deemed as impregnable, in the political, as the fortress of Gibraltar in the military world. The doctrine (622) has been long since exploded that 'the people are their own worst enemies.' We are not required to make an untried experiment; our people have been three times assembled in convention, and on each occasion to the advancement of the general good. Almost all the old thirteen States of the Union have had conventions to revise and amend their Constitutions, and their labors have advanced the commonwealth. Recently have Massachusetts, New York, South Carolina and Virginia been engaged in the business of revising their organic law. Why should *our people* more dread the hand of reform than their neighbors? Why should we fear to trust them with the work of reformation? Patriotism is unwilling to admit that we have not confidence in their virtue and intelligence."

Judge Toomer was averse to having his picture taken—no doubt the result of his extreme modesty. The portrait which is before us was copied from a faded daguerreotype, the only likeness extant. Though it is the best that could be made, it fails to do him justice; for he was a very handsome and noble looking man, as I remember him. It is the gift of Mrs. Haslam and Mrs. H. R. Horne, daughters of Governor Winslow and granddaughters of Judge Toomer.

Mr. Chief Justice and Associate Justices, I now present to you the portrait of one of your predecessors on this bench, who was not the least worthy of honor of those whose pictures adorn your walls.

ACCEPTANCE BY CHIEF JUSTICE CLARK

We are gratified to place the portrait of Judge Toomer on these walls by the side of his associates on this bench. He lived an honorable and useful life. His influence, his example and his labors were for the betterment of society and for the good of the State.

"He bore without abuse
The grand old name of gentleman."

(623) He served on the Superior Court with distinction both before and after his service here. Though his term on this Court was brief, it was long enough to show his eminent fitness for its duties. His State and this Court will ever recall his memory with pride. His opinions on the law side will be found in 13 N. C., and in Equity cases in 16 N. C.

The Marshal will hang the portrait in its appropriate place.