

PRESENTATION OF THE PORTRAIT  
OF  
JUDGE ARCHIBALD D. MURPHEY

BY  
HON. JOHN W. GRAHAM

27 OCTOBER, 1908

(582) *May it please your Honors:* When the General Assembly of 1818 established the Supreme Court on its present basis, it also provided by a supplemental act that, if a judge of the Supreme Court should be incompetent to decide a case on account of personal interest in the event, or some other sufficient reason, the Governor was authorized to give a special appointment to a judge of the Superior Court, requiring him to sit with the other judges of the Supreme Court to hear and determine all such cases. Under this law Governor John Branch appointed Hon. Archibald D. Murphey, then judge of the Superior Court to act at May and November Terms, 1819, and June Term, 1820, in place of Judge Leonard Henderson, who had been counsel in important cases then before the Court. It has been deemed proper that a portrait of this distinguished judge should take its place among those with whom he served, and that, on the occasion of its presentation, some outline of his character and public services should be given. At the request of those of his descendants and relatives who have complied with the desire of your honorable body to have his features (583) speak from the walls of this room, adorned by so many of our illustrious dead, I undertake this duty, as a friendship extended through more than three generations would not permit me to decline, and I recognize that it is peculiarly appropriate that a resident of the county of Orange should present a tribute to the memory of one who in life served her well, added lustre to her fame, and now sleeps in her soil.

Archibald DeBow Murphey was born in 1777 in the county of Caswell, about two miles from the Red House and seven miles from Milton. Here was the residence of his father, Col. Archibald Murphey, who came from Pennsylvania in 1769, being a son of Alexander Murphey, of York County, who, or whose ancestors, had come from Ireland. Colonel Murphey was the clerk of the court, and, upon the invasion of the British Army, closed his office, raised a company, and joined the forces under General Greene. The mother of Judge Murphey was, prior to her marriage, Jane DeBow, a daughter of Solomon DeBow, of the Red House, in Caswell County, who had also come from Pennsyl-

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vania in 1750, and his ancestors from Heidelberg or Holland. Of his early education Judge Murphey in his oration at Chapel Hill in 1827 gave this account: "The usefulness of Mr. Caldwell to the literature of North Carolina will never be sufficiently appreciated, but the opportunity of instruction in his school was very limited. There was no library attached to it; his students were supplied with a few of the Greek and Latin classics, Euclid's Elements of Mathematics and Martin's Natural Philosophy. Moral Philosophy was taught from a syllabus of lectures delivered by Dr. Witherspoon at Princeton College. The students had no books on history or miscellaneous literature. There were indeed very few in the State, except in the libraries of lawyers, who lived in the commercial towns. I well remember that, after completing my course under Dr. Caldwell, I spent nearly two years without finding any books to read except some old works on theological subjects. At length I accidentally met with Voltaire's History (584) of Charles XII, of Sweden, an odd volume of Smollett's Roderick Random, and an abridgment of Don Quixote. These books gave me a taste for reading which I found no opportunity for gratifying until I became a student in this University in 1796."

Governor Graham, in his address, remarks:

"When we consider that he afterwards became capable of writing like Goldsmith, and with an ease and rapidity that Goldsmith could not have equaled, we can but recall these reminiscences of earlier times and encourage the diligent student by his example. With a mind delighted by a consciousness of advancement in knowledge and spirit of emulation, he profited greatly by three years study in the University, and graduated with the highest distinction in 1799. Such was the reputation acquired by him in this period that he was at once appointed professor of ancient languages in his *alma mater*, a situation in which he continued the three succeeding years, and in which he matured that scholarship and taste for liberal studies, which so much distinguished him among his professional brethren and the educated gentlemen of the State."

On the 5th of November, 1801, he married Jane Armistead Scott, a daughter of John Scott, and a sister of Mrs. William Kirkland, whose daughter became the wife of Chief Justice Ruffin. He began the practice of law in 1802, his professional studies having been directed by William Duffy, Esq., an eminent lawyer then residing at Hillsboro, and probably Judge Murphey first settled there, though in a short time he acquired the property known as "The Hermitage" near the confluence of the Haw River and Alamance Creek, and was gradually adding to the number of acres; and his love of country life is shown in one of his letters: "I delight at this season of the year to ramble through the fields and

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meadows which begin to clothe themselves with fresh verdure, to walk over the hills and valleys when herbs, shrubs and trees begin (585) to blossom. How beautiful must the Hermitage soon appear and how much more happy must one live in such retirement, in conversing with nature's works, than those who spend their days in the hurry and bustle of the world; who must pass to their graves strangers to that tranquility and serenity of mind which few enjoy, except those who have a taste for the beauties of nature. With that pleasure shall I return to these delightful scenes from the wearisome avocations of professional life."

The competitors he met at the bar at one time or another were strong men, for besides Archibald Henderson, Seawell, Yancey and Morehead of other counties, Cameron, Norwood, Nash, Ruffin and Mangum were residents of Orange, and Hawks and Badger for several years. To show the position he early attained it is only necessary to mention that Chief Justice Ruffin, after two years (1806-1807) of study in the law office of David Robertson in Petersburg, Va., pursued his further studies under the direction of Hon. A. D. Murphey until his admission to the bar in 1808. Of the methods adopted by him in his practice, Governor Graham gives this account: "Both his examination of witnesses and arguments of causes before juries on the circuit could not be excelled in skillfulness. He had a Quaker-like plainness of aspect, a scrupulous cleanness and neatness in an equally plain attire, an habitual politeness and a subdued simplicity of manner, which at once won his way to the hearts of the juries; while no Greek dialectician had a more ready and refined ingenuity, or was more fertile in every resource of forensic gladiatorship. His manner of speaking was never declamatory, or in any sense boisterous, but in the style of earnest and emphatic conversation, so simple and apparently undesigning, that he seemed to the jury to be but interpreting their own thoughts rather than enunciating his own, yet with a correctness and elegance of diction which no severity of criticism could improve. A pattern of politeness in all his intercourse, public and private, he could torture an unwilling witness into a full exposure of his falsehood and often had him (586) impaled before he was aware of his design; no advocate had at his command more effective raillery, wit and ridicule to mingle with his arguments."

In 1812 Mr. Murphey was elected Senator from the county of Orange (which then embraced the present county, and also Alamance and the larger part of Durham County), and was continued through the succeeding years until, and embracing 1818. During this time Duncan Cameron was a member of the House for 1812-1813, Frederick Nash for the four succeeding years, and Wiley P. Mangum for 1818;

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and during the years 1813, 1815, and 1816, Thomas Ruffin was elected from the Borough of Hillsboro. A county was fortunate that could send such a Senator and Representatives, each of them going upon the bench of the Superior Court at the end of his term, or shortly thereafter; Ruffin and Nash going eventually to the Supreme Court, and each presiding as Chief Justice, and Mangum to the Senate of the United States, and presiding officer of that body during the administration of Tyler.

During the career of Judge Murphey as Senator he was one of the most popular and influential men in the Legislature, and took a leading part in its deliberations. Both as Senator, and as chairman of committee, and afterwards as a member of the Board of Internal Improvements, he advocated with great ability, improvement of roads, deepening of rivers, inland waterways for the purpose of making Beaufort and Wilmington points from which produce of the State should be shipped, and import and export trade be built up. In that day railroads had not been contemplated, and even now some of his schemes are still urged upon the general government, particularly those for the deepening of some of our rivers and securing the inland waterways through our sounds, and to the harbor of Beaufort. He was the early advocate of a general system of public education and an institution for the deaf and dumb, and by his speeches and reports aroused enthusiasm throughout the State in behalf of his proposed measures, and created a public spirit which bore fruit in after years. In the Legislature of 1818, while he was not successful in the election of judges for the Supreme Court, both he and Frederick Nash were elected judges of the Superior Court, though from the same county, and it has been remarked of him: "Murphey was not long on the Superior Court bench, but while there ranked as high as Ruffin did." The Supreme Court under the new organization began in January 1819, and the report of their decisions for that year, published in 1821, is by A. D. Murphey, who seems to have held the position of reporter while judge. He afterwards published reports of the decisions of the Court of Conference from 1804 to 1810, inclusive, and from 1811 to 1813, inclusive, and of the July Term, 1818. These reports, 1, 2, and 3 Murphey, are now known as the 5, 6 and 7 N. C. Reports.

The most important case in the decision of which he took part, was at June Term, 1820, when, as stated in *Griffin v. Graham*, 8 N. C. Report, page 69: "Hon. A. D. Murphey, Judge of the Superior Court, presided in several causes instead of Judge Henderson, who had been concerned in them at the bar," and involved a construction of the will of Moses Griffin. The trustees and executors were directed to purchase two acres in the town of New Bern, upon which a brick house was to be

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erected fit for the accommodation of indigent scholars and to be called "Griffin's Free School," in which were to be taught as "many orphan children of poor and indigent parents, who in the judgment of my trustees are best entitled to the benefit of the donation, as the funds are found to be equal to; to clothe and maintain the indigent scholars as well as school them; and at the age of 14, to bind them out to trades or suitable occupations." The complainants were the heirs and next of kin, who filed a bill against the executors and trustees, praying to have the trust expressed in the will declared void, to which a demurrer was filed. The cause was ably argued by Gaston in support thereof, (588) and Mordecai and Seawell *contra*. In the opinion of Taylor, Chief Justice, delivered for himself and Murphey, who sat for Judge Henderson, it is said on page 127: "The principal objections to the will are that it tends to produce perpetuity, and that the object of the trusts are vague and indefinite, and that it is discretionary with the executors whether they will fulfill the trusts or not, there is no one to call them to account, and that the property ought to be given to the next of kin and the heirs," and on page 130: "But the objects are distinct, viz., the education of poor children and binding them as apprentices. As all the poor children in that part of the county could not receive the benefit of the fund, a discretion was necessarily confided to the executors to select such as stood most in need of that aid. Without so much discretion at this, no charitable institution could ever have been established; for though it might be possible for a testator to designate existing objects, how could he point out those to be hereafter admitted?" And on page 131: "A perpetuity which the law would decree void must be an estate so settled for private uses, that by the very term of its creation there is no *potestas alienandi* in the owner. There is no such restraint imposed on the executor." And on page 133: "Upon the Revolution the political rights and duties of the king devolved upon the people of the State in their sovereign capacity. They by their representatives had a right to deposit the exercise of this power where they pleased, and they have placed it in the hands of the Court of Equity." And, "Where there is a trust and a trustee with some general and specific objects pointed out, or trustees for general or indefinite charities, a court of equity may as a matter of trust take cognizance of it in virtue of its ordinary jurisdiction." Judge Hall in his dissenting opinion, says: "In the case before us the trustees could be converted into a corporation and the property vested in it applied as the testator has directed. In that case there could be no objection to it as a perpetuity. Our Court of Equity clothed with all the power which the statute of Elizabeth could give can not create a (589) corporation." This concurrence of Judge Murphey was in ac-

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cordance with the report he had made to the General Assembly, in 1817, on the subject of education, in which, speaking of the necessity of education for poor children, he says: "Such has always been, and probably always will be, the allotment of human life that the poor will always form a large portion of every community; and it is the duty of those who manage the affairs of a State to extend relief to this unfortunate part of our species in every way in their power. Providence, in the impartial distribution of its favors, while it has denied to the poor many of the comforts of life, has generally bestowed upon them the blessing of intelligent children. Poverty is the school of genius; it is a school in which the active powers of man are developed and disciplined, and in which that moral courage is acquired which enables them to toil with difficulty, privation and want. From this school generally come forth those men who act the principal part upon the theatre of life; men who impress a character upon the age in which they live. But it is a school which if left to itself runs wild; vice, in all its depraved forms, grows up in it. The State should take this school under her special charge, and, nurturing the genius which there grows in rich luxuriance, give it honorable and profitable direction. Poor children are the peculiar property of the State, and by proper cultivation they will constitute a fund of intellectual and moral worth which will greatly subserve the public interest."

He resigned from the Superior Court at the end of 1820, and while laboring assiduously at the bar, he conceived the purpose of writing the history of his native State, and on 20 July, 1821, writes to General Joseph Graham: "Your letter to Colonel Connor first suggested to me the plan of a work I will execute if I live. It is a work on the history, soil, climate, legislation, civil institutions, literature, etc., of this State. Soon after reading your letter, I turned my attention to the subject in the few hours which I could snatch from business, and was surprised to find what abundant material could with care and diligence be collected—material which, if well disposed, would furnish matter for one of the most interesting works that has been published in this country. We want such a work. We neither know ourselves, nor are we known to others. Such a work well executed would add very much to our standing in the Union, and make our State respectable in our own eyes. Amidst the cares and anxieties which surround me, I can not cherish a hope that I could do more than merely guide the labors of some man, who would take up the work after me and prosecute it to perfection."

The memoranda of General Graham, prepared in accordance with the urgent request of Mr. Murphey, have furnished the foundation of much that has been written on the events of the Revolutionary War

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in our own State. Upon the application of Judge Murphey by memorial, the General Assembly, at the session of 1826, granted him authority to raise by lottery a sufficient sum for the publication of his contemplated history, the plan of which he set forth in detail. Tradition says such a scheme built the Masonic Lodge in Hillsboro, but it was not successful in publishing the history of North Carolina.

Among the public employments of Judge Murphey, of which Dr. Battle gives a full account, was his mission to the Legislature of Tennessee in 1822 in regard to the escheated land warrants, as a representative of the University, he having been selected by the trustees for this purpose. In the light of the decision in *South Dakota v. North Carolina* this would now be regarded as a controversy between States, and adjudicated before the Supreme Court of the United States, but in those days it was deemed best to make an appeal to the Legislature, and Judge Murphey asked for and obtained permission to address the General Assembly of Tennessee. A hard compromise was effected, and that not complied with, but still something was obtained which in later years amounted to a considerable sum. As his co-worker expressed it,

“Judge Murphey could tell how much feeling is sacrificed, and (591) how much anxiety is suffered by those who are the active agents in procuring any capital measure to be adopted by the Legislature of Tennessee.”

In his appeal advocating State aid to the University, of which he was trustee for thirty years, Judge Murphey would almost be considered as describing the conditions which prevail today. “When former prejudices have died away, when liberal ideas begin to prevail, when the pride of the State is awakened and an honorable ambition is cherished for her glory, an appeal is made to the patriotism and the generous feeling of the Legislature in favor of an institution, which in all civilized nations has been regarded as the nursery of moral greatness and the palladium of civil liberty. That people who cultivate the arts and sciences with most success acquire a most enviable superiority over others. Learned men by their discoveries and their works give a lasting splendor to national character; and such is the enthusiasm of man that there is not an individual, however humble in life his lot may be, who does not feel proud to belong to a country honored with great men and magnificent institutions.”

In 1827 he delivered his celebrated address before the two literary societies of the University, of which a contemporary writer of the *Raleigh Register* testifies that “the debility of his body gave an interest to his appearance. Unassuming, yet easy and insinuating in his address, clear and distinct in his enunciation, perspicuous and elegant in his style, he was sustained through a long and eloquent oration by

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the admiration and applause of a crowded assembly. None of his audience will soon forget their own emotions, or the glow of sympathy imparted to them, by the orator's beautiful remembrance of his friend and patron, William Duffy." I will only quote its conclusion: "Remember, my young friends, that most of the men who thus far have shed lustre upon our country, had not one-half the opportunities of an education which you have enjoyed. They had to rely upon their industry and genius. Genius delights to toil with difficulties; they discipline its powers and animate its courage; it contemns (592) the honors which can be obtained without labor, and prizes only those which are purchased by noble exertion. Wish not, therefore, for a life of ease; but go forth with stout hearts and determined resolution. As yet you little know what labor and perseverance can effect, nor the exalted pleasures which honorable exertion gives to an ingenuous mind. May God take charge of you; lead you in the ways of uprightness and honor; make you all useful men and ornaments to your country."

A touching picture of how he met disappointment and misfortune is given by Governor Graham: "To the possession of genius in an eminent degree he united some of its infirmities. A sanguine temperament, a daring confidence in results, a reliance on the apparent prosperity of the times, involved him in pecuniary obligations, many of them perhaps of a speculative character, which eventuated in disaster and swept away his estate. A little later came an attack of chronic rheumatism from which he suffered much, and was often incapacitated for business during the last half dozen years of his life, but during this season of adversity he struggled with a brave heart against the storms of fate. With a pallid cheek and disabled limbs, he made his appearance in the courts, where his gifted mind occasionally shone out in all its meridian splendor, and when this was not practicable, the hours of pain and misfortune were beguiled, if not solaced, by the pursuit of those noble studies which had been the delight of his leisure in the days of his prosperity."

Judge Murphey departed this life in Hillsboro, then his place of residence, on 3 February, 1832 at what those who have passed beyond it would call the comparatively early age of fifty-five years, and is interred a few feet from and nearly in front of the door of the Presbyterian Church. A handsome monument has been erected to his memory by his great-grandson, Hon. Archibald Murphey Aiken, of Danville, Va., who is the grandson of his daughter Cornelia, who (593) married John Payne Carter in 1821, and by B. G. Worth and Mrs. E. E. Moffitt. His son, Dr. V. Moreau Murphey, moved to Macon, Miss., and has descendants in that State. His third son, Peter Umstead

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Murphey, was a lieutenant in the United States Navy and in the Confederate States Navy, and was distinguished for gallant conduct in command of the "Selma" in Mobile Bay. He was twice married and left descendants by his first marriage, Mrs. T. O. Chesney, of Macon, Ga., and by the second marriage Mrs. F. A. Hoyt, of New York, and R. C. Murphey, of Virginia, Judge Murphey's fourth son, Alexander Hamilton Murphey, moved West after his father's death, and left a son.

To all of his descendants Judge Murphey has left a priceless heritage, for "a good name is rather to be chosen than great riches," and through all of his trials and tribulations the love and esteem of those who knew him best was not withdrawn, but increased as the shadows gathered around him, and one of them has testified: "I never heard a breath against his integrity. His honor was unspotted." He was indeed one

*"Of those immortal dead who live again  
In minds made better by their presence."*

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**ACCEPTANCE BY CHIEF JUSTICE CLARK**

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The Court has heard with interest the instructive and valuable address of Major Graham.

To Judge Murphey belongs the unique distinction that though never elected or appointed to this bench, he shared in its deliberations, delivered opinions, and belongs on the roll of its members. The honor is ours, not his. The Court could add nothing to his fame. He has reflected honor upon the Court.

The law is a jealous mistress, and fame and success come to a lawyer not without effort, close application, and ability. Unlike some other professions, a lawyer practices with his peers, among men (594) of his own calling, who are competent to judge his merits and ready to avail themselves of his mistakes. Hence unlike many other professions a fictitious reputation cannot be made at the bar. Judge Murphey stood the test. At one of the ablest bars of the State he early won his place at the front, and held it. He was an able and successful lawyer and a distinguished judge.

But he was something more. He did not narrow to a single calling what was meant for mankind. He took an interest in all that pertained to the welfare of the people of his State. He was the earliest advocate of Internal Improvements. About 1815 he procured the passage of acts authorizing and encouraging the building of a system of

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canals (it was before the day of railroads), and originated the idea of common schools. Some years later he set on foot a plan for publishing our State and Colonial Records, and set about writing our history. It is a public misfortune that this work was not then executed. The larger part of the historical matter then extant has since perished. Our State was then poor, its people (as compared with the present time) were illiterate, and hence unprogressive. A people must themselves be first educated to the support of progressive measures.

In many respects also he was many years ahead of his age. By his practical assistance to the projected systems of canals, he impoverished himself. But he sowed the seed of ideas, which later had full fruition

“Far on in summers which he did not see.”

Twenty-five years later when the State took up the system of Internal Improvements and inaugurated a public school system, it was largely due to Murphey's initiative, and it was his ideas that prevailed as to both. And in still later times the growth of historical interest, the publication of our Records, and the establishment of our Historical Commission may all be traced back to him.

No judge who ever sat upon this bench has impressed himself more upon the history of the State or fixed himself more abidingly in the hearts of our people than Judge Murphey. The beautiful capital of our westernmost county bears his name. The whole State cherishes his fame. The Court welcomes his portrait, and orders it placed in an appropriate place on the walls of this chamber.