APPENDIX

ADDRESS OF

WILLIAM P. BYNUM, JR.

PRESENTING TO THE COURT A PORTRAIT
OF THE LATE

CHIEF JUSTICE DAVID M. FURCHES

MAY 11, 1909

MR. BYNUM said:

May it please Your Honors:—I have the pleasure of presenting a portrait of DAVID M. FURCHES, late Chief Justice of this Court. In selecting me to perform this friendly office JUDGE FURCHES showed a personal confidence and regard which I keenly appreciate and which I shall endeavor to justify by using that plainness and directness of speech which I think he would approve if he were here. Many of his contemporaries at the bar and on the bench knew him longer and better, perhaps, than I, and could speak more fittingly of his professional and official career. My only qualification is an intimate acquaintance and association with him during the last years of his life, and a sincere admiration of his sturdy qualities as a lawyer, a judge, and a man.

The biography of JUDGE FURCHES has already been written. I need not repeat it here or refer to it further than to recall some important events which throw light upon his career. Indeed, his life throughout was so plain and unpretentious, so free from display and the pomp which usually attends the noisy honors of ambitious public life, that its record is little more than the simple story of a steady country lawyer who, by unremitting industry and the practice of the principles of strict integrity and honor, won his way surely and steadily to the highest judicial office of the State. This was the ambition of his life; this he set out to attain, and with its attainment came only the earnest desire to discharge its duties faithfully and acceptably to all of his fellow-citizens.

The ancestors of JUDGE FURCHES were from Delaware. His grandfather came to North Carolina from that State about the close of the Revolution. A relative of the family had died unmarried in that part of Rowan which is now Davie County, and left his estate to a kinsman, the Judge's great-grandfather, of Kent County, Delaware; and a son of that legatee was sent here to look after the property. He found it, and, what was better, he also found for himself a wife among the daughters of Rowan and decided to make his home amongst her people. This settler named one of his sons Stephen Lewis, after the old bachelor relative who had bequeathed his estate to the ancestor in Delaware, and this Stephen Lewis Furches, a country gentleman noted for his generosity and kindness, was the father of the Judge, the eldest child, who was born 21 April, 1832.

The future Chief Justice was a typical country boy. He helped his father on the farm; in the winter he attended such schools as the community afforded,

and when he grew older he was sent to the high school or academy a few years, and that completed his education. He had already chosen his profession, and at the age of twenty-four passed from the academy to the law school of Judge Pearson, at Richmond Hill. There he remained for the usual period, and at the age of twenty-six received his license and established an office in Mocksville, the county seat. His legal ability as well as his hold upon the confidence of his fellow-citizens, were soon attested by his election to the office of Solicitor of the County Court, a position most helpful and stimulating to the young lawyer. That position, with the exception of a few months during the Reconstruction period, he continued to hold until the county courts were abolished, in 1868.

JUDGE FURCHES was in the Confederate Army only about one month. The shortness of his service there was due to two things: first, the office of County Solicitor which he held exempted him from the provisions of the Conscript Act, and, second, having three brothers and four brothers-in-law in the army, to use his own words, he "concluded to stay out."

When the war was over and the work of restoring the State to its former relations with the Union was begun, JUDGE FURCHES was sent as a delegate from Davie County to the Constitutional Convention which met for that purpose in Raleigh, October, 1865. In that convention, composed of some of the ablest men of the State, he was an active and influential member. How quickly and thoroughly its work was done is known to every one. Among other ordinances which it adopted were those abolishing slavery, declaring the ordinance of secession null and void from the beginning, and repudiating the debt contracted in the prosecution of the war. It provided for the organization of a State Government by calling an election for members of the General Assembly, Governor and other State officers, and also for the election of members of Congress, and thus placed the State in a position to resume at an early day its practical relations with the Union. Other seceding States in similar conventions merely declared the ordinances by which they attempted to sever their connection with the Union null and void. North Carolina alone declared her ordinance void from the beginning. "The said supposed ordinance," the convention resolved, "is now and at all times hath been null and void." This was the view held by Mr. Lincoln and afterwards announced by the Supreme Court in *Texas v. White*. Mr. Lincoln, in his first inaugural address, declared that no State, upon its mere motion, could lawfully get out of the Union, and that resolves and ordinances to that effect were legally void. And in his last speech, 11 April, 1865, referring to certain criticisms on account of the fact that his mind seemed not to be definitely fixed on the question whether the seceding States, so called, were in the Union or out of it, he declared that such a question was practically immaterial—"a mere pernicious abstraction, which it were better not to decide or even to consider." "Finding themselves safely at home," said he, with his usual aptness of expression, "it would be utterly immaterial whether they had ever been abroad."

Mr. Sumner, on the other hand, held that the effect of secession was the destruction of the States, and Thaddeus Stevens was firm and bitter in the contention that the result of the war had left them in the humiliating position of conquered provinces, to be dealt with as the conqueror pleased; while Congress regarded them as disorganized communities which had forfeited all civil and political rights and privileges under the Constitution, and which could be restored thereto only by the permission and authority of the constitutional power against which they had rebelled and by which they were subdued.

Our Convention of 1865 held the view that North Carolina had never ceased to be a State, and a State of the Union; that the ordinance of secession being void *ab initio*, the State, having never ceased to be a member of the Union, had the right and would be allowed to resume her relations with it upon complying with the terms and conditions set forth in the President's proclamation of May, 1865; and, accordingly, in addition to passing the ordinances required by the President, the convention provided for the speedy reorganization of civil government in all its branches in this State, and also for the election of members of Congress, fully believing that when these things should be done the State would be accorded full recognition as a member of the Union. This had been the wish and plan of Mr. Lincoln, and the same was adopted by Mr. Johnson soon after his accession to the presidency.

Governor Worth and his party were equally pronounced in the same opinion and in his inaugural address, in December, 1866, he declared that they were "astounded by the proposition," then advanced, "that North Carolina, one of the original thirteen, was no longer a State, but only a territory of the United States," and that he would "never assent to any scheme of compromise based on the idea that North Carolina was not a State of the American Union."

That position was held to be correct by the Supreme Court of the United States, two years later, in the case of *Texas v. White*—too late, however, to prevent the mischiefs which the opposite view had brought upon us. "Did Texas during the war cease to be a State?" asked Chief Justice Chase, in delivering the opinion of the Court in that case. "Or, if not, did the State cease to be a member of the Union?" Answering these questions, he continued: "The union of the States never was a purely artificial and arbitrary relation. . . . Not only, therefore, can there be no less of separate and independent autonomy to the States through their union under the Constitution, but it may be not unreasonably said that the preservation of the States and the maintenance of their government are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution in all its provisions looks to an indestructible union composed of indestructible States. . . . The ordinance of secession adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her Legislature intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The obligations of the State as a member of the Union, and of every citizen of the State as a citizen of the United States remained perfect and unimpaired. It certainly follows that the State did not cease to be a State nor her citizens to be citizens of the Union. . . . Our conclusion, therefore, is that Texas continued to be a State, and a State of the Union."

After the convention JUDGE FURCHES returned to his duties as solicitor and to the practice of his profession generally. To him the arena of practical politics was never very enticing. His ambition was always along the line of his profession, to which, in all, he devoted nearly fifty years of his life. He attained his majority in the expiring days of the old Whig Party, of which he was an enthusiastic adherent, and from which the transition was easy and natural to the Republican Party, in a measure its successor. Loyalty to his party and loyalty to his friends was a governing principle of his conduct, though frequently he did not agree with the policies of the one nor the actions of the other. His party frequently honored him with its nominations for high and responsible office. Twice he encountered the Democratic giants of the West as a candidate for Congress—Major Robbins in 1872 and Judge Armfield in 1880—and, though the champion of a forlorn hope, each time he reduced his opponent's majority more than half. For three years he was a Judge of the

Superior Court, where he presided with patience, firmness and ability. In 1888 he was again called into party service as a candidate for Associate Justice of this Court, and again four years later as a candidate for Governor; but the common fate of all Republican candidates befell him and he, with the others on the ticket, was each time defeated.

But these successive defeats are not to be attributed to any lack of confidence on the part of the public in JUDGE FURCHES or in his fitness for the positions which he sought. On the contrary, I venture to say that he possessed in a marked degree the respect and esteem of his fellow-citizens throughout the State. They recognized his ability and integrity, and were satisfied that he was capable of filling with entire acceptability any of the offices to which he aspired. Yet, he, with others like him, were uniformly defeated as often as they ran for public office. The reasons for this are not hard to discover. It was no fault of theirs nor of the rank and file of their party in this State. But the majority of the white people of North Carolina had not forgiven the National Republican Party for its stupendous blunders in the reconstruction of the State Government in 1867—for the rejection of Mr. Lincoln's plan and the enforcement of that of Congress, and for placing in positions of power in the State men who, in many instances, were distasteful to the people and wholly unfit for leadership in such a crisis. These blunders JUDGE FURCHES and many other patriotic Republicans like him in North Carolina opposed and tried to prevent. The Constitutional Convention of which he was a member had readily complied with what the people of this State understood to be the demands of the President and the people of the North as necessary before the State should be permitted to resume its relations with the Union. The machinery of the State Government had been taken from the hands of those who had adhered to the Confederacy and placed by a loyal electorate in the hands of those who had renewed their allegiance to the United States. The great body of the people had accepted the offered amnesty, taken the oath required, and voted at the elections by which these sweeping changes were made, and the State Government, thus restored, was already performing its functions smoothly and satisfactorily, and peace and order prevailed.

The presence of the State in the Union had been emphatically recognized by submitting to its Legislature the Thirteenth Amendment for ratification, and the Legislature had promptly and almost unanimously approved it. Another recognition of our statehood, equally emphatic, so far as the Executive Department of the National Government could make it, had come when, on 16 June, 1866, the Secretary of State of the United States formally transmitted to the Governor of this State the Fourteenth Article of Amendment proposed to the Constitution of the United States, to be by him submitted to the Legislature for adoption or rejection. To the original conditions to be complied with before the Southern States should be permitted to resume their relations with the Union the ratification of that amendment was added. It was vastly more far-reaching and objectionable to the South than the other. The people of the South were nevertheless expected to face about, to turn their backs on the men they had trusted and followed and adopt the lead of those who had no magnetic hold on their hearts or minds. This they would not do, and it was unreasonable and unnatural to expect them to do it. The Legislature, in the exercise of its rightful powers, refused to ratify or adopt that amendment.

Then, without further reason, the government of this State, which had been duly acknowledged by the President of the United States and which had been organized and in existence for more than twelve months and in the regular and peaceful performance of its functions, along with the governments of other Southern States, was declared illegal and inadequate for the protection of life

or property and virtually abolished by Congress, and the Governor and other State officers who had been duly elected by the people and were in the exercise of their public duties were replaced by others, elected largely by the vote of the freedmen upon whom the elective franchise had recently been bestowed. The majority of the intelligent people of this State felt outraged and offended by these arbitrary and unconstitutional proceedings. They looked with displeasure upon the government and the officers thus thrust upon them against their will. To them the rule of that government was irksome and sure to lead speedily to disorder and trouble. It was unnatural and impossible for it to last. Men like JUDGE FURCHES were not to blame for it. They opposed this scheme of Congress from the beginning and acquiesced in it only in the hope that their fears and misgivings might prove groundless. They rightly believed that reorganized political government, with proper security for person and property, could not exist in the State unless those who were by their intelligence and character the natural leaders of the people, and who would surely lead them by and by, were permitted to lead them in that crisis. And time has proved the correctness of their position.

Nor were such men of the South alone in that belief. Many Republican leaders in the North agreed with them and urged the adoption of such a policy by Congress as the only proper solution of the grave difficulty then confronting the Nation. The sentiments and apprehensions of these Republicans were never so truly and prophetically expressed as they were by the great War Governor of Massachusetts in his valedictory address to the Legislature of that State in January, 1866, more than a year before the first reconstruction act was passed. Said he: "The Southern people . . . fought, toiled, endured and persevered with a courage, a unanimity and a persistency not outdone by any people in any revolution. There was never an acre of territory abandoned to the Union while it could be held by arms. There was never a rebel regiment surrendered to the Union arms until resistance was overcome by force. . . . The people of the South, men and women, soldiers and civilians, volunteers and conscripts, in the army and at home, followed the fortunes of the rebellion and obeyed its leaders, so long as it had any fortunes or any leaders. Their young men marched up to the cannon's mouth a thousand times, where they were mowed down like grain by the reapers when the harvest is ripe. . . . And since the President finds himself obliged to let in the great mass of the disloyal . . . to a participation in the business of reorganizing the rebel States, I am obliged also to confess that I think to make one rule for the richer and higher rebels and another rule for the poorer and more lowly rebels is impolitic and unphilosophical. When the day arrives . . . when an amnesty, substantially universal, shall be proclaimed, the leading minds of the South, who by temporary policy and artificial rules had been for the while disfranchised, will resume their influence and their sway. The capacity of leadership is a gift, not a device. They whose courage, talents and will entitle them to lead will lead. . . . We ought to demand and to secure the coöperation of the strongest and ablest minds and the natural leaders of opinion in the South. If we can not gain their support of the just measures needful for the work of safe reorganization, reorganization will be delusive and full of danger. . . . It would be idle to reorganize those States by the colored vote. If the popular vote of the white race is not to be had in favor of the guarantees justly required, then I am in favor of holding on just where we are. I am not in favor of a surrender of the present rights of the Union to a struggle between a white minority aided by the freedmen on the one hand, against the majority of the white race on the other. I would not consent, having rescued those States by arms from secession, to turn them

over to anarchy and chaos. . . . We ought to extend our hands with cordial good will to meet the proffered hands of the South, demanding no attitude of humiliation from any, inflicting no acts of humiliation upon any, respecting the feelings of the conquered."

To the stubborn refusal of Northern Republican leaders in Congress to heed such warnings and to follow such advice, and to the arbitrary and unreasonable enforcement of a contrary policy, may be justly attributed, in my opinion, the political solidity of the South and the misfortunes of the Republican Party in that section from that day to this. There, in my judgment, was the prime mistake, the inexcusable blunder. Other mistakes, it is true, may have been and, indeed, were made; other offenses undeniably were committed here in the South, where social and political chaos ensued, and the influence and effect of them remain with us to this day. But the origin and cause of these troubles were not wholly in the South, and Southern Republicans were not altogether responsible, nor are they the only proper apologists for them.

The same also has been true with respect to the management of Republican affairs in the South from that day to this. Not all of the blunders, not all of the bad management and mistakes have been made here; just as frequently, just as persistently, and just as disastrously, have they been made at Washington. And wherever and whenever and by whomsoever they have been made, those who have suffered most by them politically have been Southern Republicans of the type and standing of JUDGE FURCHES.

But, happily, we are now assured of the arrival of a better day, in which the unfortunate policy heretofore pursued towards the South shall be abandoned and reversed; when, in the language of Governor Andrew, "the cooperation of the strongest and ablest minds and the natural leaders of opinion in the South" will be sought and, let us hope, will be secured; when the wishes of her people are to be consulted and no effort spared to find out the facts in respect to the character of all proposed appointees to Federal positions, and when, in the language of the President, only those will be selected "whose character and reputation and standing in the community commend them to their fellow-citizens as persons qualified and able to discharge their duties well, and whose presence in important positions will remove, if any such thing exists, the sense of alienism in the Government which they represent."

It remains for me to refer to the most important part of the Judge's life—his career at the bar and on the bench. In 1866 he moved from Mocksville to Statesville, and soon acquired a lucrative practice in Iredell and the adjoining counties. He met as antagonists such men as Armfield, Folk, Clement, Baily, McCorkle, Watson, Linney and others, among whom he was numbered as one of the wisest and the best. As an adviser and counsellor he was always careful and safe; as an advocate he was earnest, forcible and convincing. He never trusted a client or even a brother lawyer to prepare his cases; he prepared them himself, and thus not only performed a duty, but furthered justice and enhanced his chance of success.

He was scrupulously faithful to his clients, but remembered that good faith to a client can never justify or require bad faith to one's own conscience, and that however desirable it may be to be known as a successful and great lawyer it is even better to be known as an honest man, and that there is no incompatibility whatever in the possession of both of these titles. The asserting of truth, the accomplishing of right, the doing of what is just—these he believed to be grander and better than the transitory victories sometimes questionably won in the controversies of the courts. Above all, he was honest, he was honorable in the practice of his profession as in his dealings with his fellowmen, and this gave him a power far superior, more persistent and permanent

than mere skill and strategy. When he spoke to the jury or the judge, his argument carried the weight of sincerity, his eloquence the strength of his conviction.

His elevation to the bench was in strict accordance with his tastes and desires. I have said that he was for three years Judge of the Superior Courts, from 1875 to 1878. In 1894 he was elected an Associate Justice of this Court, and acted as such until January, 1901, when his cherished ambition was gratified by his appointment as Chief Justice. After holding that office for two years, he retired to private life, carrying with him that which he ever so highly prized—the love and respect of his brethren, the confidence of his fellow-citizens, and the consciousness of duty faithfully and courageously performed.

On the bench JUDGE FURCHES was patient, hardworking and thorough in his investigation of questions on which the Court was called upon to pass. While making no pretense to polished or finished style, his written opinions are clear, forcible, and incisive. He always speaks to the point, and when that has been reached and explained he is content.

He was fond of the society of the bench and bar, and was delightfully jovial and reminiscent with all his personal and political friends.

He believed in standing by the old landmarks and the old decisions, and had unbounded admiration for the great judges who had preceded him as members of this Court.

In presenting his portrait to the Court, I have said of him only what all who knew him will readily concede. I render to his memory sufficient tribute when I portray him precisely as he was—"a true and brave and downright honest man." His heart was always open and sincere. He was plain, straightforward and unostentatious in everything he did and in everything he said. In private and in public life he always sought the path of rectitude and righteousness, and nothing pleased him so thoroughly as to be able to perform his duty well. He made no claim to erudition or brilliancy, but he possessed the richer endowment of saving common sense and "stood foursquare to all the winds that blew." He was what Carlyle calls sincere; he was what he seemed to be, no sham or make-believe, but a real, genuine man. In all his relations he was just and charitable. His love and devotion to his wife and kindred were remarkably tender and beautiful. Surrounded by them, in the full possession of his faculties and the love and respect of neighbors, he gently passed away in the early morning hours of 8 June, 1908, leaving a name untarnished and the record of a useful and well-spent life. Here where Justice reigns supreme, in the company of so many of those whom he venerated and loved, may his honest, rugged features ever receive a hearty welcome from those who frequent and abide in this place.

ADDRESS OF ACCEPTANCE

BY

MR. CHIEF JUSTICE CLARK

CHIEF JUSTICE WALTER CLARK, in accepting the portrait, said:

The Court is gratified to receive the portrait of JUDGE FURCHES. For six years he occupied a seat on this bench as Associate Justice by election of the people, and two years as Chief Justice by appointment of Governor Russell. His opinions will be found in the sixteen volumes from 116 to 131 N. C. Reports, inclusive. They will ever be his truest and best monument.

Those with whom he sat on this bench will ever recall the association with pleasure. Patient and thorough in the investigation of every case coming before the Court, he spared himself no labor to arrive at what he deemed a just conclusion. He was always considerate and courteous in his intercourse with his brethren on the bench and towards the bar.

The distinguished speaker has aptly portrayed him as a "true and brave and downright honest man—plain, straightforward and unostentatious." He served his State faithfully and well. It is fit that his portrait should hang on these walls, by the side of his great predecessors, whose learning he had imbibed and in whose footsteps he followed.

The Marshal will hang the portrait in its proper place on the walls of this chamber.