

APPENDIX

PRESENTATION OF PORTRAIT

OF

CHIEF JUSTICE JAMES EDWARD SHEPHERD

In the matter of the presentation of the portrait of former CHIEF JUSTICE JAMES EDWARD SHEPHERD, deceased, by Charles Brantley Aycock. Former Governor Aycock said:

May it please your Honors: The gracious privilege of presenting to this Court, to be hung upon its walls, the portrait of Chief Justice James Edward Shepherd has been bestowed upon me by the particular kindness of his relatives. In making the presentation it is in accordance with custom, and even without precedent entirely fit, that some account should be taken of the life of the man whose likeness we are to see. Blackstone gives as his ideal of a citizen one who "lives honestly, hurts nobody, and renders to every man his due." Tested by this definition, Chief Justice Shepherd was indeed an ideal man. He possessed every one of the elements laid down by the great law writer to constitute such a character.

Judge Shepherd was born 22 July, 1845, at Mintonville in Nansemond County, Virginia, near Suffolk, the home of his maternal ancestors, and died 7 February, 1910. His father was Thomas Shepherd, whose grandfather was a member of the Virginia Convention when the Constitution of the United States was adopted, and was a prominent man in that State. Judge Shepherd's mother, Ann Eliza Browne, was descended from Dr. Albrington Browne, a retired English Navy surgeon, who settled on the Nottoway River, Virginia. She died when he was only two years of age, and his father died ten years later, after which he lived with his older brother, who fell at Sharpsburg, leading his company. His family being of large means before the war, he had all the material advantages to make a happy childhood. In 1859 they moved to Hertford County, N. C., and it was at the Murfreesboro Academy that he received most of his schooling. When the Civil War came on, and his brother had joined the army, James E. Shepherd, though only about fifteen years of age, determined to serve the cause of the South, and attached himself to the Sixteenth Virginia Regiment which was then stationed at Norfolk, but being too small to carry a musket, he was made a "marker" for the regiment, and after some months, on account of his youth, he obtained his discharge to take up the study of telegraphy at Blackwater, Va., and having learned this art, he was again assigned to duty in the army as telegraph operator under General Jones, in West Virginia, and afterwards at the headquarters of Gen. John C. Breckenridge. His services throughout the war were prompt, faithful, and efficient. There he learned, as can be learned nowhere else, the deep reality of life.

The end of the war found him stationed at Wilson, N. C., where, on account of the loss of his estate through the war and the death of his brother,

APPENDIX.

he was left entirely dependent upon his own exertions. He thereupon secured the position of telegraph operator and supported himself and his younger sister, reading law at the same time. Mr. Henry Blount in his lecture, "Beyond the Alps Lies Italy," describes him at this time in his little office poring over his Blackstone until the late hours of night with a zeal that promised much for his future. He craved learning and sought it with diligence, not only in order that his own powers might be developed to a fuller service, but as well from the pure love of learning itself. He completed the study of the law at the University of North Carolina and was admitted to the bar in 1868, and opened an office in Wilson. In 1871 he formed a partnership with Major Thomas Sparrow of Washington, N. C., and moved to that town. In the same year he married Miss Elizabeth Brown, daughter of Mr. S. T. Brown, and sister of Associate Justice George H. Brown of the Supreme Court. Judge Shepherd at once entered upon a growing practice, which soon became lucrative. He was active, diligent, painstaking and thorough. He was enthusiastic as well. Knowing that the law was a jealous mistress, he did not neglect her, but he found time to pay some attention to politics. For a number of years he was chairman of the Democratic Executive Committee. This position extended his acquaintance and familiarized him with people—their methods of thought, their ambitions, their passions, their affections, their hatreds. In 1875 he was elected to the Constitutional Convention from the counties of Beaufort and Pamlico. He was the youngest member of the convention, but young as he was, he served on two of the most important committees, one the judiciary committee. It is to him more than to any other that we owe the change in the system of county government by which the eastern counties with large negro populations were freed from their political control. In 1876 he was elected chairman of the Beaufort County Inferior Court, over which he presided with signal ability, dispatching business with the promptness and accuracy of the best trained Superior Court judge. In 1882, upon the resignation of Hon. Mills L. Eure, Governor Jarvis, whose home was in that section and who knew Judge Shepherd well both as a man and lawyer, appointed him judge of the Superior Court, and he served as a Superior Court judge from then until January, 1889, when he became an Associate Justice of the Supreme Court. Upon the death of Chief Justice Merrimon, in 1892, Associate Justice Shepherd was appointed by Governor Thomas M. Holt Chief Justice and was unanimously nominated in 1894 by the Democratic State Convention to succeed himself. But 1894 was, from our standpoint, a cataclysmic year, and he, together with all his ticket, was defeated, except Mr. Justice Clark, who had no opposition.

Judge Shepherd was for a number of years a lecturer at the University Law School, and when Judge Manning died was offered the position of dean of that school, but declined.

After leaving the bench, he returned to the practice, being associated at first with the late Charles M. Busbee and afterwards with his son, S. Brown Shepherd. Both firms did an excellent practice, and at the time of his death Judge Shepherd was receiving an income as a practicing lawyer surpassed by few lawyers of the State. At one time he was offered a partnership with Judge Seymour D. Thompson of St. Louis, but declined because he loved North Carolina and her people too well to leave them.

These are things which the entire public know or may well know about Judge Shepherd. There are things about him which are only known to those who were intimate with him, who loved him, and who followed his career with affectionate interest. The death of his son, James E. Shepherd, Jr., while

APPENDIX.

just entering upon manhood, was a blow to him so deep and profound that he never entirely recovered from it. Life from thence forward never had so rosy a hue as before. His relations to his family were perfect. He was a most dutiful and devoted husband, attentive to his wife in small things and forgetful of her in nothing that could contribute to her comfort or happiness. With his boys he was something of an older boy than they, but not too much older to be entirely companionable. He thought their thoughts and sympathized with their ambitions and their different points of view. He knew that they did not have his experience, but he had all of their experience and more, and he went back to live with them from their own standpoint. Judge Shepherd was a simple man and sensitive. He was anxious always to be on equality with those with whom he associated, but his mind ran so much upon the deeper things that most of them knew so little about that his conversation adjusted itself to ordinary commonplaces with difficulty. I quote from the tribute of Mr. Robert L. Gray, which expresses my own conviction better than I can do it myself. "On the personal side," says Mr. Gray, "Judge Shepherd was one of those men of whom it is said, 'He is as pure as a woman.' His integrity, his sense of honor, the natural dignity of an unassuming virtue, clothed him with a certain ingenuousness that inspired while it caused a smile. He walked unspotted, to a large extent oblivious of the smut about him; yet, with it all, so companionable, so approachable, and so generous of himself and his talents that even the years he carried so lightly were easily forgotten in his presence."

Wanting in the opportunities of early education on account of the war, when a time of leisure came and Judge Shepherd had the means to supply himself with books, he surrounded himself with the best thought of the world and diligently read the great classics; and those which he could not read in the original, he enjoyed through the translations: I remember one occasion at a supper given by the late Capt. Swift Galloway, at Snow Hill, Judge Shepherd opened himself to us and talked with a freedom and richness and fullness about history and literature that I shall never forget. His familiarity with Roman and Grecian history and literature as exhibited that night was a delight to me as well as to our cultured host and all the guests. Judge Shepherd's life was full of work and as complete with service as it was with work. He labored not for himself alone, but was thoughtful and considerate not only of his family, but of all his friends. He never forgot a kindness or a favor. He carried in his mind and heart every student who read law under him, and regarded him as a personal friend, and the students, for whose walk in life he had held the light, during all his life looked to him for advice and guidance, and whenever they could be of service to him, gladly rendered it. His friends were all of those who knew him well, and his few enemies only those who, not knowing him, misconceived his motives and his actions. He was keenly sensitive to criticism and was a great sufferer from unjust attack, but neither criticism nor false accusation could ever make him veer from the course which his own judgment and conscience pointed out as the right path to follow. He might suffer, but he would not change.

But the matter of more concern in this forum is Judge Shepherd's career upon the bench. I first knew him as a Superior Court judge, and I want to say with distinctness and emphasis that I have rarely if ever seen a better trial judge. He was patient to hear, diligent to investigate, fearless in decision. He dispatched business rapidly, without hurry and without ostentation. He was courteous to everybody, but exacting in prompt obedience to

APPENDIX.

every ruling of the court. When a case was tried before him by good lawyers on each side, it was thoroughly well tried. He was gentle toward all lawyers, but he was particularly gracious to young lawyers and patient with those who did not know. He suffered no byplay between counsel on opposing sides, and thereby preserved pleasant relations between the members of the bar and maintained the dignity and order of the court. When a case was appealed, his notes were full and his memory accurate and his heart unafraid. He therefore made up his cases with absolute accuracy and impartiality. He brought to this Court not only the learning of the years of patient toil at the bar, but the experience of a long service in the courts below. While he was companionable and loved men, it is not too much to say that he was more at home with books. Study was his way of taking a rest. He was never quite so easy as when investigating a difficult and abstruse question of law. He belonged to the class of conservative judges. He thought it was the duty of a judge to determine what is the law, not what the law ought to be. He thoroughly believed that under our Government there were three coördinate departments, the executive, the legislative, and the judicial, and it was ever his purpose to keep them separate. He believed that changes in the law should be made by the Legislature, and not by the interpretation of the courts. He had a profound conviction that the great judges of the past were patriotic men, earnestly striving to find out what the law was and seeking to apply it to the conflicting contentions of men in a fair and equitable spirit, and he therefore believed that what they had written about the law was of eminent value to the judges of the present day, if not indeed absolutely controlling, unless changed by legislative enactment. He thoroughly knew the law applicable to real estate and regarded it as the utmost importance to the conservation of the rights of property and the consequent welfare of that important part of the people who exhibit in the fullest the Anglo-Saxon love of the land, that there should be no variableness nor shadow of turning on the part of the courts in reference to real estate rights.

But above and beyond all, he was a great equity lawyer; and when one has said this he has said much, for to be a great equity lawyer involves not only much learning and culture of mind, but great qualities of heart as well; it is equivalent to saying that he was a virtuous and upright man; that he was clean-minded; that he was fair in his dealings with men; that he not only knew right and wrong in the abstract, but in the daily practices among men; that he realized obligations and duties; that he contemplated the beauty of trust and confidence and deprecated its abuse; that he was familiar with the sermon on the Mount and believed it to be the best exposition extant of the duty of man. When he came to deal with matters of the appellate court, it is apparent from what I have said heretofore that he dealt only after the most patient investigation. He examined all the authorities whenever it was possible for him to do so. If they appeared to be in conflict, he studied them with diligence and intensity and frequently was enabled thereby to show that they were not in actual but only in apparent antagonism. If the authorities were actually in conflict, he never sought to smooth the matter over, but adopted what appeared to him to be the more reasonable view and aligned his court with that side. It is needful that I add, Judge Shepherd was not a slave to precedent. If the precedent was ill-considered and unsupported by reason, or if the conditions which gave rise to the precedent had so changed as to render it inapplicable to the present controversy, he did not hesitate to mark out the way for the future and be-

APPENDIX.

come himself a maker of precedent. He was a conservative on the bench, not because he was wanting in progressive ideas off the bench, but by reason of the fact that he believed that the interpretation of the law should be fixed. He was thoroughly in accord with all real improvements in the law, but he felt that this improvement should come through the Legislature, and not through the courts. It is manifest that his conviction was that with a fixed and certain determination of the meaning of law all people would in the course of time come to a knowledge of their rights under the law and fewer of them would violate it and there would be less litigation. If out of this fixed and certain and determined nature of the law there were particular cases of hardship, he held that these very hardships not only saved many other people from violation of the law, but would in themselves lead to legislative intervention and change of the law. I do not hesitate to express my personal conviction that it would be an evil day for any State if there were not at all times on the highest Court in the State some man of the type of Chief Justice Shepherd.

Judge Shepherd was a great jurist. He had a large influence over the mind of the lawyers of the State. He kept them stable and firm for the interpretation and enforcement of the law as it is, but left them entirely free to work with all their might for such changes as may be necessary to improve the conditions of men and to overturn the evils inflicted by the law as it is. As an equity judge, he recognized the expansiveness of this branch of jurisprudence and sought in every way to make it come up to the requirements of present-day conditions. Wherever the jurisdiction of equity could be invoked, the enlarged and generous view of life, which to my mind is the finest product of this period of the world's history, found expression in his opinions. Senator John W. Daniel might well have been talking about him when he said: "What is that great system of equity jurisprudence which we see advancing its lines and enlarging its jurisdiction from generation to generation, marching on and on, planing away the sharp angles and rough edges of the common law, supplementing its deficiencies, softening its rigors, forerunning its purpose, and garnering its fruits? What is it but the expansion of the public conscience and the reaching forth of its hands to refine the standards of right and to perfect the remedies for the prevention and rectification of wrongs?"

Chief Justice Shepherd was a just man and upright, clean of life and pure of heart. He was brave in war, fearless in peace. The only consequence to himself which he apprehended out of any decision about any case was the suffering which he would undergo if he decided it wrong. He never approached the decision of any case with apprehension as to its possible effect upon himself as a man. Hon. W. D. Pruden, one of the State's greatest and best men, recently wrote:

"Judge Shepherd's ability and thoroughness as a lawyer is recognized by the entire bar of North Carolina. For many years before he went upon the bench and after his retirement as Chief Justice, he and I were close to each other. As a practitioner, he was always scrupulously candid, fair, and honorable, and his learning as a lawyer and as a judge are exemplified in hundreds of opinions running through the North Carolina Reports from the time he went upon the bench until his death. They were uniformly clear, cogent, and strong. So many of them showed his great learning and logical analysis, that I hesitate to discuss any particular opinion written by him.

APPENDIX.

"Great as he was as a lawyer, strong and true as a man, and patriotic and loyal as a North Carolinian, I prefer to think of him as a friend. In this respect he could not have been excelled. I knew him in all of the vicissitudes of life, in prosperity and in adversity, in joy and in sorrow, in buoyant hopefulness and in depression; but none of these conditions affected his friendship. He was always affectionate, true, and generous, and those to whom he gave his friendship knew that they could rely upon him whatever the situation. Among the things that I value in my past life, there are few which give me more pleasure than the close friendship which without variableness or shadow of turning always existed between us."

In his life and relations to others he was unselfish to the last degree, and none but those who were most closely associated with him knew of the generous and noble acts done without ostentation and with great delicacy. The pleasure in giving appeared to be all his own. He was a member of and vestryman in the Church of the Good Shepherd in Raleigh, and was, indeed a Christian.

He was my friend, and I loved him. He is dead, and I mourn him. His works live, and I rejoice in them. I present this semblance of him to this Court to be hung upon its walls in order that the youth of coming generations may be reminded that deficiencies of early education may be supplied by diligent application in manhood, and that obstacles in youth can be overcome by industry and economy, and that obscurity may be transformed into fame by a broad culture of both head and heart when such culture is carried on with faith in God and fear of no man.

I close with the appreciation of him written by his daughter-in-law:

He slept—and came the Infinite Prospective,
Of all Life's tangled meshes wrought aright;
Of Equity and Justice wherein "a little child shall lead them,"
"The Still Small Voice" quelling the voice of might.
He slept—and as by habit long directed
His soul slipped out into the goal he loved,
So, simply, with a good life's quiet dignity,
He entered the courts of God.

ACCEPTANCE OF PORTRAIT BY CHIEF JUSTICE CLARK

We have listened with great interest to the admirable speech of Governor Aycock in presenting the portrait of Judge Shepherd. Nothing can be added to what he has so well and so justly said.

To Judge Shepherd, honors came early, like flowers—

“That come ere the swallow dares
And take the winds of March with beauty.”

Before he was quite thirty he was a member of the Constitutional Convention of 1875. In 1882 he became a judge of the Superior Court, and in 1889 took his seat as an Associate Justice of this Court, where he served for four years, when he became Chief Justice by appointment of Governor Holt, a position which he filled for two years. He was nominated for the position and failed of election, not through any fault of his, but because of the change in the political complexion of the State at that time.

It is not necessary to bear testimony to Judge Shepherd's fidelity and ability, for the proof of it has been written by his own hand in the fourteen volumes of our Reports—102 to 115 N. C.—which contain his opinions. His uniform courtesy to his brethren on the bench, to the profession, and indeed to all men, was a part of his nature. Had circumstances permitted him to remain longer upon the bench he would have rendered added service to his State and the profession; but it may well be doubted if he could have added to the reputation which he achieved in the six years during which he occupied a seat on this bench.

The Court accepts his portrait with great pleasure, and the marshal will hang it in its appropriate place on the walls of this chamber.