

PRESENTATION
OF THE
PORTRAIT OF HON. THOMAS C. FULLER
TO THE
SUPREME COURT OF NORTH CAROLINA
BY
COL. CHARLES W. BROADFOOT

Colonel Broadfoot said:

Mr. Chief Justice and Associate Justices: With your consent, we are about to recall to mind a distinguished North Carolinian, the HONORABLE THOMAS C. FULLER, late of this city. He was born in Fayetteville, N. C., on 27 February, 1832, of one of those old families who settled upon Lord Granville's grant, in Colonial days, and have ever stood prominent in our State.

In early life he lost his father. His mother, some years afterwards, married Dr. Simeon Colton, of Fayetteville, a Presbyterian minister, of staunch New England stock, noted for piety, austerity, and learning. Thomas became the protégé of his uncle, Elijah Fuller, Esq., at the time a prominent and well-to-do merchant of that place. The uncle, a man of generous impulses and kindly nature, did his part generously towards the nephew, and gratefully, bounteously, lovingly, was his family afterwards repaid.

Young Fuller received his training at the hands of his stepfather, Dr. Colton, who taught a classical school of high order, and at the law school of Judge Pearson. Upon being licensed, he hung out his shingle at Fayetteville, and from thenceforth to the time of his death was a devoted son of this old town.

The ancients said, it was a hard task to climb Parnassus. We know what a rough and tiresome road it is which the young lawyer treads when first he begins to climb. However, Mr. Fuller, with his many friends to cheer him on, aided by strong and influential family connections, climbed rapidly, and we find him with a growing practice, happily married, in 1856, to Caroline Douglas Whitehead, daughter of Williamson Whitehead, Esq., of Fayetteville—the lady of his choice, the woman of his undying love, one gifted in largest measure with all the plain, homespun knowledge, accomplishments, and graces which adorn true womanhood. She was, in deed and in very truth, as soft, gentle, modest, bright, charming, and lovable a woman, with as sweet a smile, as ever plighted her troth. Caddy Whitehead, or Caddy Fuller, was admired by all who met her, and fondly loved by all who knew her. She was the idol of her family and husband. From this marriage were born manly sons and fair daughters, of whom we may not now speak.

This happy couple had scarcely begun housekeeping when the dark shadow of war turned brightness into night. Mr. Fuller was an old-line Whig, and of course an intense Union man, as indeed a large majority of our people were. Lincoln's proclamation for troops, to make war upon the South, was to him the call to arms. He promptly laid aside everything and volunteered as a private in the LaFayette Light Infantry, Joseph B. Starr commanding, soon

PRESENTATION OF PORTRAIT.

to become Co. F, First Regiment, North Carolina Volunteers, which enlisted for the war. So we see that Private Fuller had the honor to be "First at Bethel." He duly blistered his hands shoveling dirt in the trenches at Yorktown, and marched up and down the peninsula, at the command of General Magruder, Colonels Hill and Lee; enjoyed the martial music of Charlie Bank's band, playing its only tune:

"Put him in the ditch,
Put him in the ditch,
For old Magruder,
He says so."

In soberness, Private Fuller did his duty as a soldier. Mr. Chief Justice, we know what that means. He set an example to his comrades and was the life of his company.

When the First Regiment was disbanded November, 1861, it was evident that the war was to last for some time, and Captain Starr and Mr. Fuller set to work at once to raise an artillery company. When it became known that Starr was to be captain and Fuller first lieutenant, old comrades and others volunteered at once, and the company entered into service with full ranks. Lieutenant Fuller had no opportunity to show the stuff that was in him, as the company, for want of guns, was sent to Fort Fisher, and upon being equipped afterwards, served here and there in Eastern North Carolina. While in active service in Starr's Battery, Lieutenant Fuller was elected and took his seat in the last Confederate Congress, receiving an almost unanimous soldier vote, being the youngest member, and by the way, the handsomest, the Adonis of Congress, as he was called. Here, too, no opportunity offered for display of his talents. It was then only a question of how long we could hold out and preserve our honor.

The end came. What an end! Nothing saved us from annihilation but the stout hearts of our men and the sublime virtues of our women. Our soldiers were ragged and soiled, but their souls were intact, undismayed, unconquerable. We say with pride, "First at Bethel, farthest at Gettysburg, last at Appomattox" for them. For our sweethearts, sisters, wives, and mothers, we say, "First at Bethel, farthest at Gettysburg"—foremost in all good works, untiring, self-sacrificing, God-guided women, to them there was no Appomattox; *they* have never surrendered. If pride of ancestry is ever pardonable, our children may well be proud.

Reconstruction is the blackest, most damnable page in the history of our country. Its story has never, and can never be told; far better that it should not be. We must forgive, but we may not forget.

At the first election after the war in 1865, he was elected to Congress from the Cape Fear District, but was not permitted to take his seat, by the rulings of Thad Stevens, *et id omne genus*, which freely translated would read, "and all that lot of fellows of the baser sort." It was during this eventful time that the Hon. Thomas C. Fuller went back to his little office on the banks of Cross Creek, where, lulled by its falling waters, he was soon busily at work. To our thinking, these were the happiest days of his life, riding in from his country home, with carriage full of children, and dinner basket in hand. He had, with all of us, a hard struggle, at first, to keep the wolf from the door. Conditions soon changed. The upheaval caused much litigation, of which he had his full share. Indeed, he stood at the head of the Fayetteville Bar. He first came into State-wide notice by his bold, masterful defense of Tolar and

PRESENTATION OF PORTRAIT.

others before a military commission held at Raleigh. His clients were convicted, of course, and sentenced to death. General Canby commuted to imprisonment for life, and their counsel, by strenuous efforts, after a short time, induced President Johnson to pardon.

Mr. Fuller's reputation rests chiefly on his skill as a criminal lawyer. In this branch of the practice he had no superior in our State, and was called into service in all important cases. Tradition says he saved the life of a prominent and wealthy client, charged with murder, by his skillful conduct of the case. He had an old land surveyor to make a map of the place of the homicide, and by this witness broke down the evidence of the State, made good his plea of self-defense, and set his client free. Now, he had followed this old surveyor in many a land suit in Cumberland by course and distance, and knew exactly how to frame his questions to secure desired answers. His removal to Raleigh followed close upon this verdict.

Of all his criminal cases, he probably took most interest in that of Jacob Manuel, a negro, tried for murder in Cumberland. He honestly, sincerely believed his client innocent, and as usual did his best. It was a case of circumstantial evidence, many facts proven pointing to the accused as the slayer. Mr. Fuller made an attack upon the chief witness for the State, such an attack as only he could make. His speech was a very able one, his whole soul was in it; but he lost. We all know "what fools these jurors be." He succeeded in getting a commutation of sentence from death to life imprisonment, and on a Christmas Eve made an appeal for pardon to Governor Brogden in such earnest manner as would take no refusal, and he made a Christmas present to an old father, who alone had stood faithful, of a pardoned son. This was a charity case, but Judge Fuller's face always lighted up at mention of it.

As a practitioner—the crucial test, after all, of a lawyer—Judge Fuller was fair and straightforward. If he knew any short-cuts, it was to avoid them; he never was known to take advantage of them, and scorned, despised, and denounced them.

In consultation with brethren, he was open, frank, and always pleasant. He never held back a good point, that he might make and take credit for it with judge or jury. It was his client's cause, not his, to be presented in the strongest light, fought to a finish, and won or lost honorably. Hence, he never played for prominence, but cheerfully took any place assigned him by associates. Some of us know, in these latter days, how much these matters count. If an associate made a slip, he was up and ready to repair the loss—never to reproach the unfortunate. With these qualities, it is superfluous to say he was always an agreeable associate, and generally chosen as such by his brethren.

Oh, how kindly, gracious, and tactful the aid he gave to younger members of the bar. To them he was not the big lawyer, who knew it all; but the elder brother, upon whom, somehow, they were at liberty to call. In a rough and tumble fight he had no superior. If, by chance, his well-poised lance was shattered in the onset, he grasped his battle axe; if that failed him, he drew his short sword, and woe betide the adversary who came within its reach. In addressing the Court, his points were clean-cut, clear, and pressed with earnestness; failing to convince, he never wrangled, but bowed with becoming deference.

His reputation as *primus inter pares* rests mainly upon his skill before the jury. Brought up among the Scotch, he had learned to follow Burns' advice, "To keep thro' ev'ry other man, with sharpen'd, sly inspection." In Cumber-

PRESENTATION OF PORTRAIT.

land, where he was raised, if allowed to pick the jury, his cause was almost won before the pleadings were read. He was brimful of what delightful Dick Battle used to call the "*Gaudia certaminis.*" Saturated with his cause his manner before the jury was indescribable. He knew exactly what to say and how to say it. His insight into human nature was so keen that he seemed to read men by some kind of intuition. He never fired over their heads; his shots were around the bull's eye. Beginning with some commonplace remark, he would let fall something to attract their attention; that gained, he would warm up, and if eloquence is vehement simplicity, he was indeed an orator. His language was always plain and homespun, never indulging in fine, prepared speech—and went home. When he began to pull that long moustache, lean frequently over the spittoon, his face to take on a solemn look, his eyes to stare at vacancy, these were weather signs, so to speak, never failing, even in dry weather, to foretell a thunderstorm about to burst to the great discomfiture of the other side. His manner was intensely earnest, impressing the jury with the belief that what he said he believed to be true. There was nothing studied or put on about him. The jury were gently but irresistibly led to think that here was one who was simply aiding them to come to a right verdict, and come they did to a verdict, in Fuller's favor.

One precious, priceless gift he had, now numbered with the liquid fire of the ancients—he knew how to quit!

To our mind, his choicest gift was his skill in the examination of witnesses. He never asked a question without anticipating the answer, and he knew so well how adroitly to frame them that he generally had the wished-for answer. He had in mind exactly what he wanted to prove, and his questions were framed accordingly. If the witnesses were shy or ill at ease, or hostile, a question or two, in words such as he thought would restore their self-possession, placed them at ease, and he had from them the proper answer. He would draw out a witness so smoothly that all that was in him would appear as an open book, colored irresistibly in Fuller's favor. In cross-examination we have seen him cut the ground from under his opponent's feet, and utterly bewilder him, by coaxing an answer out of the main witness which flatly contradicted his evidence in chief, on some important point, or an answer on some new matter that would throw a sidelight, changing entirely the whole aspect of the case; or failing there, some question put to the main witness, with consummate adroitness, would cause him to hesitate, fidget on the stand, lose his temper, perhaps, and break down his whole evidence, and with it the case in hand. If the witness showed his decided leaning against him, and he had no chance to pick something out of him, favorable to his side, his first question would be a declaration of war, and a battle royal would soon follow between witness, who stood upon the defensive, and attorney, who made the attack, the latter choosing his ground, advancing or retiring at pleasure, with the skill which comes of long practice and a thorough knowledge of his art. The issue we may easily guess. And yet he never browbeat a witness, and was too generous to take an unfair advantage of one. We repeat, his skill in handling witnesses was simply marvelous. He wasted no time in idle, foolish questions. If all present-day lawyers were Fullers, sixteen judges could easily do all the work in our Superior Courts, and this bench might, for two days in the week, go to the ball games. But why go on? Suffice it to say, Mr. Fuller was, since the sixties, among the ablest, may we not say, the ablest lawyer in our State. The highest compliment ever paid to him, in our opinion,

PRESENTATION OF PORTRAIT.

was that, Mr. Chief Justice, of your illustrious predecessor, when he said, "Well Tom, I hear that they talk of impeaching me. If they do, I want you for my counsel."

There came to him, as it were, to round out a well-spent life of great activity and usefulness, "to husband out life's taper at the close," the appointment as an "Associate Justice of the United States Court of Private Land Claims" by President Harrison, 10 June, 1891, which he held until his death in this city, 19 October, 1901. The judicial ermine, worn with honor, of course, added nothing to the character, dignity, or consequence of him who wore the Confederate gray jacket in 1861.

We come now to speak of him as a citizen. Here he was at his best. We recall with pleasure his manly figure and handsome face, lighted up with his genial smile. Of fine presence, courtly manners, and pleasing address, he was a marked man in any company. Plain as a pikestaff, easy as an old shoe, he was one that a child would instinctively draw near to. He never unbent—had nothing to unbend—but was always, under all surroundings, the same simple, unpretending man. Broadminded, clear headed, open handed, he lent himself willingly to any project for the upbuilding of his community and was a model citizen.

He had the rare faculty of making friends, whom he fastened, not with hooks of steel, which sometimes snap, but with those tendrils which, growing out of the heart, entwine themselves, we know not how, about objects beloved, which give and stretch upon occasion, but never break.

The poet Pope says: "Whatever is, is right."

Judge Fuller's friends paraphrased thus, "Whatever Fuller does is right." There were no empty seats about his on the hotel piazza where he attended court. He was a fine conversationalist, told a good story, and enjoyed heartily one told by another. He had no private grievance to unload upon his friends—how some folks persecute us in this respect!—but kept his own troubles to himself. Bubbling over with animal spirits, he shed sunshine all about him. We have never known greater devotion shown by mortal man to kith and kin, and they in return almost worshiped him. His washerwoman loved him.

No matter how his mind might be full of weighty matters, he always had time to put in practice the amenities of life—those little things, simple in themselves, which go to make up so much of the enjoyment of those about us, and which so many forget or neglect. A kindly nod for the humble, a pleasant word for the acquaintance, a hearty handshake and cordial greeting for the friend, were to him of course.

After disease had laid a heavy hand upon him, and he knew that the end was nigh, he went home, to Fayetteville. On his way he was asked what he was going for. His reply was, "Just to look at Joe Starr." They are together now.

A very short time before his death, while at table at the Yarborough, an old lawyer friend from home went in to dinner. Judge Fuller recognized him, beckoned to him to come to him, grasped eagerly his hand, while an old-time smile lit up for a moment his wasted face. He said, "George!"—not another word; a tear coursed his cheek. Prompt us, say the words for us, for we cannot. Tom Fuller—we hope we break no canon of decorum when we speak of him, stripped of titles—was a splendid type of the old school Southern gentleman, a species of the genus homo now nearly extinct.

In behalf of those nearest and dearest to him, we present his portrait, and ask you to hang it upon these walls, to keep company with North Carolina's best.

ACCEPTANCE OF PORTRAIT.

ACCEPTANCE BY CHIEF JUSTICE CLARK

The Court is gratified to receive this portrait of Judge Fuller, which has been so handsomely presented in the speech of Colonel Broadfoot. Judge Fuller was a strong man in every sense of the word; of splendid presence, learned, able and eloquent, he would have taken the first rank at any Bar or in any calling. A gallant soldier, a member of the Confederate Congress, a member-elect to the United States Congress, but wrongfully denied his seat, a magnetic public speaker, a leader in his party and later in life a distinguished member of the Federal Judiciary, he made his strongest impression on the times in which he lived as a "Leader of the Bar."

A strong Bar makes a strong Court. The courts in which Judge Fuller practiced were his debtors for the great aid he rendered in the administration of justice. His views and arguments are imbedded and preserved in many opinions of this Court. Judges necessarily can give but limited time to the consideration of any one cause. But when able and learned counsel have given full consideration to a cause and have thoroughly grasped it and have taken it red-hot to hammer on the anvil of debate, it is a weak court indeed that cannot catch inspiration from the light thus shed. The course of judicial decisions is largely the result of the investigations and reasoning of counsel, who have thus written themselves into judicial opinions. The *Dartmouth College case*, erroneous as many now deem it, and corrected by constitutional amendments in most of the States, was fully as much an incorporation of the views of Daniel Webster as of the great Chief Justice, John Marshall, who wrote it. The same is true of most of the leading decisions of the courts when causes of importance have been debated at the Bar by strong counsel and have become milestones to mark the progress and the development of the law.

It is well to place on these walls the portraits of the judges who have written the decisions of the Court; but it is no less appropriate that we should preserve for the admiration and the emulation of successive generations of lawyers these memorials of those great "Leaders of the Bar" who have shared so largely in forming judicial opinions and in shaping the course and current of the law by the force of their reasoning.

We have already on our walls the portraits of several of the greatest lawyers of this State, and hope to be favored with the portraits of others. But it can well be said that among them there has been none who is more fully entitled to be considered a "Leader of the Bar" than the distinguished subject of the portrait now presented. North Carolina has furnished no abler nor more successful advocate before the jury and the courts than Thomas C. Fuller.

The portrait by Mrs. J. Marshall Williams is a faithful likeness. Its admirable execution is proof conclusive, if proof be needed, that one sex has no monopoly of talent.

The Marshal of the Court will hang this portrait in its appropriate place on the walls of the Library of this Court, and the remarks of the distinguished counsel who has addressed us, so happily, will be printed in the next volume of our Reports.

INDEX

ACTIONS. See Removal of Causes.

Actions, Form of—Injury to Shade Trees—Condemnation—Measure of Damages.—Forms of action are not now regarded of supreme importance, and the measure of damages for injury to shade trees done by a quasi-public corporation in pursuance of its charter powers is the same, whether the action be brought by the person who has a property right in the trees or by the corporation in condemnation proceedings. *Moore v. Power Co.*, 300.

ADULTERY. See Husband and Wife.

ADVERSE POSSESSION. See Limitation of Actions; Deeds and Conveyances; Trespass.

ALIMONY. See Divorce.

APPEAL AND ERROR. See Parties; Trials.

1. *Injunction—Subsequent Motion—Court's Jurisdiction.*—Where in an action by a trustor in a deed of trust given on lands to secure a debt, the court has granted an order restraining the sale of the lands upon condition that the plaintiff pay into court the amount he admits to be due, and he fails to perform the condition imposed and appeals to the Supreme Court, he may not thereafter renew the motion for the order in the Superior Court upon the same state of facts, for the appeal carries with it all questions incident to and necessarily involved in the ruling to the appellate court. *Bonner v. Rodman*, 1.
2. *Trials—Evidence—Instructions—Harmless Error.*—The erroneous admission of evidence on the trial in this case was cured by the charge of the court. *Ellison v. Telegraph Co.*, 6.
3. *Judgment—"Mistake"—Interpretation of Statutes.*—On appeal from an order setting aside a judgment for mistake, etc., under Revisal, 513, the court can review only the question whether the facts found by the lower court constitute such mistake, etc., as would authorize him to set aside the judgment. *Mann v. Hall*, 50.
4. *Same—Verdict.*—Where on appeal from an order setting aside a judgment and verdict for mistake, etc., rendered under provisions of section 513, Revisal, the judge of the lower court has found that by mistake in describing the lands sued for the attorney has demanded judgment in his complaint for a fractional part of the fractional part of lands contended for, and not the whole of such fractional part, mistaking the description of one for that of the other; that during the progress of the trial the testimony of the witnesses reasonably confirmed him in this mistake, and it appears that the judgment entered conformed thereto, it is *Held*, that the order setting aside the judgment and verdict comes within the purview of the statute, and will be sustained, the rights of third persons not having intervened. *Ibid.*