

PRESENTATION OF THE PORTRAIT
OF
MR. JOSEPH HARVEY WILSON
TO THE
SUPREME COURT OF NORTH CAROLINA
BY
JUDGE FRANCIS I. OSBORNE
21 APRIL, 1914*

Judge OSBORNE said:

I have been requested by his surviving son to present a portrait of the late Mr. Joseph Harvey Wilson, of Charlotte, to this Court, and I gladly accede to the request.

Upon his death, noble words were spoken of him by his brethren of the bar, notably Col. H. C. Jones, Judge W. J. Montgomery, and the presiding judge, A. A. McKoy. I cannot now recall the exact words of the speakers, but remember well the keynote of their addresses.

Colonel Jones spoke of the exalted purity of the life of Mr. Wilson and his influence over the members of the bar. Judge Montgomery spoke of his legal acquirements and his marvelous success as a lawyer, and Judge McKoy, in words of surpassing beauty, of the loss which the State had suffered in the death of so noble a citizen.

Thirty years have flown by since then; nearly a whole generation has passed away. The eulogists have gone to join the eulogized, and the eulogies are for the most part but tradition or history in the forgotten files of contemporary newspapers. The members of the bar and those of his fellow-citizens who knew him well are now few indeed. His name, his mind, his character and person are but a memory.

Today I greet and pay obeisance to that memory and shall endeavor to depict it, as it stands before me, in faithful colors, for the purpose of strengthening and refreshing it in the minds of those who knew him, and, let us hope, for the benefit and instruction of those who knew him not—especially the younger members of the bar.. The affection, gratitude and respect which I bear him call for words of praise from me, which are but words of truth.

He needs no false eulogy or flattering portraiture at my hands. To indulge in them would be recreant to the proprieties of this occasion, disloyal to him whose whole life was a devotion to every virtue that belongs to the great family of truth. It would be, indeed, exceedingly indelicate in me to flatter him, dead, who when living flattered no one, and scorned all false praise from others.

*This address has but recently been furnished.

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In this Southern land we are very much prone to the habit of conferring unearned titles upon acquaintances and even strangers.

Colonels, majors, who never saw war, and judges who never sat upon a judicial bench, surround us everywhere; but he whom I now honor, after the manner of England's great Commoner, went through life with a name unadorned with borrowed title. "Mr. Wilson" he lived and labored, attained success in his profession; as "Mr. Wilson" he died, and as "Mr. Wilson" we cherish him in our recollection.

It is said in one of Bulwer's novels, "The Caxtons," that the Duke of Wellington was once passing on the streets of London. Some young man remarked, "There goes the Duke," and his companion asked, "What Duke?" "Why, the Duke of Wellington, stupid." So, within a narrower sphere, Mr. Wilson was THE Mr. Wilson by preëminence. In the large judicial district in which he practiced I doubt not if any man had remarked, "There goes Mr. Wilson," any hearer would have known that he meant Mr. Joseph Harvey Wilson, of Mecklenburg County.

As such, I will endeavor to give some slight sketch of his life and character.

He was born September, 1810, at the home of his ancestors in Mecklenburg County about nine miles northeast of Charlotte, near Philadelphia Church. He was the son of the Reverend John McKamie Wilson, a distinguished Presbyterian minister and a great educator. His mother, Mary, was a daughter of Alexander Erwin, a Revolutionary patriot, thus relating Mr. Wilson to the Waughtstill Averys, the McDowells and other prominent figures of that time.

Mr. Wilson was prepared for college by his father, and so remarkably precocious was his intellect that he entered college in the Junior class at thirteen years of age, graduating with honor at fifteen. After obtaining his degree he returned to reside a short time at his home, without engaging in any active business, by reason of his youth.

Success greeted him at the threshold of his career and walked hand in hand with him until his death, which occurred in September, 1884.

His compeers at the bar were Judge Nathaniel H. Boyden, of the Supreme Court bench, the Honorable Thos. S. Ashe, of this body, Judge Jas. W. Osborne, of the Superior Court, and the Honorable Haywood Guion, a lawyer of great ability and a writer of note in his day. Later in life, his compeers were Judge Wm. P. Bynum, Senator Z. B. Vance, the Honorable Clement Dowd, Col. Hamilton C. Jones, and many of the younger members of the profession.

I have said that he was successful at the start. It would have been, indeed, marvelous if he had been a failure. Wherever the English law pertains, no matter in what country, he would have been amongst its

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foremost practitioners. Of strong natural parts, ever an intense student of his profession, he brought into his practice a profound knowledge of law and business methods. He had deeply studied all our ancient authorities. He drank in law at the fountain head, but he kept abreast with the current as it flowed.

He read and studied the contemporary decisions of the Court, and there was no opinion from this bench, settling any important question, with which he was not thoroughly familiar.

Besides his knowledge of books, he studied men. He was a close observer of their actions, a keen inspector of their motives. He was never the dupe of misplaced confidence.

He did not take chances in the investment of his time, his talent, or his money. He builded no castles in the air. He was a plain, practical business man, and not a dreamer of dreams. But above and beyond his knowledge of books, of his profession, in the practical affairs of life, stood prominently that character for integrity which made his name a synonym of honesty and fair dealing. Amongst able men and great lawyers, he stood the foremost, as a wise and prudent counselor, skillful draughtsman of conveyances, contracts and pleadings.

If success is to be measured by triumphs in the forum, he was the equal of any of these gentlemen I have mentioned, and if it is to be measured by the confidence of the entire business community, the number of responsible clients and the well-earned rewards of a lucrative profession, he was the superior of any of them.

As an advocate Mr. Wilson was successful. He did not aspire to eloquence, as we generally understand the term, but if the definition of Charles James Fox be correct, that "eloquence is logic set on fire," then he was eloquent indeed.

He did not adorn his addresses with flowers of speech. He rarely ever used an illustration or told an anecdote. His object was not to appeal to the imagination with figures of rhetoric, or to amuse the fancy with jest. He sought only to convince, or rather, it seemed, to inject his own convictions into the mind of the court and the jury. The strength of the speaker lay in his clearness, his intense earnestness, and his ability to impress his audience with the sincerity of his convictions. He was clear, for his thought was always clear. He never went into the trial of a case without thoroughly mastering it in all its details, both as to facts and law. He rarely ever spoke without premeditation and preparation. Out of a redundant vocabulary of plain, strong words, for the most part of Anglo-Saxon derivation, he could pour forth sentence after sentence, closely connected, all well rounded and complete, with every word in its proper place, and each one bearing its

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appropriate part in conveying the idea he sought to impress upon his hearers.

Everywhere natural, and nature having endowed him with great dignity of mind and character, he brought into the courtroom that dignity of manner which belongs peculiarly to an older generation of lawyers. Always respectful to the court, courteous and even courtly to his opponents, he enforced by his conduct respect and courtesy from others. Nothing could distract him from the issue before his mind. The cause which he had so thoroughly mastered in his office seemed to have mastered him. He lost his entire personality in his zeal. Wit at his expense was an idle summer wind. I have often seen it tried by the very genius of wit itself, Senator Vance, but however amusing to others, the shaft fell harmless on that dignity which clothed as a garment this grand gentleman of the old school.

It is to speak words of supererogation to say that in all his practice he was honorable; that he knew no short cuts to success. Written agreements with him were superfluous. His word was his bond. No matter how fierce the controversy, how important the issue, how intense his own zeal for his client's cause, he never made an enemy in the courthouse.

There was always one limit to his partisanship that he strictly observed. It was his own honor. "That was aye his border." All his adversaries knew it, and therefore cherished no enmity towards him, for lasting animosity is not the child of good faith and honor. It is the legitimate offspring of fraud and deceit. But Mr. Wilson had no enemies at the bar. Whether opponents or not, all its members respected him, and those who were thrown in close relationship with him were his friends.

In his action in speaking (and I mean merely physical action, not the action that is spoken of by Demosthenes, which seems to my mind to embrace the entire domain of public speaking) he was graceful and forceful. Considerably above the ordinary height, of a form the model of symmetry, erect in stature, all his gestures were consonant with the thought and its expression.

I have said before that he thoroughly understood his cases. I should have quoted a far higher authority than myself. Chief Justice Pearson, who rarely ever complimented any one, and who when he did meant more than he said, in discussing the members of the bar of about his own age, attributed Mr. Wilson's success to the fact of his clear understanding of his cases.

I cannot agree with him who said that the legal mind displays its power in illustrating the obvious, explaining the evident.

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In my opinion, to understand fully an intricate law case requires the highest exercise of the mental faculties. But it was not simply in understanding this or that particular case that the powers of Mr. Wilson's mind were displayed to their fullest extent. It was in his profound knowledge of general legal principles, and his ability to apply them to new conditions.

In the busiest period of his life, if not the most important, there occurred the well known revolution in our practice and pleading. In 1868 the Code was adopted, abolishing the distinction between actions at law and suits in equity, and establishing one form of action. It was almost impossible for us who have been bred under the new forms of pleading to understand with what difficulty those older lawyers who had spent their lives in the study of Chitty and Stephens, and filing bills and answers in equity thereto, could reconcile themselves to the new order of things. It seemed to them that they had to forget all the old paths they had trod, and blaze out a new way in a barren wilderness of legal thought without a guide.

To Mr. Wilson's credit be it said, though he preferred the single issue to the multiplication thereof, and thought the more numerous issues were calculated to confuse rather than enlighten the jury, and really was devoted to the old equity practice, he did not despair of fully understanding the new. Being so well versed in the science of good pleading which the old law contained, he brought his knowledge of the old to shed light on the new practice, and soon became a master thereof.

Out of the throes of those times were evolved more important changes than mere pleading and practice. The organic law of the State itself was amended by adopting the homestead and personal property exemptions therein. This laid before the whole profession a wide field of thought.

From the downfall of the Confederacy the relations of trustee, *cestui que trust*, guardian and ward were much disturbed. What might be the rights and responsibilities growing out of such relations were for the courts to tell us anew, for trust funds had been invested in securities which had been sanctioned by the law, at the time the investments were made, but which had become thoroughly worthless by the results of the war.

Contracts, perfectly legal during the predominance of the Confederacy, at the time they were made, were declared illegal by act of Congress, and the contracts that were valid had to be solved in the legal tender of the United States Government, upon a scale provided by statute.

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In the settlement of these grave questions before the court Mr. Wilson bore a conspicuous part. How well he bore it is best illustrated in the volumes of our Supreme Court reports. Time would fail me to detail the important cases in which he appeared.

In summing up the universal opinion of his mind in its operation, I could not do better than to quote from Lord Macaulay's remarks, concerning Charles Montague, the father of English public finance:

"It has long been usual with us to represent the imagination under the figure of a wing, and to compare the successful exertion of imagination to a flight.

"Thus, an orator or a poet, as the case may be, is an eagle, and another a dove, and a third, more modest, a bee. Neither of these types would have suited Montague. His genius may be compared to that strong pinion which, though it is too feeble to lift the ostrich in the air, when she confines herself to the surface of the earth, enables her to outrun hound, horse and dromedary.

"When a man with genius like this attempts to ascend to a heaven of invention his awkward and unsuccessful efforts expose him to derision, but if he is content to stay in a terrestrial region of business, the faculties which could not enable him to soar in the air, he soon finds enable him to distance all competitors on the lower sphere."

Here the parallel ceases, for Montague did attempt to ascend the heaven of invention, and failed. Mr. Wilson, well knowing the old adage of Swift, "It is an undoubted truth that no man ever made an idle figure in the world who understood his own talents, and no man ever made a good one who mistook them," confined himself to the terrestrial region of business, and distanced all his competitors.

As a citizen, Mr. Wilson was liberal and progressive. He encouraged public education, was an advocate of religion, and aided all public improvements; in short, he was devoted to the moral, intellectual and material advancement of society. In politics he was what we term an "Old-time Whig." After the manner of Webster, Clay, Wiley P. Mangum, Geo. E. Badger and Wm. A. Graham, he believed in a strong National Government, and the exertion of the powers of that Government, as he understood them, for the benefit of the Nation at large.

He was earnestly opposed to secession, and for the first time in his life was tempted to leave the practice of his profession to engage in political discussion.

Voluntarily, and in opposition to the majority of his friends and relatives, he offered himself as a candidate for the Convention for the purpose of defeating secession. And in this he preferred principle to popularity. For he was not the man to count the number of his adversaries, when a question of principle was involved. He was defeated,

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as was to be anticipated. But when the State did secede, he seceded with it, and earnestly, loyally supported the cause which she espoused. For from the crown of his head to the sole of his feet, he was a North Carolinian. He freely gave of his substance to the Confederate cause. He knew all the leaders in the secession movement, and many of our generals. He shared the counsels of the one, rejoiced in the temporary victories of the other, and deeply shared in the humiliation of their defeat.

Past the military age, and not being trained to arms, he did not fight the battles of the Confederacy in person, but he gave to the cause what was dearer to him. He sent his sons to the front; one of whom fought the entire four years without requesting a furlough.

When the cause was lost, and there was a faint hope that his State might be restored to her former place in the Union, without humiliating conditions, he participated in the hope. He was sent as a delegate to the Peace Convention, which, if my knowledge of history serves me right, was called in furtherance of Grant's famous declaration: "Let us have peace." We all now know that this hope failed.

Perhaps in his secret heart he clung to a still further hope that there might arise out of the chaos of parties some political organization through which his old-time tenets of government might find expression. He soon realized the failure of this hope. He saw around him a large number of his trusted fellow-citizens disfranchised and the former slave endowed with the ballot, and in and from such a political situation there was but one issue, that of race supremacy, and he cast his lot on the side of his own race. Believing that Democracy was the only political party by and through which the supremacy of the white race could be sustained, he joined that party, and gave to it loyal support, until his death.

Mr. Wilson was tempted once more to aspire to public office, but that by the almost unanimous solicitation of the white people of his county. He was elected State Senator and was President of the Senate. It is proper to state, in this connection, that he was tendered a judgeship, at one time, but declined it. Political ambition or greed of office could not tempt him from the practice of the profession in which he took delight.

As a man, the principal traits of Mr. Wilson's character were sincerity, justice and perfect courage, moral, mental and physical; nor was there the slightest shadow of false pretense in his conduct. He never made a profession of friendship that he did not feel, nor espouse a cause in whose righteousness he did not believe, and he never betrayed cause or friend. He lived in the broad sunlight of public opinion and his life was an open book.

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His justice was manifest in all his dealings with his fellow-man. He gave to every one what belonged to him, and that which was not his own he would neither take nor keep. There was scarcely any one in Mecklenburg and Cabarrus counties who had a legal grievance, whether imaginary or real, who did not consult him. Thus he was the favorite counsel of the plaintiffs, and yet he rejected, if truth were known, more cases than most lawyers brought in his day. He examined the facts laid before him by his client, and without suggestion or amendment thereto, he formed his judgment upon the facts as presented. If he thought he had no case, he would not bring it. He took cases as he found them and did not make them.

His moral force was shown in his life by his absolute freedom from folly and vice. Immoralities he despised. He seemed to have avoided even the vices of youth. This may have been because, in fact, he had no youth, judging from the precocity of his intellectual development, shown from his early graduation at college and his immediate entrance into the struggles of life. However that may be, if he was tempted as others, he had strength to resist the temptation, and the struggle left behind it no trace upon his conduct. He was bold, self-reliant in mind, forming his convictions without the advice of others, and after having formed them, he freely uttered them, when called upon, and stood ready to defend them against all comers.

Mr. Wilson was a manly man, endowed with the highest quality of physical courage, rightly exercised. This he inherited from his fighting Scotch-Irish ancestry. Suffice it to say that he was of the blood of Andrew Jackson, and none braver ever coursed through the veins of men in all the tides of time.

In this land of equal rights and privileges there is no title of nobility permitted under the Constitution. But nature defies the Constitution, ordinances and statutes, breaks through their bounds, and endows her favorite sons with titles of honor and respect, nobler than those dispensed by royal hands.

Around us we see an aristocracy of mind, of character and of religion. Of that aristocracy Mr. Wilson was a member, and if the title to such nobility can be handed down from sire to son, no man could assert a better right to it, for he was a descendant of a line of Presbyterian ministers, beginning in that Francis McKemie who emigrated to this continent in 1663 and founded and established the first Presbyterian church in America on the far-famed Eastern Shore of Maryland. That church he maintained in spite of religious persecution. Of such an ancestry, Mr. Wilson lived and died worthy.

He entered into the struggles of life early, as I have said, and as its gates spread open to him he saw no primrose path, no vista of easy

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dalliance, no royal road to success. He knew that his life was to be a battle and a march, and trusted in the end to victory.

He was poor, not with that chill penury which checks noble aim and freezes the genial currents of the soul. Poor after the manner of Webster, Clay, Ruffin and Pearson. Poor with that poverty which is the highest incentive to labor for honorable distinction. He made up his mind in the beginning, that the old adage in reference to lawyers, that they worked hard, lived fast and died poor, should find no additional exemplification in his life.

"He gathered gear by every wile that's justified by honor, not for to hide it in a hedge, nor for a train attendant, but for the glorious privilege of being independent." Having attained that independence by intense labor before arriving at middle age, he was not lavish in money matters or prodigal of his substance, for he had learned the lesson of frugality in the school of necessity. He was liberal, however, and not parsimonious. He was a contributor to all public charities and to his church. He did his alms in secret, not letting his left hand know what his right hand did. Having attained his independence, in his residence in Charlotte he dispensed a generous hospitality. His home was the home of his friends and relatives, and the door stood wide open to the stranger guest.

In religion he was a Presbyterian. From his birth and training he could scarcely have been anything else; but he was not of the strictest sect of that denomination of Christianity. He was broad-minded and tolerant of the views of those who differed with him on this serious subject.

He knew that the bedrock of our Constitution was religious freedom. Puritan he was, but not after the manner of those Puritans who forbade bear-baiting in England, not because it gave pain to the bear, but because it gave pleasure to the bystanders.

He took delight in seeing others enjoy the pleasures which he had denied himself. Down in his heart of hearts he believed that he might worship God and trust and love his Saviour without condemning all graceful, beautiful, intellectual and innocent pleasures of life.

All this he believed, notwithstanding that he knew that the chief end of man was to glorify God and enjoy him forever.

It was in his home life that Mr. Wilson found his greatest happiness. There his kindly virtues shone resplendent. There was the tender, faithful and knightly husband and just and generous father.

He was twice married. His first wife was Miss Adelaide Patton, of Buncombe County. Of this marriage there were five children, Rosa, James, Harvey, Frank and Anna, four of whom attained ages of ma-

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turity, and three lived past the middle age. The first daughter died in infancy.

His second wife was Miss Mary Louisa Phifer, of Cabarrus County. Of her I will only say that she was a lineal descendant of that Martin Phifer who was a member of the first Legislature of North Carolina and an advocate of the first law in favor of religious freedom. Of this marriage there were two children, Mr. George E. Wilson, of Charlotte, and Mrs. Charles E. Johnson, of Raleigh, who still survive.

Of strong, vigorous constitution, sickness rarely visiting him, respected by his fellow-citizens, loved by his friends, adored by his wife and children, conscious of rectitude, confident of immortality, his life was fortunate in duration and exalted in the end.

As has been said of statues and monuments, so may it well be said of portraits as public memorials. Their existence is only justified by two reasons—either as works of art or because of the subject they commemorate. This portrait, tried by either test, stands fully justified.

All who knew Mr. Wilson know this likeness. Here is the thoughtful brow, the aquiline nose, the firm mouth, the strong chin, all the lineaments of a countenance denoting reflection and inflexible resolution.

I therefore present to this Court the portrait of an honored father, the gift of a devoted son. Right well do I understand that you will gladly receive it and direct your marshal to hang it in its proper place in this, North Carolina's only pantheon, surrounded by a goodly company of peers, perhaps encouraging the weary and despairing member of his profession by reminding him of one who hesitated at no labor, whom no difficulties could conquer, and in the lexicon of whose life, both youth and manhood, there was no such word as fail.

ACCEPTANCE BY CHIEF JUSTICE CLARK

The address of Judge Osborne in presenting the portrait of Mr. Wilson is a worthy tribute to the memory of one of the most distinguished lawyers that North Carolina has known. The profession of law differs from nearly all other learned professions in that its members must exercise their calling beneath the critical eyes of their fellows. A physician, a clergyman, a teacher, or a member of any other profession practices his calling chiefly before those who are laymen. But this is not so as to the legal profession. The lawyer is under constant observation by members of his own profession whose interest it is to be quick and alert to find any defect that his argument may present. If there is any joint in his armor they are sure to perceive it and to penetrate it. One who obtains eminence at the bar has always fairly earned it by merit alone.

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The judges are not subject to the same sharp and acid test. If a judge is cautious not to stray beyond what has been said, and will confine himself always to the use of the thoughts of other men, he may attain the reputation of a safe and sound judge. But one who climbs to the position of a leader of the bar can only do so upon his own initiative and ability and learning and under the critical eyes of eager and alert antagonists. He must possess a thorough knowledge of the law and quickness to avail himself of all that he knows on the shortest notice. He must have the tact to be insistent with the court without seeming to be persistent. He must be a good judge of men and possess an almost intuitive knowledge of human nature so that he may make the best of the witnesses and win the confidence of the jury in the justice of his cause.

At one time at the English bar the opposing leaders in almost every great cause were Sir James Scarlett, afterwards Lord Abinger; and Henry Brougham, afterwards Lord Chancellor Brougham and Vaux. Brougham had an impressive personality, a deep sonorous voice and immense versatility. Scarlett was a small man, unassuming, and always spoke to the jury in a conversational tone. Indeed, he seemed rather the thirteenth jurymen conferring with the others, instead of trying to persuade them. At the close of the term at which many great causes had been tried, Lord Campbell relates that he approached the jury and asked them their opinion of the two men. They were unanimous in the expression that Brougham was probably the greatest lawyer and orator that England had ever known. They said that Scarlett was a very nice gentleman, but every one knew that he was no speaker, and Brougham had always proved that Scarlett did not know much law. Campbell then asked them how it was that at that term in every case in which the two men had been opposed they had given their verdict without exception in favor of Scarlett. "Why," said they, "in every one of those cases he had been employed by those who had justice on their side, and he could not help winning." Campbell thought this the highest art. But the jury were much nearer right than he. The really successful men at the bar, who win most of their causes, are those who have the industry to thoroughly comprehend the facts and the law of every case intrusted to them, with the soundness of judgment to perceive where the right lies and the honesty to advise their clients so that they rarely bring an action, or defend one, in which justice is not on their side. Then they need only the clearness of statement to make the court and jury see it.

Unlike Scarlett, Mr. Wilson was possessed of a fine personality, and was a forceful advocate; but, like Scarlett, he had the industry and the good judgment to see where the justice of the cause lay and the

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honesty to advise his clients so that he rarely appeared in any cause in which he did not convince the court and the jury that he ought to win, and was much aided in this by his well-known high personal character, which always gave an added force to any argument that he made.

We are fortunate to have before us so excellent a portrait of this great lawyer. His memory as a man and as a lawyer should ever be held in highest honor by our people and the profession. The marshal will hang his portrait in its proper place on the walls of the library of this Court, among those great leaders of the bar whose careers have reflected luster upon the profession to which they belonged and the State that gave them birth. Beneath his portrait may well be written the sentence bestowed by Cicero on a great lawyer of his day, "*Virum justissimum et tenacem*"—"A most honorable man, and tenacious of the right."