

PRESENTATION OF THE PORTRAIT
OF
HON. DAVID FRANKLIN CALDWELL

(LATE A JUDGE OF THE SUPERIOR COURTS OF LAW AND EQUITY)

TO THE
SUPREME COURT OF NORTH CAROLINA

BY
HON. THEO. F. KLUTTZ

1 MAY, 1917

MR. KLUTTZ said:

May it Please Your Honors: It is a far cry from 1844 to 1917.

Many, and strange, and great have been the happenings in that time. In the judicial history of North Carolina great reputations have been made, great judges have lived and died, and we yet have great judges with us; but I question if the Judiciary of the State has ever been stronger than when the Supreme Court sat for the December Term, 1843.

Ruffin, the great Chief Justice, whose bronze effigy guards the portals of this great fane, was then in the zenith of his powers; and with him sat the able and indefatigable Daniel, and the brilliant statesman and jurist, Gaston.

Of this illustrious legal triumvirate, Dr. Kemp Battle in his "History of the Supreme Court" says: "No State of the Union, perhaps not even the United States, has ever had a superior Bench; few ever had its equal. At home and abroad their decisions, as a rule, had the weight of established and unquestioned law."

Nor was the Superior Court Bench hardly less able or striking. On it sat those veteran sages of the law, Frederick Nash, John L. Bailey, Thomas Settle, (the elder), and John M. Dick; with their able associates, Richmond M. Pearson, William Horn Battle, and Matthias E. Manly. Of these, Nash, Pearson, Battle, and Manly were destined to deserved promotion to the Supreme Bench; and two of them, Nash and Pearson, to long and distinguished service as Chief Justice.

It was a halcyon day in the judicial history of the State, and it was to this great galaxy that David Franklin Caldwell was presently to be worthily added. Lamented as few men have been, Gaston after a day's illness, died during the sitting of the Court, 23 January, 1844, and Frederick Nash was appointed by Governor and Council as his successor.

The consequent vacancy upon the Superior Court Bench was filled by Governor Morehead and his Council on 10 July, 1844, by the appoint-

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ment of Hon. David Franklin Caldwell of Rowan, and these temporary appointees were regularly elected by the General Assembly of 1844-1845.

David F. Caldwell, who thus came to the Bench, was already well known to the people of the State by his long and honorable public service, and was in every way worthy of the high accession.

Though many years have elapsed, and the judges and lawyers of his generation have passed away, his name and fame, and his unique personality, are yet familiar by memory and tradition to many of the older citizens of the State; and it is a pleasant duty to set down here a brief appreciation of his life, character, and service.

He was born of sturdy Scotch-Irish-Welsh ancestry, in the county of Iredell, 12 March, 1791, the son of Col. Andrew Caldwell, a stern patriot of the Revolution, who later often represented his county in the General Assembly both in House and Senate; and who was a warm friend and kindred spirit to the great but somewhat erratic John Sevier, and stood bravely by him in his troubles.

His mother was born Ruth Sharpe, a daughter of Hon. William Sharpe, himself a distinguished patriot of the Revolution, who was a member of the Provincial Congress at New Bern and Hillsboro in 1775, and also of the Constitutional Convention or Congress at Halifax in 1776, and was also a member of the Continental Congress at Philadelphia, 1779-1782.

Col. David Caldwell, his paternal grandfather, also fought in the Revolutionary War, and commanded several expeditions against the Cherokee Indians, and he was also often a member of the General Assembly.

His maternal great-grandfather was David Reese, a signer of the Mecklenburg Declaration of Independence. This bold, patriotic, and independent ancestry accounts for the manner of man that David F. Caldwell was.

His younger brother, Hon. Joseph Pearson Caldwell, was elected to the Thirty-first and Thirty-second Congresses of the United States, dying while brilliantly serving his second term, leaving one son, Joseph P. Caldwell, Jr., who became the founder and great editor of the *Charlotte Observer*.

Another brother was Dr. Elam Caldwell, a learned and beloved physician of Lincolnton. Judge Caldwell was twice married, first to Fannie, daughter of William Lee Alexander, and, after her death, to Mrs. Rebecca M. Troy, a sister of the wealthy philanthropist, Maxwell Chambers. Of the second marriage there was no issue. The children of the first were William Lee, Archibald Henderson, Richard Alexander, Dr. Julius Andrew, Fannie Macay, who married Mr. Peter W. Hairston, a wealthy and prominent planter and business man and a gallant Confederate

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soldier, and Elizabeth Ruth, who married Col. Charles F. Fisher, who fell while gallantly leading the Sixth North Carolina Regiment at Manassas, and of this union came the gifted author, Mrs. Frances C. Tiernan, whose pen-name, "Christian Reid," is known world wide.

Judge Caldwell's early education was acquired at Bethany Academy, in Iredell County, a classical school of much note, where under the tutelage of that noted teacher, Hugh R. Hall, he was prepared for college. He then entered the University of North Carolina, where he took a literary course, but was not graduated because of financial inability.

Returning from college, he studied law with Hon. Archibald Henderson, whom Judge Murphey eulogizes as one of the greatest men and best lawyers of his time.

Upon his licensure in 1815 he began the practice of the law in Statesville, but after a few years removed to Salisbury, where he continued to reside until his death in 1867.

He soon acquired an extensive practice, but being young, patriotic, and ambitious, he was early drawn into politics, representing Iredell County in the House of Commons, 1816-17-18-19, and the Borough of Salisbury in 1825. He was a member of the State Senate from Rowan 1829-30-31, and was twice honored by election as Speaker of the Senate.

Speaking of the assembling of the House of Commons in 1816, Moore, in his History of North Carolina, says: "David Franklin Caldwell of Iredell County was also a new member. He, too, was an able young lawyer, and was to become prominent alike in political and legal circles. He was remarkable in many respects. No man could be more charming or more terrible. The frown and thunders of Jove were seen on his clouded brow, while, like Shakespeare's Richard III, the blandishments which followed were all the sweeter for the contrast. He was able, luminous in statement, and the embodiment of truth and honesty. He could terrify the crowded courthouse from the bench all day long, but with the evening's privacy no gentleman in all the land was more genial or entertaining."

As Speaker of the Senate, his legal ability, his legislative experience, his firmness, fairness, and fearlessness all combined to make him a model presiding officer, and to add to his already great and growing reputation.

After this service he continued in the lucrative practice of his profession until his elevation to the judgeship in 1844.

As a lawyer he was well grounded in the fundamental principles of the law, and was possessed of a logical and analytical mind. He was untiring in the preparation of his cases, was always courteous to bench and bar, of direct and forceful but never of verbose or grandiose address, and of commanding person; and his success at the bar was commensurate with his great capabilities.

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Political feeling in that day was strenuous and rancorous, and many were the personal rencounters between rival candidates for popular favor. I have seen political pamphlets of those nullification times which were Rooseveltian in their objurgations, and in which Andrew Jackson was either defied or damned. Judge Caldwell, prior to his elevation to the bench, was the leader of the old Whigs in Rowan and surrounding counties, while his fellow-townsmen, Hon. Charles Fisher, a distinguished citizen, of high character and great ability, was the Democratic leader. They were often opposed to each other, and, unfortunately, there grew up very bitter personal feeling between them. This culminated at Mocksville, at the first term of the Superior Court for Davie County after it was established in 1836. Mr. Fisher had an appointment to speak, to which Judge Caldwell publicly announced that he would reply; but Mr. Fisher consumed the entire afternoon in a bitter political speech, to which Caldwell vainly sought opportunity to reply, and he and his friends were consequently indignant. After supper, in the public room of the hotel kept by Mr. Lemuel Bingham, Judge Caldwell, talking to himself as was his wont, used an opprobrious expletive, referring to the leanness of the court, which Mr. Fisher overheard, and mistakenly understood as applying to himself, and, becoming enraged, so violently assaulted Caldwell that he was only saved from great and perhaps fatal injuries by the interference of Mr. Bingham and others.

Brooding over what he considered an outrageous and humiliating wrong, Judge Caldwell, yielding to the then current notions of the requirements of honor, challenged Mr. Fisher to mortal combat, naming as his second Hon. Sam P. Carson of Burke (now McDowell) County, a leading Democrat, a prominent citizen, who had in a duel killed Hon. Robert B. Vance, an uncle of Senator Z. B. Vance.

Mr. Fisher promptly accepted the challenge and through his second, Hon. Burton Craige, named broadswords as weapons for the fray. To this Mr. Carson strenuously objected, pointing out that it was contrary to the code duello, and that owing to the greatly superior size and strength of Mr. Fisher, it would be simply exposing his principal to barbarous butchery, ending by proposing firearms at close range.

Mr. Fisher remained obdurate, and after considerable correspondence, Mr. Carson, after fully setting forth his reasons, refused to allow the duel to proceed, announcing his determination to challenge any one who dared impugn the courage or conduct of Judge Caldwell; and so, happily, ended this unfortunate episode, without bloodshed. It is somewhat romantic that while the fathers were thus at deadly enmity the gallant son of one wooed and won the fair daughter of the other—Col. Charles F. Fisher wedding Ruth Elizabeth Caldwell.

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When Judge Caldwell came to the bench at the age of 53, it was with a ripe knowledge of the law, a clear understanding of its principles, a rich experience of men and affairs, a vast fund of common sense, and a profound sense of the dignity and responsibility of his position. He was reasonably patient in the hearing of causes, but detested unnecessary waste of time. He had no favorites at the bar, allowed no familiarity, and was always sympathetic to the young lawyer who showed himself at all deserving.

He was quick to protect an honest witness from browbeating or badgering, and was severe in his deprecation of such practices. Attempted fraud and perjury fared poorly at his hands. His austere and commanding personality instinctively compelled respect and silence in his courts.

Except in cases of great moral turpitude, he was not unduly severe in his sentences, and often in the case of small offenders, after a terrific exposition of the heinousness of the offense and an awful warning against its repetition, he would astonish the thoroughly alarmed culprit by an unexpectedly light punishment; but he had taught him a lesson which he would never forget.

Once at a winter term of Rowan Superior Court, when the witnesses had been ordered from the courtroom until called to the stand, a poor fellow when called was found crouching beside the stove. Indignant at the violation of his order, Judge Caldwell said nothing until the case had been given to the jury, when he called the offender before him and lectured him severely upon his flagrant contempt of the orders of the court. The poor fellow begged for mercy, explaining that he was freezing out of doors, and had only crept in to warm. The judge, winding up his exhortation, thundered: "It is represented to me that you are a poor man, and have a large and dependent family, and I will therefore not fine or imprison you, but I will inflict a worse punishment upon you": (then sternly, after a pause, while the culprit cowered before him) "I leave you in the hands of Almighty God!"

His personal courage and awe-inspiring dignity were well illustrated in his treatment of one Hopkins, who had been severely punished by him. Hopkins entered the stage coach in which the judge was traveling to one of his courts, and, recognizing him, said abruptly: "Judge Caldwell, you punished me outrageously, and I am going to whip you for it, right now!" "Whip me?" said the judge, indignantly. "How dare you insult a judge of the Superior Courts of Law and Equity for discharging his sworn duty? Get out of this stage at once, sir!" And, according to Hopkins' own story, he did get out at once, without knowing how, and the stage drove on, leaving him in the road.

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It is said that while practicing law he once trailed a fellow-townsmen, who had absconded with a considerable amount of trust funds for which he felt himself morally responsible, to New Orleans (then a considerable journey), and *vi et armis* compelled him to discharge.

These are a few of the many characteristic reminiscences of this great and unique judge which yet linger in popular tradition.

The State was then divided into seven judicial "circuits," and the judges were selected from the State at large, but were appointed for some particular circuit, and required to reside in one of its counties. They were required, after about 1856, to ride all the circuits in rotation, beginning from the first. The courts were held twice a year in each county, spring and fall, and the terms were, except in a few of the large counties, one week each.

The munificent salary was \$1,950 per annum, payable semiannually, with nothing for expenses. Ninety dollars per week was allowed for special terms, for each second week of court, and for each week over twelve on the circuit.

There were only two railroads in the State then, the Raleigh and Gaston and the Wilmington and Weldon; there were few bridges and no good roads; so that the judges rode the circuits for the most part in their own two-wheeled "gigs" or in sulkeys; by stage coach where available; and in the mountain counties often by horse- or mule-back, traveling long distances, often on Sunday, to reach the next court. Yet with these hardships it is reliably said that Judge Caldwell in all his fifteen years service was never late in opening court on Monday morning, except on rare occasions, when prevented by sickness or impassable waters.

In 1859, when 68 years old, while in the full possession of his faculties, but sensitively, almost morbidly, fearing that advancing age might, imperceptibly to himself, impair his usefulness, he resigned from the bench and retired to his spacious and beautiful home in Salisbury.

He was then given the honorable but almost honorary position of President of the Branch Bank of North Carolina at Salisbury, which he held until the collapse of the bank as a result of the War Between the States.

He was brought up in the atmosphere of the "Westminster Confession of Faith" and the Assembly's "Shorter Catechism," with their stern Calvinistic theology, but in mature years became a communicant of the Protestant Episcopal Church, and died in that communion. He was never an emotional religionist, but he had an abiding faith in the great truths of the Christian religion, and a profound sense of his own personal accountability.

He had strong convictions and followed them relentlessly, but he had tender sympathies, and was always heedful of the call of suffering or

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distress. When a boy, in the sixties, I frequently saw Judge Caldwell upon the streets of Salisbury. He was then in his declining years, but he was still erect and alert, walking slowly, yet with great dignity of carriage. He was an inch or two over 6 feet in height, of slender build, with blue eyes and dark hair then tinged with gray.

He was always neatly dressed, wearing a long coat of best broadcloth, a high silk hat, and his linen was always immaculate. I never met him without instinctively raising my sometimes shabby hat, and the salutation was always gravely and courteously returned by raising his own. On the 4th day of April, 1867, at the age of 77 years, he succumbed to the infirmities of age, and was laid to rest in the hallowed old Lutheran Cemetery in Salisbury, near the tomb of his old friend, Archibald Henderson.

Preserved and gathered here by loving hands, the faces of his mighty compeers look down upon us from the walls of this courtroom and library, and it is meet that his, as he looked and moved in life, should join them, that "He, being dead, may yet speak."

Fortunately for posterity, he was persuaded when about 60 years old, to sit to William Garle Brown for his portrait, and that portrait, true to life, I am now commissioned by his reverent grandchildren, Mr. Peter W. Hairston and Miss Ruth W. Hairston of Cooleemee Plantations, Davie County, to present to the Supreme Court.

May these mute yet eloquent portraitures of the Law's great dead, with the splendid judicial history which they recall, ever serve to incite and inspire the commemoration and emulation of bench and bar through long ages yet to come.

I thank your Honors.

ACCEPTANCE BY CHIEF JUSTICE CLARK

The interesting and instructive sketch of the life of Judge Caldwell by Mr. Kluttz is a valuable addition to the history of the Judiciary of the State.

Rowan County has never been lacking in lawyers of ability. When on the death of Judge Gaston of New Bern, Judge Nash of Hillsboro was promoted to the vacancy, Governor Morehead of Greensboro, who was himself one of the ablest lawyers in the State and knew well the standing and character of all the leading lawyers in the State, selected David F. Caldwell, of his neighboring town of Salisbury, for the vacant place on the Superior Court Bench. He could not have chosen more wisely.

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Judge Caldwell at once achieved the confidence and the esteem of the people, and never lost it. He had many of the characteristics of the strong man* who went from the same town of Salisbury to the Presidency at Washington. Tall, spare, quick in his decisions, and relentless in his enforcement of the right as it was given him to see the right, he feared the face of no man, and, turning neither to the right nor to the left, he pursued the path of duty and made the law a terror to evildoers.

Prior to 1856 the judges did not rotate the entire State, but each year they allotted the districts among themselves, with the sole restriction by statute that they should "not ride the same circuit twice in succession." It was not long after the change was made which required the judges to ride all the districts of the State in succession that Judge Caldwell resigned. At that time the office was held for life, and as he lived for many years thereafter his resignation was doubtless caused by this change, which imposed unnecessary hardship and expense upon the judges. This was changed in 1868 to the system in force everywhere else (save in our adjoining State of South Carolina) of each judge riding his own district only. In 1878 this was unfortunately changed back to rotation.

In maintaining respect for the law there is no influence greater than that of those judges who, in the language of Scripture, "sit in the gates" and administer justice in the sight of all people. And there are no public officials whose character, conduct, and capacity are more closely scrutinized and more quickly and accurately estimated.

During the time that Judge Caldwell was on the Bench there were many able and learned men upon both Superior and Supreme courts, but it may well be doubted if among them there was one whose personality more thoroughly impressed itself upon the minds of the people or whose memory will abide longer. Many anecdotes of him were long current among the people and Bar, and are not yet forgotten.

Learned, inflexibly just, of commanding person, courteous in his manner, decided in his opinions, and vigorous in his execution of the law, he was an honor to the profession and to the Bench.

The Marshal will hang his portrait in its appropriate place on the walls of the Library of the Court.

*Andrew Jackson.