

PRESENTATION OF THE PORTRAIT
OF THE LATE
WALTER A. MONTGOMERY
TO THE SUPREME COURT OF
NORTH CAROLINA
BY
HONORABLE T. T. HICKS
OCTOBER 30TH, 1923

The Supreme Court being assembled, Mr. Hicks, on being recognized, addressed the Court as follows:

May it Please Your Honors: The wife and son and daughter of Honorable Walter A. Montgomery, late an Associate Justice of this Court, have caused to be prepared a portrait of him, and have assigned to me the pleasant duty of presenting it to the Court. I now do so; and in connection therewith, since he was blessed with long life and good days, I will, by your leave, speak briefly of him.

But, before beginning this sketch, I will present another but poetic negative that shows some of his features, apparent to the eye of the observant, as well as in this excellent likeness:

"Thou shalt know him when he comes,
Not by any din of drums.
Nor the vantage of his airs;
Neither by his crown,
Nor his gown,
Nor anything he wears."

The chain of events that produced the life and career of Walter Alexander Montgomery has many links. The most remote link we have been able to trace was severed from the chain on the night of Saint Bartholomew's Day, in the year one thousand six hundred and eighty-five, when, on account of the revocation of the Edict of Nantes, a hundred thousand Protestants were slain in France and four hundred thousand more saved themselves by flight. One of the Montgomeries found refuge in Scotland, where, and in the North of Ireland, for a hundred years he and his descendants lived and intermarried. They loved not the Catholic Church, nor the Government of England. Their dislike of the former was because of its persecution of Huguenots, and of the latter because it oppressed the Irish and created by law artificial class distinctions.

The founder of the family in America, from which Judge Montgomery descended, arrived in New York from Ireland about the year

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1795. There he practiced for several years the art of the silversmith. His health failing, he came, after five years, to Hertford County, North Carolina, from which he shortly removed to "the hill country" of Warren as it was then called. There he bought a farm, on which he lived to his death on July 6, 1849. His seventh child, Thomas Alexander Montgomery, born May 7, 1818, was the father of Judge Walter A. Montgomery, who was born in Warrenton, N. C., on February 17, 1845. The mother of Judge Montgomery was the daughter of Robert T. Cheek who married in the ancient and honorable family of Alston, of Warren County.

Of Judge Montgomery, he himself has said: "My lot was destined to be that of those who get what they pay for: that and nothing more. My experience in life has been that the natural has ever come to pass."

The war of the Confederacy broke upon the nation when our subject was just sixteen years of age. His father owned many slaves. He supported the cause of Secession with all his heart and all his possessions. His son said that the father regarded General Lee and Jefferson Davis as "the greatest among men." The son early acquired the impression that slavery was wrong, and declared that if any slaves ever came into his possession he would set them free; so that it was an often expressed wish of the slaves of the family that "Marse Walter may draw me."

Yet the call to arms so appealed to the youth that at once after war was declared he tendered himself for military duty, and was a bugler of the company until the military examination came to be made. Dr. Charles O'Hagan, the examining physician, on account of his small size and delicate constitution, declared he had symptoms of consumption, and absolutely rejected him, and could not be prevailed upon by Col. Robert Ransom, the commanding officer, to change his mind. Within ten minutes young Walter had left the camp and was on his way to Warrenton. Within a week he had gone to Norfolk and sought and obtained permission to join the army there.

Judge Montgomery referred to his temperament as "mercurial"; but it is to be noted that his continued purpose ran through those four terrible years; that in the certainty of the failure of the cause after Gettysburg, when at times myriads of soldiers were "absent without leave," Walter A. Montgomery laid down his arms at Appomattox. He knew of and saw the building of the Merrimac, and shared fully all the hopes and expectations of the Southern people as to what it would do. He saw it steam down the river from Norfolk, and he witnessed from the shore the duel between it and the Monitor. He helped to fight the battles of Fredericksburg, Chancellorsville, Gettysburg, Brandy Station, the Wilderness, Spottsylvania Court House, Win-

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chester (1864), Bell's Grove, Mine Run, Hatcher's Run, Fort Steadman (Hare's Hill), the last day's battle in the trenches at Petersburg, Sailor's Creek, and Appomattox.

Though early marked for death, according to the opinion of the medical officer at the beginning of the war, the physical training, the outdoor air, the avoidance during the four years of the formative period of his life of excessive eating and drinking, and other forms of improper conduct, fitted him for a life of active labor. The scars of the wounds he received at Chancellorsville and Gettysburg were buried with his mortal remains in Oakwood Cemetery at Raleigh, N. C., in the seventy-seventh year of his age. We seek to shun the Apostle's suggestion of "enduring hardness" as good soldiers; "but the instant case" proves its virtues and exhibits its rewards. Until he was large enough, and strong enough to carry the equipment of a soldier, he carried and blew the bugle. The discipline to which he was subjected, his learning obedience to the laws of the camp and of war, by the things which he suffered, with the opportunities for the study of men, were together quite as valuable to him as would have been the acquisition of four years in college.

The spirit and enthusiasm of the soldiers during the first year of the war were fully shared by him and were most remarkable to him. They were anxious for the fray; they thought the war would last only a few months; they feared it would end before they would be engaged in a battle; they believed one Confederate could whip six "Yankees." The thought of having to go home without a wound was humiliating. But after the Conscript Act of April, 1862, went into effect, the hegira homeward of so many of "the better class," and so many bombproof positions were found by the aid of "the twenty-negro law," that much began to be thought and said about the war being a "rich man's war and a poor man's fight." Many of the men carrying the guns began to realize that their true interests were not involved in the success of the Confederacy. And it is indeed one of the wonders of the world that the fighting spirit, the courage, what has recently been called the morale of the soldiers, continued as long as it did. Robert Toombs and Bishop Polk declared that "the greatest incentive to loyalty to the Confederacy of the poor white men of the South was the fear that the success of the Union armies would enforce the social and political equality of the negroes with the poor white people of the South.

Judge Montgomery saw and endured much of the sufferings, privations, hunger and hardships of the soldiers. His conversation at times sparkled with witticisms and anecdotes of that time. Two will be here given: "General Gordon was with much energy trying to rally his broken ranks at the battle of Hatcher's Run in February, 1865, and

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being near a wounded man who was on his way to the rear cried out to him, 'What is the matter with you, sir?' The Irishman replied, 'Faith, and as for me, I have a hole in my stomach as big as your fist.' But moved by Gordon's stirring appeal, he stopped short and, with his cap in his hand, turned on the enemy, shouting, 'Charge 'em, boys, they have chase in their haversacks.'"

The other story relates to the etiquette that prevailed in the matter of pillaging the dead. The first man who found a dead soldier, whose equipment was worth having, was entitled to all he had, and no other soldier would trespass upon his find. No matter how badly wounded or how near dead a Yankee was, he must never be touched so long as he breathed. On one occasion a finely accoutered Yankee was found by one of our men. His belongings were a rich prize of war. The discoverer stood by, waiting anxiously the return of the soul to the God who gave it. On the instant he begun to divest the body of its goods, when the Yankee remarked, "Friend, can't you wait a few minutes longer?" The hungry soldier drew back in amazement, saying, "I beg your pardon; I'm damned if I didn't think you was dead."

Judge Montgomery quoted General D. H. Hill as saying, in an address before the Southern Historical Society: "From first to last our army was the worst equipped, the worst fed, the worst clothed and the worst organized army in the world. That of our enemy was the best equipped, the best organized, the best cared for, and the most pampered army of the nineteenth century."

Of the generals, Judge Montgomery said: "For General Jackson the soldiers had always cheers—in battle and in camp—and the highest admiration of his triumphs and leadership. They loved General Lee. They revered his character; they had unlimited confidence in his generalship and awe for his personal greatness. They never cheered him. The Southern armies for the last two years of the war lived, as it were, on the breath of this most remarkable person, both in qualities of the statesman and the soldier, developed or discovered by the war." He quoted General Lee as saying to General Wise: "The men of this war who will deserve most honor and gratitude are not the men of rank but the men of the ranks." Another statement of General Lee to a foreign officer visiting his headquarters: "I am ashamed for you to see my poor, ragged men in camp or on parade, but I would be glad for all the world to see them on the field of battle."

Soldier Montgomery saw, and heard the voices of, Stonewall Jackson and Robert E. Lee. He heard the address of General Lee to his soldiers at Appomattox. On that day he and others of Warren County lifted their eyes from the smoke and noise and sufferings of the camp and battle fields and turned their faces homeward.

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A part of Sherman's Army, under General Howard, passed through, and for a while remained in, Warren. Judge Montgomery's account of their visit is that the soldiers were under the very best discipline. There was not the least fear on the part of the people that they, or their homes or property, would be injured by the soldiers. Every possible precaution was taken by the officers and soldiers to protect the people against marauders and hangers-on.

The slave population of Warren was more than twice that of the white, yet we are told that not half a dozen made unnatural exultation over their sudden emancipation. They remained at their homes, worked the crops that had been planted, and divided them generally, under the direction of their former owners. The relations between them and their late masters continued to be not only agreeable, but friendly.

The only schooling in books young Montgomery had was in the schools of Warrenton, until his sixteenth year. Then, for four full years, without vacation or holidays, he attended the College of War, which, better than Bologna or the Sorbonne, Oxford, Harvard, or Columbia, taught him the ways of men and the laws of life. He arrived at home at the age of twenty, with his diploma written on his body, and photographed on every faculty of his mind.

His father was ruined financially, and for his son there was no help except in his own right arm. For some time he and his companions cultivated a musical and theatrical life and gave entertainments, with some success at home and in several of the towns of Eastern Carolina. In the late summer he concluded, as so many others have done, to teach, and opened a school at the home of a kinsman in the county, where he taught until Christmas. Then he returned to Warrenton, begun the study of the law, at the same time pursuing his studies in history and general literature. He had for his guide, philosopher and friend, Mr. William Eaton, Jr., a learned lawyer, author of Eaton's Forms. After a year of study he carried a letter of high recommendation from Mr. Eaton to the Supreme Court and received in January, 1867, his county court license. That summer he attended the commencement at Chapel Hill, saw President Johnson made an honorary member of the literary society, and was himself, on motion, made an *honorary member*, and signed his name just under that of the president. Mr. Seward excused himself from accepting the honor because he had never been a member of a secret society, when Mr. Fab Busbee, knowing, as ever, what to say, moved a suspension of the rules in the case of Secretary Seward, and he signed up just under the name of Walter A. Montgomery.

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The soldier-lawyer was, on the day after taking the oaths of an attorney, promoted to the office of Attorney of the County Court of Warren. This office he held until the court was abolished in the year 1868. During the year 1867, in addition to being county attorney and law student, he edited for Mr. I. H. Bennett the Warrenton *Courier*. In January, 1868, he received his Superior Court license. During that year he edited a newspaper of his own, called *The Living Present*. Mr. Eaton took him to call on the Justices on the night after he received his Superior Court license. He related that "Judge Pearson was plain and blunt, with small, brilliant, black eyes; that Judge Battle was gentle and timid and kindly; how suave and courteous was Judge Reade, and that all of them showed personal regard and marked courtesy for Mr. Eaton. Judge Reade on their departure took young Montgomery by the hand and expressed the wish that he might not only be a great lawyer, but a great man:

"Not great like Caesar, stained with blood,
But only great as you are good."

That old lawyer, William Eaton, Jr., held a high place in the admiration of the young soldier-lawyer, as he did in the estimation of the State and the Supreme Court. He was not only a great lawyer, but well versed in literature. He would often repeat, said Judge Montgomery, with a depth of feeling, and declare it to be the saddest commentary on life, those familiar lines of Shenstone:

"Who'er hath traveled life's dull round,
Where'er his stages may have been,
Hath sighed to think he still hath found,
His warmest welcome at an inn."

In view of the difficulty of getting a room in an inn, without telegraphing in advance, in these last days of the world, let us hope that Mr. Eaton's fame as a lawyer is not built on such an erroneous foundation as his alleged estimate of human and family and friendly and fraternal regard and affection.

A glimpse at the life and manners of the people of Warren in the youth of Judge Montgomery will be of interest. The "big business" of that time was slavery. The only other business was farming. Many of the farmers produced cotton and tobacco in large quantities. Several years ago, long since automobiles came, your speaker spent two afternoons looking for Jones's Springs and Shocco Springs and the grave of Annie Carter Lee, daughter of General Lee. She died at Jones's Springs, of typhoid fever, during the war. On the second trip, after much travel and inquiry, we found them. One old dilapidated house,

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with no spring, was all that was left of Jones's Springs. "Shocco," a few miles eastward, is an overgrown bottom on a small creek. About 150 yards from the path was a portion of a marble gum, from which water flowed. Not a house, not a brick, not a rock was seen. The country, for quite a distance around both spring sites, was occupied almost entirely by negroes. The farms and roads were unimproved, and the roads were almost impassable. Thorns and briars and dilapidated houses were in evidence. Cedars and pines and vines had enveloped the Jones graveyard, where, after being piloted on foot half a mile from the path, we found a beautiful monument, enclosed with a strong iron fence. The monument bears, in addition to name and dates, this inscription, written or selected no doubt by the immortal Lee:

"Perfect and true are all His ways,
Whom heaven adores and earth obeys."

That old house and that old "Spring Gum," and the iron fence and monument and the ground itself, and they only, are left of two of the most fashionable and famous resorts North Carolina has produced.

When Judge Montgomery was a boy the rich and aristocratic of North Carolina and Virginia resorted thither. That whole section was noted for the social habits of its people. They kept open houses. Their tables groaned with luxuries. Their sideboards were well supplied with brandies and whiskies and wines, strong and light, native and foreign. No note was taken of time, and the impression prevailed that none ought to be taken. When, soon after the war, a gentleman bought a London double-case gold watch, using it met with the disapproval of his neighbors and friends. Lord Macaulay said of the statesmen of the time of Lord Bacon and Cardinal Woolsey: "It is impossible to deny that they committed many acts that would justly bring on a statesman of our time censures of the most serious kind." So we of this time are aware of a sense of pained surprise that gambling, horse-racing and cock-fighting were the frequent diversions of the men of Warren in "the days before the war."

It is a remarkable fact that those sections in several of the eastern counties that contained the largest slave populations are now the least prosperous and progressive, the ex-slaves and their descendants being still there in large numbers, while the families of their masters have removed or become extinct. Other sections where there were few slaves are, and have been for years, far more prosperous and progressive. Warrenton, a small town, had great merchants in those old days. They carried large stocks of high-class merchandise to supply the demands

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of the wealthy citizenship of the town and county, the patrons of those far-famed resorts and visitors to the community.

Judge Montgomery thought and spoke kindly of the colored population. He had known many of them in his childhood and youth. He drew character sketches of a number of the slaves, and of them and others after they had long been free. He spoke of the kindness with which they were treated by their masters, and of the mutual good will that existed after their emancipation, and of the high character and trustworthiness exhibited by many of them. He had a conversation with one of the older men who many years after the war was boasting to the Judge of the fact that none of their family of negroes had ever been in the courthouse. On being reminded of the case that Cæsar, one of them, had, the old man replied: "Oh! that was 'bout 'er 'oman! I'm talking about stealing and burning and killing and such things."

By the year 1873 conditions had greatly changed in Warren. Many of the heads of wealthy old families had died and their estates had been sold for debt or divided. Living and farming were conducted on a smaller scale. "Black Friday" spread its darkness over Warren County as over Wall Street. Mr. and Mrs. Montgomery, seeing the situation as it was, and having some property interests and friends in Memphis, removed to that city. There they formed many lifelong attachments and friendships. But he did not press his claims for professional recognition upon the attention of the public. He appeared in a number of important cases while his brother looked after their valuable cotton farm near there. After three years in Memphis, they decided to return to Warren County where, and in the adjoining counties, he was actively engaged in the practice of law until his removal to Raleigh in 1893. He was soon out of debt, and he and his family lived most comfortably. His home and grounds comprised fifteen acres which were cultivated successfully and produced, in great abundance and variety, fruits, vegetables, grapes, and flowers.

During this happy period of his life, our friend was saddened by the sickness and death of his two brothers and of his son, Eppes Wilson. Eppes, who was an unusually intelligent child, gifted with many interesting phases of mind, was afflicted from his sixth year with a spinal disease, the result of an accident, which ended his life in 1890, in his fourteenth year. All the love and attention that were possible were lavished upon him by his devoted parents, and he attracted the love and sympathy of many others. He was supported and enabled to live for several years by plaster casts, the use of which had been discovered shortly before by Dr. Hunter McGuire, of Richmond, and applied at proper intervals to the body of little Eppes by that eminent physician and surgeon.

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The parents of Judge Montgomery were Episcopalians, devout people, and lovers of their church. So was and is the Judge's wife. He was taught in its tenets by his parents and the minister, but concluded that he should join the Baptist Church, which he did about the time when he was twenty-one years of age. His father was so hurt at this act of his that he never afterward spoke to him on the subject.

One Sunday afternoon Eppes' mother had him in the darkened parlor wrestling with the catechism. They had been for some time on that part of it relating to "The desire" and "My duty to God and my neighbor." It was a difficult subject to Eppes, who was further hindered and delayed by the merry voices of the neighbors' children who had gathered on the lawn outside. Finally his mother said: "Eppes, you have just got to learn these lessons. I have been trying to teach them to you for weeks. You shall not join those children until you learn these lessons." Eppes replied: "Mamma, I can't understand 'the desire,' and it's no use to teach me 'my duty to God and my duty to my neighbor,' for I'm not going to join your church. I'm going to join papa's church, where they don't have any 'desire' nor any 'duty to my God or my neighbor.'"

The tender attachment and affection that existed between these parents and this child, all the stronger because of the affliction which the little boy suffered, drew forth long afterward, from the depth of his father's soul, these pathetic utterances: "I have never recovered that which I lost in his passing. My faith in being reunited with him is not so strong as to share with his mother her great and certain trust, but his life and long suffering, and his untimely death, his devoted love for me and mine for him, his heroism and patience, are the strongest influences and arguments that could induce me to believe in personal immortality; to feel that God in his justice will not disappoint me in the hope that I may sometime be with Eppes again. As did that other agonized father who threw himself upon the Master's loving kindness, I cry: 'Lord, I believe; help thou mine unbelief.'"

The political career of Walter A. Montgomery is an interesting study. He was for about twenty-five years chairman of the executive committee and leader of his party in Warren County. The colored people outnumbered the whites, more than two to one, and they were divided politically in much the same proportion. His party was so well organized that at one time there were only three white men in the county who voted the opposition ticket. These three were men of high character, who had been old-line Whigs in the days of that party.

In the year 1870, Judge Robert B. Gilliam, Congressman-elect, died. Mr. Montgomery aspired to succeed him. His friends busied themselves. He soon had the promise of the votes of enough delegates to

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nominate him. But the delegates from Nash who had expressed themselves as being heartily in his favor, did not attend, and the nomination went by a small majority to Hon. John Manning, of Chatham.

In July, 1890, Mr. Montgomery's name was before the Judicial Convention at Weldon with those of Judge Peebles and Judge Bryan. The nomination was lost to him by a very small error in the addition of the votes on one ballot. Truly did the poet say: "So nigh is grandeur to our dust."

In the year 1889 "the crime of '73" became generally known. "Times were hard," and continued so to be until after the Spanish-American War. Corn went down to forty cents a bushel, meat to four cents a pound, and cotton to less than five cents. Just think: it required the price of 12½ bushels of corn to pay a lawyer for writing a deed for land that was perhaps not then worth much, if any, more than the price of writing the deed. Mr. Weaver, speaking in Denver in 1892, said: "What is a Populist? It wasn't necessary for me to come all the way from California to Denver to tell you that. Put your hand in your pocket. There is no money there." Public office became a thing greatly desired. Judge Montgomery related the events connected with the election of 1890 in Warren, and the indictments that grew out of them in the Federal Court at Raleigh, and his protest against the acts that caused the indictments, and his appearing, with other attorneys, for the defendants, and their acquittal. The Legislature in 1889 prescribed stricter rules for registration and voting. This act came up for construction in the spring of 1892 in the case of the State upon the relation of Travis N. Harris v. George N. Scarborough of Montgomery County. Read in the light of all that has since occurred in this State on the subject of the suffrage, that statute and that decision seem stale and dull; but they created an immense impression upon the minds of the people of that time. They changed the personnel of four members of this Court, and were the bud and the blossom of which the elections of 1894 and the years following, and the constitutional amendment so called, attempting to regulate the elective franchise, were and are the fruit. The distressing condition of the people, owing to the scarcity of money, growing, as was then supposed by many, out of the demonetization of silver in 1873, and the election law, were the principal matters discussed in the campaigns of 1892 and 1894, 1896, and 1898.

Mr. Montgomery suffered with the people and sympathized with them. Some gentlemen were tendered nominations for judicial positions as "nonpartisans" by the two opposition parties, and declined to accept the same. Judge Montgomery was offered by them the nomination for Associate Justice of the Supreme Court, and he accepted it and was elected. He declared long afterward that his political status

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in the years following was fixed by the Democrats, though he never considered himself a Populist, and the Republicans never considered him a Republican; but that he voted for Bryan every time he was a candidate, and was in sympathy with his policies.

Judge Montgomery saw that questions arise in courts involving office-holding, the revenue, the policies of parties as written in the statute law. He saw that the natures and habits of thought of men are not changed entirely by their translation from private life to the judicial bench, and that they would naturally be influenced to some extent by habits and views they had indulged and entertained for a lifetime. His experiences as a Judge confirmed his convictions of the propriety and usefulness and benefit of the nonpartisan system in the election of judges. Yet he paid his colleagues the high tribute that in conference those of different political sentiments were led to consider all sides of the case from judicial and not from partisan points of view.

He was reelected in November, 1896, for a full term, and served the State ten years, from January, 1895, to January, 1905.

Those years, and several years that preceded them, were lean years in the life of the State. Any little old office from road supervisor or county commissioner or shell-fish commissioner to those of judge, solicitor, railroad commissioner or a receiver of a defunct corporation or superintendent of a prison, was considered worth a fight involving the most strenuous efforts of learned lawyers, and taxing the skill and patience of the courts.

About that time your speaker was talking with a citizen of Pennsylvania, who had some real "sure enough" property in this State. He said the greatest need of his State at that time was a law compelling a person elected to an office to serve, especially if elected to the Legislature.

In those days *Hoke v. Henderson* was quoted more than the law of the Twelve Tables or Magna Carta or the Bill of Rights. In 1895 the Fusionists were by it barred from various offices they sought to go up and possess, for an office was "property," and the officer had a vested right in it and obtained his bread from its income. In 1899 and 1900 the same doctrine was successfully invoked to keep the Fusionists in office. Then this Verdun of the office-holders yielded, and it was discovered that an office is not "property." Indeed there were a few during those days, and since, who knew that an office never was property in the sense of being an asset. It couldn't be bought. It couldn't be sold. It couldn't be transferred. It couldn't be taxed. It was indeed a liability to him who held it. Yet, what dweller in our Jerusalem "has not known the things that came to pass in those days?" Who does not recall *Carr v. Coke*, *Caldwell v. Wilson*, *Wood v. Bellamy*,

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Ewart v. Jones, Cook v. Mears, McCall v. Gudger, Green v. Owen, Wood v. Elizabeth City, Abbott v. Beddingfield, McCall v. Webb, Cherry v. Burns, Cunningham v. Spruill, White v. Hill, Day's case, Wilson v. Jordan, Railroad v. Dortch, Bryan v. Patrick, White v. Ayer & Worth, Mial v. Ellington, and the Impeachment of the Judges! And who that recalls those times and those cases does not pity their littleness, their insignificance, and regret them and what was said and done about them, and the effect they produced upon the character of the State?

Judge Montgomery wrote many of those decisions. He saw and heard the rancor and passion of the parties and their supporters. Of the final overthrow of Hoke v. Henderson he said—134 N. C., 173: "I am content, as indeed I must be, to abide the judgment of the profession, with the hope and in the belief that the judgment of the future and of calmer times, if an adverse one, may be expressed more charitably than was that of the opponents of the decisions at the time they were made."

Was it "the hard times" or the love of office that impelled the people to strive as they did in the days of "Fusion," and to arrange matters as they did and as they are?

The moralist and the ethnologist see deeper into the problem. They say the struggle had its origin in the Slave Ship; that the curtain was lowered on one act of the drama at Appomattox; that the chains forged for the minds of the mariner and warrior were our war amendments; that the days of Fusion witnessed another struggle to be free from them; and they hope that the words "Third and fourth generation," written by Moses on the table of stone, will not be construed to mean fifth or sixth or seventh at the council table of the Eternal.

Judge Montgomery came to speak of the period to which reference has been made, near the close of his life, and he declared that he found himself bound as strictly by the obligations of truth and moderation of statement as he ever did in any matter; and he said that with the final passing of the great majority of those men who played leading parts in the heated drama of that time, the irritations and bitterness of those days had fallen out of his own mind. He discussed the events referred to with the calmness and the perspective of the historian and the philosopher. He said he felt the silence of his friends in those days a thousand times more keenly than he did the attacks of the insidious or splenetic politician.

But, notwithstanding the temporary coldness of some of his friends and the bitter political animosities of the time, "One continued purpose ran" through all his acts—official as well as private. He had not "the love of power or of popularity which very easily deludes a Judge into

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the conviction that he is acting merely with a view to the public good." And no one could or can be found who could truthfully say that in his service to the State and its people Judge Montgomery failed in any case to do what was "fit for a Judge to do."

He was an Associate Justice of the Supreme Court from his fiftieth to his sixtieth year. His work, opinions, are contained in the twenty-two volumes, beginning with Volume 116. His style is smooth, easy-flowing, temperate, clear, and never unduly extended. The most elegant reprehension of a litigant to be found in his opinions is at the end of the case of *Bearden v. Fullum*, 129 N. C., 479, where he said:

"We cannot let this case pass off without an unqualified expression of our disapproval of the conduct of those who have caused this litigation by their refusal to turn over these fines to the proper fund. We are met with an open defiance of two most solemn decisions of this Court on the matter which is the subject of this litigation. In the case of the *Board of Education v. Henderson*, 126 N. C., 689, we decided that all fines for the violation of the criminal laws of the State were appropriated by the Constitution for establishing and maintaining the free public schools. That case was reviewed and approved in *School Directors v. Asheville*, 128 N. C., 249; and yet, in the face of these two decisions, it is sought to raise this question again. We are surprised at the continual violation of the law and the persistent refusal of the authorities of the city of Asheville to conform their actions to the decisions of the Court in the matter before us; and we would be untrue to ourselves if we did not express in unmistakable terms our disapproval of their conduct. Their course is a dangerous example and an incentive to others to defy the rulings of the Supreme Court of the State." And yet the case was carried to the Supreme Court the third time, after Judge Montgomery's retirement, and again decided in the same way. See 137 N. C., 503.

Judge Montgomery's first published opinion, *Latham v. Ellis*, 116 N. C., 30, involved the right of a father of good character to the custody of his minor child. It has been quoted and approved by this Court eleven times. Another of his early opinions, *Carter v. Lumber Company*, has been quoted and approved nine times since. *Nichols v. Gladden*, 117 N. C., 497, in which he wrote the opinion, involved Lord Coke's famous "Rule in *Shelley's case*," of which Lord Campbell says in his "Lives of the Chief Justices," that "It is the most celebrated case that has ever occurred concerning the law of real property in England—a case now read with far more interest by true conveyancers, not only than *Macbeth* or *Comus*, but than 'the judgment on ship-money' or 'the trial of the Seven Bishops.'" To the opinion of Judge Montgomery in *Nichols v. Gladden*, defining this famous rule, Mr.

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Samuel F. Mordecai, who needs no praise from me, refers his law students in Volume I at page 649 of his lectures, as "One of the clearest expositions of the rule to be found anywhere." He quotes a page of the opinion in his book. The opinion of Judge Montgomery in that case has been cited by this Court seventeen times since. And he a poor boy who spent his four college years out of doors on the battle fields of Virginia, and was without tuition in *belles lettres* or the humanities.

The great case of *Gattis v. Kilgo, Duke et al.* for seven long years kept our legal, political, and religious worlds in arms. It was four times in the Supreme Court—three of them during the incumbency of Judge Montgomery—once on a point of practice and twice on the law of libel. He wrote the two opinions in the case involving the law of libel. The fourth appeal, occurring after his retirement, was decided in harmony with the opinions he had written, and which have been quoted and approved often by the Court since.

On his retirement from the Supreme Court, Honorable James C. McRae, well known in the legal life of the State, retired from the Court by the elevation of Judge Montgomery to that high honor, who in his later career of professor of law at the University of North Carolina observed the conduct and opinions of Judge Montgomery, expressed of him in the North Carolina Law Journal what was, we believe, the general opinion of the legal profession and of the people of the State: "For Judge Montgomery we have none but the kindest words. He has left his impress upon the legal literature of his generation in more than a score of volumes of the Reports, by which he may be well contented to be judged. He carries back to private life that which he brought upon the Bench—an unsullied reputation as a lawyer and a gentleman."

In January, 1905, Judge Montgomery resumed the practice of the law at Raleigh and in the courts of Warren, where he had employment in the important cases. He was also standing master in chancery in the United States courts for several years, and as such heard some important cases. He was much interested in the case of *Rodwell v. Rowland*, involving the right to office of the Clerk of the Superior Court of Warren between two men of the same political party. He felt a natural gratification in the fact that in the argument of the case before the Supreme Court, having submitted his mental faculties at his advanced age to a supreme test, he found them unimpaired. Judge Walker did him the honor to say to him that his argument was the best he had heard on a constitutional question during his term of office.

Up to this time, though he had been all his life full of its interests and activities, and considered nothing human as foreign to him, he said he had never taken a soft drink, seen a game of baseball, attended

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a motion picture show or ridden in an automobile. Whether he later yielded to the fascinations of these worldly temptations this deponent saith not.

In his relations with his fellows, Judge Montgomery formed many and strong attachments. He loved to speak of his friends and of their endearing qualities. His dearest friends in the legal profession during his long life here were William Eaton, Jr., William H. Day, Spier Whitaker, J. B. Batchelor, R. H. Battle, Fabius H. Busbee, and Judge James E. Shepherd.

There was a strong tie that bound him to many of the clergy with whom he dwelt: Dr. J. M. Atkinson, of the Presbyterian Church; Rev. T. J. Taylor, for about 40 years, and still, pastor of the Warrenton Baptist Church; Rev. T. B. Kingsbury, Rev. J. D. Hufham and, perhaps dearest of all, Rev. William Sinclair Pettigrew, brother of General Pettigrew.

Judge Montgomery was fond of relating an incident that occurred one night when this saintly man, a minister of Mrs. Montgomery's communion, was visiting in their home. The conversation turned upon the proposition then much discussed by Bishop Lyman, that the Episcopal Church should direct its missionary efforts to the negro race, which church he contended was the religious home of the negro. Mr. Pettigrew was much opposed to the idea and stood and argued strenuously against it, to which the Montgomerys readily agreed. He closed his argument with the statement, accompanied with a sweeping gesture: "Why, madam, every one of them (meaning the negroes) are natural-born Baptists." Then, realizing that he had said something that might not be pleasing to Mr. Montgomery, he turned to him and said: "Bless my soul, Mr. Montgomery, I beg your pardon; my zeal may have led me to say something offensive to you, and I would not do that for the world." To this Mr. Montgomery replied, in all good humor, "Why, Mr. Pettigrew, you have stated the exact truth; and I, like most all the negroes, have no better sense than to believe just what the Bible says." Then Mr. Pettigrew looked perplexed, and then the humor of it all dawned upon them all, and the delightful social intercourse was not interrupted.

The friendship and esteem of many noble women were cherished, and especially of Mrs. Pendleton, Mrs. Mary Cooke Green, and Mrs. Ellen Mordecai. He declared without hesitation that the very greatest blessing that ever came to him was in the person of his dear wife, Lizzie Holman Wilson. They lived together in mutual confidence through many checkered scenes from their marriage September 27, 1871, until his death. Near the last he declared "she has been my guide and my stay. She never disappoints me. My fondest, my happiest, thought

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is that when the light of day is passing from my eyes forever I shall still see her pointing the way upward to a country where our union shall be complete and unending."

Very near the last he said: "I do not like old age. I shy at the old man's weeping eye, his tremulous voice, his faraway look, his motionless form when he sits, his drooping figure as he leans upon his staff. When I see him, as I sometimes do, as represented by the old Confederate soldier, in places of public resort, seated with his comrades on a bench, silent and expressionless, seemingly realizing that he has ceased a quest upon which he had staked his all, although I love his spirit and recall Gettysburg and Shiloh, I hasten with bated breath and a steadier gait."

We have thus viewed this good and useful man as he appeared in his youth, in his young manhood, in his profession, in his family, and in his relations to the State and society. And now we see him, freed from the ambitions and cares and strife of the world, still with smiling face and joyous heart, though meditative, awaiting with profound interest and expectation what lay beyond "the gateway we call death." The day of his departure was the 26th of November, 1921.

A long time ago a man whose "native hue of resolution
Was sicklied o'er with the pale cast of thought,"

who brooded over life, death, and immortality, said to me: "If you are allowed to live on, you will at once be set to work on a job of a million years to get a new trial for some Paris, son of Priam, or Judas Iscariot or Benedict Arnold." And in his weariness he expressed the wish that he might rest for myriads of ages under the willows.

Walter Montgomery searched contemporary life, history, philosophy, law, literature—real and imaginative—and religion for the best that has been revealed to man. Through a long life here he reveled in "thinking God's thoughts after Him." It is both reasonable and natural and pleasing to believe that these efforts, this enthusiasm for the good for which men strive, must have commended his spirit on discarding this "vesture of decay" to its great Creator for other delightful work in the accomplishment of His great designs.

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ACCEPTANCE BY CHIEF JUSTICE WALTER CLARK

Sharply different views of government were made manifest in the Convention which formed our Constitution at Philadelphia. On the subject, which became a sectional issue, the difference grew more vital and far-reaching as time passed, increasing in bitterness and antagonism until it overshadowed all others and resulted in the great struggle of 1861-65.

The marks left by that struggle were deep and lasted for many years. As one evidence of it, during twenty-five of the years after the war was over, up to 1900, every executive of this State had served in the Confederate Army, and so had both Senators and thirteen members of this Court.

Among the latter, the youngest but one who ascended this Bench, was Walter A. Montgomery. He made a splendid record as a soldier, and after the war did his full duty as a citizen and achieved high reputation as a lawyer.

For ten years he sat on this Bench, showing learning and displaying a conscientious fidelity to his duty, and winning the esteem of his companions and the confidence of the public. His service here began in January, 1895, and lasted to the close of 1904. That is, for the full period of ten years, and his opinions will be found in 21 volumes of this Court, beginning with the 116th and including the 136th North Carolina Reports.

These opinions will be a lasting monument to his ability and industry and to the great service he rendered the State and the profession, of which he was a distinguished ornament. He could have said of them, in the words of the Latin poet, "*Exegi Monumentum Aere Perennius.*" "I have built a monument more lasting than bronze, which neither time nor fire nor rust shall destroy, and which will last through the years that are to come."

Those who knew him best, especially those who sat with him here, will have a lasting recollection of his industry, of his ability, and of his consideration for all, especially for those who had the honor to see service with him here.

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