

PRESENTATION OF THE PORTRAIT
OF THE LATE ASSOCIATE JUSTICE OF
THE SUPREME COURT

GEORGE HUBBARD BROWN

APRIL 12TH, 1927

ADDRESS BY
HONORABLE ROBERT WATSON WINSTON

May it please the Court: It is becoming quite customary, I observe, to refer to "the old court" as though the term had a definite meaning. And in one sense it has. To every lawyer the old court signifies the court which examined him and granted his license. Thus to me, the old court is Smith, Ashe, and Ruffin. To most lawyers, however, at this time the old court is Clark, Walker, Connor, Hoke, and Brown. Some day, your Honors—may the day be far distant—you yourselves will have become "the old court."

Now the court composed of Chief Justice Clark and the Associates I have just called over, was as typical a body as could have been chosen—taken as a whole, they were the Old North State in epitome. As geographically the State of North Carolina lies in the North Temperate Zone, so politically and economically her courts and other agencies of government lie between the 32d and 36th degrees of north latitude. In nothing is the good State radical, except in conservatism.

In the generalization which I am now making, I do not refer to the individual members of the old court, but to that body as a unit. For individually only two of its members, I should say, were typical of the State—probably only one. Certainly the Chief Justice, with ideas of judicial progress which startled even the sagebush courts of the northwest, was not typical of the good Old North State; nor was Walker, with the exclusive aroma of the Cape Fear; nor Brown, with a total indifference as to whether his decisions pleased or displeased the *News and Observer*. As concerns the other two Judges, Connor and Hoke, it must be said of the former, there was a judicial tenderness and equipoise, which places him in a class by himself, his sweet-spirited soul could not typify the rough hail-fellow-well-met, unconventional commonwealth of North Carolina. Hoke, then, with his loud, honest laugh, his hearty ways, his assumed air of Democratic lineage and environment, undoubtedly stood for the unconventional old Tar Heel State. This attempt at classification is subject, however, to your Honors' better judgment and correction.

Taken as a whole, the old court had all the earmarks of the great State they served—courage, honesty, fairness, poise, and intellect. In

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a poem called "Hatteras," the author, Joseph Holden, draws a strong picture. Halfway between the poles lies the State of North Carolina. The north wind, rushing down from one pole, challenges the south wind, rushing up from the other, to mortal combat. The challenge is accepted, and they meet; off Hatteras, the Golgotha of the sea, they fight. Mountain-high roll the waves, "beckoning the white-winged brides of the ocean to watery graves." As with the physical forces of North Carolina, described by the poet, so with her social and political. Extremes challenge each other to combat; they meet, but neutralize one the other. The north wind of radicalism often challenges the south wind of conservatism to combat, and they meet on North Carolina soil. It seems certain that something terrible is going to happen at last; but, when the flurry is over, there stands the Old State serene and smiling and firmly fixed to her ancient moorings.

By one or two votes only the impeachment of the judges was defeated; by one vote of this Court the scheme to run out Kilgo and the Dukes, thereby depriving the State of eighty millions for education and charity, was likewise defeated. It must be admitted that the resultant of all the work done in North Carolina is good, the tendency is upward. Analyzing the composite picture of the old court, can it not be said that Clark was the exponent of radicalism? Hoke the exponent of democracy, and Walker the adherent of precedent? Undoubtedly of the five Connor was the chancery judge, while Brown was the law judge. Out of this mixture of radicalism and conservatism, of democracy and aristocracy, of equity and jurisprudence, came the old court. And of it it must be said that the whole was greater than the sum of its parts. For behind this Court stood nearly three million freemen, and behind it also stood an honest record of justice tempered with mercy. Like the compensating clock, with a pendulum of steel and mercury, the steel pressing downward, the mercury pressing upward, the resultant is always the correct time.

The part George Hubbard Brown played in this judicial drama was unique, more so, perhaps, than that of any other actor on the boards. From the day North Carolina judges were elected and not appointed, Judge Brown filled a place no other judge has ever filled—he was the acknowledged exponent of the vested interests of the State. Not only did he not cater to the people, he advocated principles they opposed. On the bench he stood for property and property rights as much as for the rights of persons. Not only did he do this, but he gloried in the fact; and so long had he stood for equal and exact justice to corporate interests, his course—paradoxical as it sounds—had become a source of strength and not of weakness. In party conventions and at the polls the State of North Carolina, with its checks and balances adjusting the

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rights of persons and the rights of things, looked to George H. Brown to represent the latter. For sixteen years Justice Brown was the judicial shock-absorber of the Court, absorbing and short-circuiting wildcat legislation, as the lightning-rod short-circuits a flash of lightning.

Within their sphere he considered the people supreme, but no further. In matters of finance and in all other technical matters he felt that the people had not sufficient knowledge or information to vote intelligently. For example, on the issue of gold and silver as the basis of monetary value, or on the question of freight rates, that is to say, of the cost to a railroad to transport commodities per ton per mile, he would prefer an opinion of Secretary Mellon or of A. P. Thom, general counsel for the united railroads, to that of the people. Herein lay the difference between Brown and Connor—when Connor decided against the people, it put him to bed; when Brown decided against the people, he went his way rejoicing.

Naturally, such a man was not a reformer; yet the reformers admired him more than they did one another. In truth, if there be one thing the average reformer seems to dislike more than another, it is a brother reformer. It follows, therefore, that Clark, the radical, was closer to Brown, the stand-patter, than to Hoke or Connor, the conservatives. Of Brown, Clark expected nothing, and was not disappointed; of Hoke and Connor, Clark expected much, but often failed to get it. These men would not leave a well-beaten judicial highway to tread an obscure mountain trail. A few years ago, when important rights of Chief Justice Clark were to be adjudged, Justice Brown wrote the opinion, deciding in favor of the Chief Justice. Though Judge Clark and Judge Brown stood at the two ends of the political poles—one a disciple of LaFollette, the other of Grover Cleveland—they were the best of friends, and so were Judge Brown and Josephus Daniels. There may be another reason for this kindly feeling for Judge Brown by the reformers, he was the most impersonal of men—intellectual, thoroughly detached, and unemotional. He never scolded nor fussed; he could sit by and see a man make a fool of himself without losing his temper, or he could write an opinion cutting up some utterly baseless, useless, and absurd case with as much gravity and seriousness as though the matter were of real importance. And yet he had little patience with slipshod methods or with mediocrity. We hear of judges who are patient with young and poorly prepared lawyers—sitting quietly and listening to nonsense by the hour—Brown was not that kind of a judge. The moment a lawyer wandered from the issues, he would call him back, often doing this so brusquely as to give offense. But when the opinion came down it was apparent that Justice Brown had been sounding a proper note of warning.

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Judge Montgomery, in an opinion, once said of Justice Brown that of all the Superior Court judges, he was the best. It is easy to understand why a Supreme Court judge should make this statement; the judge of an appellate court likes a case well made up—issues clear-cut, evidence admitted or excluded without hesitancy or dodging. That kind of a trial judge George H. Brown was. Having no judicial hobby to ride, he did not hold court with a brass band. He was neither a candidate for Governor nor Senator. In fact, of him I should say that none surpassed Judge Brown in the performance of his duties as a *nisi pruis* judge. I have never known one to surpass him in the elimination of extraneous matter, and in discovering the real points of a case. The issues culled out by him and put to the jury were sharp and clear-cut, like the edges of a diamond. When going from county to county and holding court he was simply holding court—not teaching Sunday school nor running a chautauqua.

From boyhood up George H. Brown was a leader. At the school of James H. Horner at Oxford, where the lad was a pupil for two years—all the schooling he ever had, by the way—no one surpassed the young fellow. His nickname shows the position he filled—"Magnus Brown," the boys always called him "Great Brown." And great he was. In the first place, he was physically a man, being well proportioned, closely knit together, and the impersonation of power and authority. Some five feet nine inches tall, weighing about one hundred and eighty pounds, dignified, severe, silent, courageous, loyal, no flatterer, with only a handful of friends, because he cared for no more, one may search the annals of the State and not find his match. A remark of Emerson might be applied to Justice Brown, so thoroughly impersonal and detached was he. Speaking of Thoreau, and of his individuality and aloofness, Emerson declared that he would as soon think of offering to walk down the street arm in arm with an elm tree as with Thoreau. As Justice Brown sat on that bench, your honors, and asked some searching question, his rich deep voice had the note of finality. In fact, his voice seemed made to order—voice and head fitting together to a nicety. And such a head! Every feature ample, nose, mouth and ears large, forehead expansive, and a countenance as inscrutable as the Sphinx. His movements were slow and judicial, and though well-groomed, he was thoroughly simple and unaffected. Taking him all and all, he might have sat on the English bench with Mansfield, or on the American bench with Marshall, without loss of dignity or prestige to either. When Rufus Choate was called on to drink to the health of Lemuel Shaw, he responded: "To the Chief Justice! We believe he is ugly, we know that he is great." The latter part of this toast describes Justice Brown.

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And no one more looked the part than he. Essentially he was the judge. Speaking few words from the bench, when he did speak it was to the point, and generally a vital point. It has been said of one of the judges of this Court that when he smiled or nodded an approving bow one might be sure he was going to lose his case. Not so with Judge Brown. There was no camouflage about him; one always knew where to find him. Not double-faced, what he professed to be that he was. Unlike the man in the boat, he did not look one way and row another. And he was the essence of loyalty. If you were his friend, behind your back he was more your friend than to your face. He suffered no one to speak ill of his friends or of the principles he stood for.

Not only was Judge Brown a fine specimen of physical manhood, he likewise possessed a vigorous and a remarkably clear intellect. He did not juggle or play tricks with his intellectual processes; he was not everlastingly searching around for some reason to support a false theory. For example, believing that property needs protection as much as persons, in suits for personal injuries, when the injured party was negligent, he opposed mulcting the innocent corporation with damages. While on this bench his opinions were generally short and to the point. To him law was quite simple, law was but a rule and a rigid rule at that. If one followed the rule, he should be protected; if he disobeyed the rule, he should suffer. With judges the emotional often sways the reason, and the law becomes uncertain and variable. Hence, the old maxim, "Hard cases are the quicksands of the law." Judge Brown had no trouble of this kind. Like Chief Justice Ruffin, he was a believer in the letter of the law, in the law as written. Better an occasional hardship through the courts than that the whole system of jurisprudence become a mere game of chance. Hence, Judge Brown adhered to the letter of the law. With him commercial paper was sacred. Notes, bills, bonds, these must be paid, and whensoever a commercial paper got into circulation, having been duly negotiated, it was to Judge Brown a courier without luggage, almost as sacred and indefeasible as United States currency. So as to real estate. In trials of title to land, Justice Brown stood by the ancient landmarks; he was no innovator.

Courts, in their eagerness to give expression to the mores of the people, to put themselves in line with the best thought of the community, often become legislators. Brown never did this. With Bacon, Justice Brown agreed that the province of a judge is to declare the law, not to make it, *discere non facere*. The new idea that judges should not express their own views and convictions, but should search around and find out the wishes of the best element in society, and give expression to the same, regardless of law, he scouted. Satisfied with jurisprudence as it is today, he was not desirous of overturning it, or of falling back on the

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judicial "recall." His aim was to follow in the footsteps of Ruffin, of Gaston, and of Rodman, and to do this without fuss or feathers. Hence, he wrote no startling opinions. Coke and Blackstone were good enough for him, his only fear being that he could not equal the masters of the law.

During his two years at school under the elder Horner, he learned how to study, how to train his mind. "Old man Jim," as he loved to call his great teacher, taught him to be intensive, not extensive, taught him that one must know *much* and not many things. To those two years Judge Brown ascribed his success in life. Undoubtedly his accuracy, his correctness, and his directness must be ascribed to this period and to this training. Three books of Cæsar, the first book of Livy, and a little of Virgil, was about all the Latin Mr. Horner required. But what he taught, he taught. About fifty lines a day, four days in the week, would be the extent of the week's work. Then on the fifth day, Friday, would come the review. Every line that had been gone over during the week would be reviewed on Friday, and every tense, mood and construction again inquired about and impressed upon the mind of the pupil. Under drilling of this kind, young Brown was put in the way of accurate thinking—when he was only sixteen years old—and until the day of his death continued the process.

There is a French saying that one should have a conscience even in his amusements; that one should not be amused at anything unworthy of laughter. In this high standard Justice Brown concurred. His sense of humor being subtle and selective, buffoonery and coarse jokes he abominated. A good story-teller himself, he was interested in such wit as had a flavor of the Attic or was natural and spontaneous.

Having ideas of the kind I am endeavoring to describe, and yet living in a pragmatism—a day when the absolute has given place to the relative, perhaps wisely, Justice Brown must be called our Dissenting Judge—he was unwilling to bend the law to meet difficult situations or to win popular favor. Thus he could never bring his logical mind to the point of agreeing that one who is not a party to a contract, though interested in its performance, could sue into the same and recover damages for its breach. Hence, to his way of thinking, there was no legal basis for an action by the citizen of a municipality against a water company when the citizen's property had been burned for lack of pressure, in violation of the terms of the contract between the town and the water company. Cases also involving what is called mental anguish for failure to deliver a telegram made no appeal to Justice Brown; they were illogical in principle and a mere attempt at arbitration. *Lawrence v. Telegraph Co.*, 171 N. C., 240.

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Therefore, in a suit against a telegraph company for failing to deliver a message to a laborer announcing the death of a person who, ten years before, had employed plaintiff, Judge Brown dissented from the opinion awarding damages. He was satisfied that it was a fake case. Though the plaintiff testified that "not being a pallbearer at a funeral was grievous to his very mind and soul," Justice Brown could see no basis for a suit. As the learned Justice put it, "the man's agony was of that kind that can only be assuaged by mental solatium." Along the same line he likewise dissented in *Horton v. R. R.*, 169 N. C., 166. In this case, the dissent was based on the idea that the plaintiff assumed the risk of injury from a defective water-glass. As the plaintiff was operating the engine equipped with a standard water-glass, the dissenting opinion reasoned that the injured man was acquainted with the situation, and took employment subject to the same.

In his dissenting opinions, however, Judge Brown was always fair and courteous, ascribing no sinister motives to his brethren. It is a rare gift in a judge to be able to deal with the problems of life impersonally and dispassionately; to sit apart and view the game from the sidelines. And this Judge Brown could do. Being but a cog in the judicial machinery for the divine working out of certain governmental questions, as such and not otherwise, he functioned. If, however, all judges held these immutable views, it might be disastrous to a republican form of government and destructive of democracy; and yet it will be a sad day when the tribe of absolute judges becomes extinct. Without them great business enterprises could not continue to operate.

Judge Brown's mind being simple and direct, he approached legal questions practically and intuitively, in this respect resembling Marshall, Ruffin, and Pearson. The metaphysical and philosophical he was content to leave to Dean Pound of Harvard and Carter of Oxford. The philosophers might busy themselves with far-fetched analogies and subtle distinctions; they might go in search of original sources, but not so Judge Brown. Like a skillful musician, intuitively he detected the slightest false note in judicial ratiocination. Oftentimes, as I have looked at the head of this man as he sat on the bench, seen him busy in his ponderous way, paring off the irrelevant and redundant, eliminating the prelogical and extraneous, eager and intent in the pursuit of truth, unmoved by popular clamor, I have said "there is the biggest brain I ever saw."

But George Brown was not only a man physically and mentally, he was also a man religiously. The dignified and esthetical services of the Episcopal Church, of which he was an occasional communicant, struck a responsive chord in his equally impersonal nature.

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One day he and I were discussing the subject of the Hereafter. We had spoken of how inaccountable, how inexplicable everything around about us seemed. What is the origin of matter—the origin of mind? How appalling the immensity of space, the unendingness of time—universality, immortality. I ventured to ask if he believed in a Hereafter and in God. "I certainly do," he replied. Pursuing the subject, I asked him how he reasoned it all out. "I don't reason it out at all," he replied. "I sucked it in with my mother's milk." Up in New York State and at Clifton Springs, where he went sometimes before he died, there was a thorough-going chaplain, a fine old man and one much beloved. Often Judge Brown and he would go alone into the lovely chapel annexed and the good man would repeat some ancient prayer or read a line or two from the Hebrew prophets. So reserved was Judge Brown, he sat so far in the rear of his affections, people generally had little knowledge of the man. His feelings he kept to himself. Yet under a roof in this city where he lived for many years while a Justice of this Court, the youngest child loved him, and many a day the two would go off to John Robinson's circus alone. Aye, not alone, your Honors, there was a third one along, Rilly, the old family cook, as faithful as she was black. Are not the deepest streams those that make least noise? What became of Regan's and Gonerill's professions of love for their father when the old man was in need? Was not Cordelia's love for Lear deeper than theirs? As with Cordelia, so with Brown—chary of protestations of affections, but ample in service of friendship.

"Unhappy that I am,
I cannot heave my heart in my mouth.
I love your majesty according to my bond,
Nor more nor less."

There is a loyalty of the lips and another loyalty of the heart, and this latter Judge Brown had. Indeed, those who know him best know that he reached the height of loyalty, loyalty to loyalty.

With these sterling virtues Justice Brown would not have been human did he not likewise possess faults, but his faults were the habits and ways of the generation of men to which he belonged; they touched himself only, not his fellow-man. In the discharge of duty he kept himself in splendid form, and no man served the people more faithfully or more efficiently. The faults he had he never concealed, and he enjoined it upon his biographers that they should describe him as he was, that they should paint him true to life—warts and all.

The main facts of Judge Brown's life are few and simple. Though he was quite a politician in early life, serving as chairman of the county executive committee of Beaufort, at one time running for the nomina-

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tion for Congress, and in 1884 a delegate to the National Convention that nominated Grover Cleveland, he soon tired of this sort of life. When he once became a judge, he was ever afterwards a judge. He was born and died in Washington, North Carolina, the date of this birth being 3 May, 1850, and the date of his death 16 March, 1926. His father was Sylvester T. Brown, lineally descended from Revolutionary ancestors of whom Justice Brown was justly proud. Among these were Captain George Hubbard and General Thomas Holliday. On his mother's side one discovers James Bonner, maternal grandfather, founder of the town of Washington, and Richard Bonner, maternal great-grandfather, the wealthiest citizen of Beaufort County. From him Justice Brown inherited those rare financial gifts by the cultivation of which he became perhaps the best authority in the State, except among the bankers, on the subject of stocks and like securities.

After two years at school, and at the age of eighteen, he secured a position in New York City as a telegraphic operator. Here in a brief time he learned the art of telegraphy, his quickness of mind making him an expert. It is interesting to note that Thomas A. Edison occupied a desk adjoining young Brown in the telegraph office. After remaining in New York some two or three years, the young fellow returned to Wilson, North Carolina, where his parents were then residing; but in a short while removed with his parents to his birthplace in Washington. He now began the study of law under the direction of Chief Justice James E. Shepherd, and in 1872 was duly licensed by this Court in his chosen profession. Shortly thereafter he formed a copartnership with Fenner B. Satterthwaite. This partnership lasted until the death of the senior member, about 1882. At the Washington bar at that time were such imminent lawyers as David Miller Carter, Edward Warren, William B. Rodman, Thomas Sparrow, George Sparrow, James E. Shepherd, and Charles F. Warren. Among these notable men George H. Brown stood deservedly high. His arguments to the jury were expressed in simple words, but clearly and forcefully, the usual tricks of the speaker and the orator he disdained. As a trial lawyer his strength lay "in a retentive memory, a quick mind which immediately detected error in the adversary, in a familiarity with the basic rules of evidence, and in the diligence with which he prepared his cases. He stated his case with precision and based it upon some fundamental proposition of law, citing few authorities." After the death of Mr. Satterthwaite, Judge Brown offered a copartnership to John H. Small, afterwards Congressman for many years from the First District. The partnership of Brown & Small continued until the year 1889, when Judge Brown was elevated to the Superior Court by Governor Scales. Judge Brown was then thirty-nine years of age, and after a service of fifteen years on

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the Superior Court bench, was elected in 1904 an Associate Justice of this Court. Here he served for sixteen years, retiring on account of ill health in 1920. An acute attack of influenza in 1918 having impaired his vitality, he was not content to serve longer, except upon the assurance that his strength would permit the continuance of the same high type of service. After retiring from the bench, he lived quietly at home in Washington, occasionally holding a special term by appointment of the Governor. During his late days, in fact, during his entire life, he was an omniverous reader, reading rapidly. After the duties of the day were ended, he would retire to his chamber and read current literature until late at night. He was a man that dared to be alone, and who spent much of his time in his library. Among his diversions it may be also mentioned that he was fond of a good horse, and in his earlier days always kept a fine pair of horses for his stables. He was likewise fond of hunting, and oftentimes on the circuit at the end of the week would go out with some friend and spend the week-end hunting birds.

On 17 December, 1874, George H. Brown was married to Laura Ellison Lewis, who was the daughter of Henry A. Ellison and Eliza A. Tripp. Mrs. Brown is of English and French descent, and her ancestors were long associated with the upbuilding and progress of the city of Washington and of Beaufort County. They were possessed with pride and intelligence, and were influential factors in their community, their fine qualities being inherent in their daughter. The married life of Justice Brown and Mrs. Brown embraced more than half a century. She was a partner in his early struggles and a potent factor in his successes and triumphs. Her courage, wisdom and fidelity lightened the obstacles of his life and pointed the way to progress. It is at her request that I now have the honor of presenting to this Court a portrait of the distinguished judge, whose life and character I have undertaken to portray.

ACCEPTANCE OF BROWN PORTRAIT.

**REMARKS OF CHIEF JUSTICE STACY, UPON ACCEPTING PORTRAIT
OF THE LATE ASSOCIATE JUSTICE GEORGE HUBBARD BROWN.
IN THE SUPREME COURT ROOM, 12 APRIL, 1927**

On 16 March, 1926, at the call of "the evening bell," Judge George H. Brown passed off the stage of action and left, for our keeping, a record of high service to his State and a heritage of great worth to his fellow-man.

For sixteen years, as an Associate Justice of this Court, he labored incessantly, writing just judgments into the "Book of the Law" of a great people. His opinions, invariably concise and to the point, are to be found in forty-four volumes of our published Reports, beginning with the 137th and ending with the 180th.

We concur in the estimate of the speaker that he will take prominent place among the ablest jurists of the Commonwealth. He possessed to a marked degree, not only the gift of words, but also the power of accurate statement. For the profession he served so long and well, his work will stand as his monument. Verily, his clear and forceful expressions have already become beacon lights and guideposts for both Bench and Bar.

The Court is pleased to have this likeness of its former member, whose memory we honor today, and it has heard with gratification the thoughtful and ornate address of Judge Winston. The Marshal will cause the portrait to be hung in its appropriate place on the walls of this Chamber, and these proceedings will be published in the forthcoming volume of our Reports.