ADDRESS

BY JOSEPHUS DANIELS

ON

PRESENTATION OF THE PORTRAIT

OF

HON. HENRY GROVES CONNOR

TO THE

SUPREME COURT OF NORTH CAROLINA

BY HIS CHILDREN

ON TUESDAY, 19 FEBRUARY, 1929

I cannot remember when I did not know Henry Groves Connor. Our friendship had no birth. It was inherited. Our mothers, widows and neighbors in the village of Wilson, were pillars of goodness and usefulness. They had learned and practiced "the luxury of doing good." They were united by community service and common faith. They illustrated Bacon's "there was never law, or sect, or opinion, did so much magnify goodness as the Christian religion doth." Their close friendship, I am happy to recall, became a heritage of their children. It is the highest title of nobility to be born of such mothers. Perhaps it was their similarity of experience that knit these mothers together, for early widowed, their purpose in life, about which they often communed, was to rear their children to be worthy of the sterling character of their fathers.

There was never a time when I did not regard Henry Groves Connor as having about him a certain high quality that gave assurance of a distinguished future. Ten years my senior, he was a practising lawyer before I began to parse Latin sentences. There is a wide gulf between a boy of ten and a man of twenty. That chasm was bridged in our experience when boyish admiration ripened into intimacy and affection, and the younger looked to the older for counsel and found him an inspiring exemplar. Growing up with a feeling that he was marked for high place, I later came to understand the source of his distinction. As a youth he bore himself in such way as to impress the community that he lived in two worlds, as indeed he always did. One was the work-a-day world about him wherein he accomplished his task as a true yokefellow with his associates. In that other world in which he walked, he communed with the master minds of all ages and climes. The world of

reading set him apart in an indefinable way from most of his associates. If "set apart," however, it was only in the respect which superior ability is sure to command. He was not "set apart" otherwise, for he held the regard and esteem of the people of every walk of life. It would convey a wholly wrong impression of the man, indeed, to infer that his reserve and aloofness indicated lack of warmth in his friendships, interest in his associates, or want of a certain humor and raillery which gave him rare charm. Indeed his philosophy, while grave, was shot through with the human touch. He possessed a gaiety, cheerfulness, and love of the lighter vein which in social life illuminated his conversation. He had the gift of being an interesting talker, fresh and inspiring. Neither in public nor private utterances did he "talk down" to those who heard him. To talk with him and to hear him talk was both a delight and a privilege, particularly prized by ambitious young men who were stimulated by his discourse.

Early he found more delight in the lives of the Lord Chancellors than playing ball with boys of his age. He never learned to play. In youth, as when older, he walked with his head in the air, and did not escape the criticism in the small town that the young man "thought uncommonly well of himself." This before he was admitted to the bar. More so at the bar, prior to recognition that his ability justified loftiness of bearing. Lithe of figure, looking taller than his inches, with clear-cut features and with poise, mental and physical, he seemed to wear distinction as a garment. The word "lofty" fitted him as did no other word. When he spoke, his spare figure seemed to loom, and he appeared larger than he was. His flashing eyes and sincerity proclaimed that he was one on whom nobleness did rest. Some men are born with the purple of dignity and nobility. It asserts itself early and ripens with age. At first, critics regard it as a pose. Later they know it is natural and that such bearing is the hall mark of an excellent spirit. It might be truly said of Judge Connor, before as well as after he won recognition, in a lesser degree, what a hack driver said to me in Trenton of the Governor of New Jersey:

"Is Governor Wilson popular here?" I asked.

"The people respect him," answered the driver, "but I observe he walks alone."

Coming to North Carolina from Florida, Judge Connor's parents moved to Wilmington in 1844. In 1855, when the new county of Wilson was established, they became residents of its county-seat. In his new home his father, with saw and plane, worked skillfully in fashioning the Temple of Justice in the new county. The son with different tools made that courthouse indeed a Temple where justice was the property of all who entered its portals. Judge Connor at the age of fifteen lost his

father, and his school days ended abruptly. But good teachers had pointed the way. He was a student and learner all the days of his life. Though he never attended high school or college, how many university graduates equaled him in mastery of knowledge? Laying down school books, he took up law books. His capacity and promise, later recognized by all, were appreciated by the leading law firm in Wilson, and he was taken into the law office of Judge George Howard and George W. Whitfield. It was a fortunate connection for him—not less so for the law firm. Judge Howard had gone on the bench at thirty and had become the most influential young leader of Democracy in Eastern North Carolina before the War Between the States. He early demonstrated an ability and fitness for public service that would have given him higher place in public life, if the political debacle following the war of the sixties and Reconstruction had not denied election to men of his faith in his district. The association of the able lawyer and the young law clerk grew into a friendship as beautiful and as lasting as any in song or history. George Whitfield, less widely known, was not less accomplished. Nor was he less attracted to the young man than was his daughter, Kate, who a few years later became Mrs. Connor. The young law student made himself indispensable to the firm. He won the confidence and regard of their clients, studied law at night and exercised almost a father's care over his brothers and sisters. Thus the young man grew in stature and in favor. Before being admitted to the bar, he enjoyed the advantage of reading law under the late Hon. W. T. Dortch, of Goldsboro, who had been a Senator in the Southern Confederacy, easily the Nestor of the bar of Eastern North Carolina. The attachment between instructor and student was broken only by the death of Mr. Dortch, to whose memory the pupil later paid high tribute.

In January, 1871, Mr. Connor was licensed by the Supreme Court to practice law, when he was only nineteen years of age. He had never known real boyhood. He had done a man's job and thought a man's thoughts. At nineteen he was fixed in his character and principles, and ready to become a member of the jealous profession. In the same year he was happily—I should say most happily—married to Miss Kate Whitfield. To an intimate friend he wrote in 1904: "Yesterday was the thirty-second anniversary of my marriage, and I have been thinking and rejoicing in the great blessing that came to me in my wife. She has been and is a tower of strength and comfort to me." Their children and grandchildren rise up to call them blessed, and are giving added honor to the name synonymous with patriotic service to their State. Thus though the law prescribed twenty-one as the age for admission to the bar, and there was an entrenched belief that a man should not marry before he attained his majority, we find him a lawyer and a husband at

an age when most young men are in college. Though young, he was old beyond his years. If there was any thought that his obtaining his license before reaching the required age was contrary to the statute made and provided, no question was raised. Formalities were not so much insisted upon as now. The character of the examination was less searching, but, if it had been as thorough, young Connor had mastered his Blackstone and Adams and Chitty. Moreover, he had for several years drawn pleadings and had familiarized himself with the rules of practice.

Like Bartholomew F. Moore and some others who won distinction at the bar, Mr. Connor began the practice of the law at the county-seat of Nash. In a few months he returned to Wilson. After a short partnership with Howell Cobb Moss, who became Clerk of the Superior Court, he later formed a partnership with Hon. Frederick A. Woodard, who had a rare gift for friendship, and this partnership continued until Connor's elevation to the bench in 1885.

My early and pleasant recollections after quitting school center around the law office of Connor & Woodard. That firm not only appeared on one or the other side of the docket in nearly every case in Wilson County, but in important cases in the surrounding counties. It was more than a law office where clients repaired. It was the center of political and other activities of the community. These two able lawyers were retained by most of the leading business men and farmers, and their clients made other claims on them than for legal advice. People of substance and ideas and public spirit gathered at that law office, which was the clearing house of the town and county, to discuss and practically decide community programs. There subscriptions were made to allay suffering and want; there preachers and church officials met to plan church activities; there farmers came to discuss crops and politics. It was even said by some that it was a place of gossip and that candidates for office owed their selection to these gatherings. I recall as a small boy going into the office upon some errand and lingering to hear the talk of the inelligencia of Wilson and the politicians and business men and farmers of the county. Proud I was, when as local editor of the *Wilson Advance,* I was admitted into this goodly fellowship and learned the first steps in politics. It was in that office also that, after seeking and obtaining the advice of Connor and Woodard, the papers were drawn that gave me editorship of my first paper, the *Wilson Advance,* and from its members that I received wise counsel and admonition in apprentice days in journalism. That advice was not lacking in later years, though I hasten to absolve the memory of both Connor and Woodard from responsibility for any of the paper's policies.

Few things were done or enterprised in that county between 1875 and 1885 that did not originate in that law office. The active political

leader was the junior partner, Mr. Woodard, afterwards the distinguished and able Representative of the Second District in Congress, and a tower of strength in financial affairs in the community as well as in law and politics. Unlike in many ways, these partners were alike in ability, in keen interest in all that concerned man, in giving themselves and their leadership in ways that were as useful as they were unselfish. Wilson was the only Democratic County in the Second District, which was for years represented in Congress by a Negro. It was held in that column in those years because its people were fundamentally Democratic and because their leaders were men of wisdom and political sagacity. And the most influential of those leaders were Henry G. Connor (always called "Groves" by his friends) and Frederick A. Woodard. If they were successful, it was because they stood for high ideals and supported men who incarnated sound principles. They led the fight for Jarvis for Lieutenant-Governor in 1876 and afterwards for Governor and for United States Senator. The friendship between them and that wise chief executive was close. He leaned upon them as they supported his educational and industrial policies, and this intimacy ended only with death. They also championed the nomination of Governor Scales in 1884, and it was largely to their zeal and organization that he carried so large a vote in that section of the State against his eloquent opponent. It was to such friends and counsellors that Aycock turned in his public life, as well as in his early career at the bar. They shared with him the vision of an educated commonwealth and upheld his hands with unselfish coöperation.

In the 1881 ill-fated campaign for State prohibition, to bear the fruit of victory later, Mr. Connor gave it earnest support by speech and pen in a county overwhelmingly against it, although political ambition would have suggested opposition or silence. The next year he was nominated for the State Senate, but the reaction from the prohibition campaign jeopardized party success with a dry candidate. Accepting the situation, and having more regard for party success than personal promotion, he voluntarily surrendered the nomination, and contributed largely to holding his party together in the face of the danger of a split on the wet and dry question. That act of self-abnegation impressed the electorate, and in 1884 he was again nominated and elected. "To renounce and not be embittered" is one of Stevenson's tests of nobility. This self-effacement, along with courage to stand alone, bore its reward. Afterwards in every crisis the people of his county and district called him to leadership and gave him in other practical ways evidences of their friendship.

The Senate of 1885 left few permanent statutes. It held the rudder true. Public revenues were too small to permit more than slow and

steady progress. It is rare that the chairmanship of the judiciary committee goes to a new Senator. The fact that by common consent it went to Mr. Connor is proof that his high standing at the bar was already recognized. The one outstanding statute of that General Assembly is known as "The Connor Act," which required the registration of deeds. It brought needed security to titles to land. A distinguished judge called it "the most useful piece of legislation affecting property on our statute books."

When in the summer of 1885 Governor Scales was called upon to name a Superior Court Judge of the newly created district in which Senator Connor resided, though that district contained, among others, such prominent lawyers as Joseph J. Davis, Charles M. Cooke, Benjamin H. Bunn and Jacob Battle, people and bar by common consent wished Senator Connor to be named, and the Governor appointed him. Governor Scales had the right conception of the judiciary, as shown in that and other appointments to the bench, which distinguished his administration. Soon Judge Connor was accorded the same recognition by the whole State which had been given in his district and in the Senate. He held court from Currituck to Cherokee, everywhere winning the regard of the people and the respect of the bar both for his courtesy and his profound knowledge of the law. Nothing makes up for the latter qualification in a judge. The salary of a Superior Court judge in that era was $2,500 with requirement to preside in every county in the State, and with no allowance for expenses. Having no outside income, with increasing family responsibility, financial considerations impelled him in 1893 regretfully to resign and return to the active practice of the law. In 1894 the leader of the fusion forces nominated what they called "a nonpartisan judicial ticket," and placed Judge Connor on it for Associate Justice of the Supreme Court. They named another Democrat, Justice Walter Clark, already on the Supreme bench, and the nominee of the Democratic party, for reëlection. The idea of a nonpartisan judiciary appealed to Judge Connor. Some of his closest friends, confident that the Fusionists would win that year, urged his acceptance, believing that he and Clark, and a Populist of Democratic training, could hold the rudder true in the Supreme Court and keep it free from political bias during the perfervid political bitterness that was sweeping the State. Their prediction of victory for the Fusionists was realized. Upon reflection, however, Judge Connor declined to permit the use of his name, since his party had already named the sitting Democratic Justices as their candidates. He was unwilling to be voted for against party associates, whose service on the bench rightly entitled them to a continuance on this Court.

Judge Connor did not escape some criticism on the part of militant Democrats because he did not immediately repudiate in severe terms the use of his name by the Fusionists. These critics believed the Fusionists were not actuated by the motive to secure a nonpartisan judiciary, but had placed Clark and Connor on their ticket to avoid criticism while they were careful to secure a majority of the Court from their parties, fused into one for that campaign. Always courteous and considerate, Judge Connor declined the advice to rebuke those who sought to honor him, but at the same time firmly declined to permit himself to be a candidate against a Democratic Justice. He also declined a commission as trustee of the Agricultural and Mechanical College for Negroes in Greensboro sent him by Governor Russell. "Would it be rude for me to respectfully decline?" he asked Judge Howard. "I am determined not to be drawn into any position having the slightest connection with public affairs." His self-abnegation in putting aside the judicial nomination, as when he resigned the nomination for the State Senate in 1882, gave proof of his party fealty. It was in the future, as in the past, to bring appreciation and reward.

In 1898 he responded to the call of the people to lead the fight in Wilson County as candidate for the House of Representatives to restore his party to power in order to end the Fusion regime. That was a memorable campaign. "White Supremacy" was the Democratic slogan. The calm, judicial, moderate Connor was so aroused that when he spoke to thousands of determined men in that campaign, a friendly critic said he could think of no figure in history so like Connor that day as Robespiere. If he preached near revolution, it was not in hate of the Negro, for he was always his helpful friend, but rather in love of his State. He possessed the power to convince and arouse, thus referred to by Goldwin Smith: "No orator, however perfect his art, can hardly be impressive without weight and dignity of character." He would save whites and blacks from what he regarded as intolerable conditions. Writing on October 2nd, in the midst of the campaign, to Judge Howard, he revealed his own feeling and gave a glimpse of the serious situation existing:

"I am making a campaign of which I shall never be ashamed. I am trying in some measure to pay my debt to the people of this country, and it is very gratifying to see that they understand me and my feeling. There were from 6,000 to 7,000 people here today. I do not think any man ever had a more loyal or cordial demonstration than they gave me today. . . . I pray the present condition may pass away without violence or bloodshed, and that our people may be wiser and understand each other better. I feel a strong desire to speak to the Negroes and let them understand how I feel toward them, but just now I would not be understood."

Though serving his first term as Representative, Judge Connor was chosen Speaker, the contest in the Democratic caucus being between him and two popular and experienced members of the House, Lee S. Overman, of Rowan, later to become United States Senator, and Locke Craig, of Buncombe, afterwards Governor. It was an historic session, featured mainly by the drafting and submission of a consitutional amendment regulating suffrage, by the revising of election laws, and by the repealing of what the majority regarded as partisan legislation which had caused the uprising of the people of the State in 1898. That General Assembly and its successor, of which Judge Connor was also a member, contained more able men, who afterwards were elevated to high station, than any similar bodies of half a century. He was one of the leaders who had part in framing the constitutional amendment. They accepted the Louisiana "Grandfather Clause," in preference to others suggested, because it left no door open to dishonesty in execution. Judge Connor was deeply concerned with securing an honest election measure, and was in conflict with those who wished a law through which a coach and four could be driven. The Fusionists had enacted a one-sided law to aid them. Some Democrats wished to do likewise, to Judge Connor's dismay. He sincerely desired an educated electorate and elections above suspicion, and he strove for both. "He was too fond of the right to pursue the expedient." After his election in November (1898) Judge Connor, thinking aloud in a letter to Judge Howard, wrote:

> "The politicians have stirred the minds of the people more deeply than they intended. I find many men, who would have read me out of the party in 1894, now insisting I must take the lead in working the problem out. I am determined that, with my consent, no law shall be passed, having for its purpose or permitting frauds. I am willing to throw every possible constitutional restriction around the registration, but when the vote is cast it must be counted and honestly returned. I want the final conclusion to which we arrive put in the Constitution, and I want, if possible to secure the permanent undivided political supremacy of the white man. I think this is essential to the peace of our people. We must take the responsibility and have the power. When done we can no longer excuse ourselves from discharging our duty in regard to the Negroes of the State, but we must bear the responsibility like men, like sane, virtuous, high-minded citizens. A man who has no higher conception of what 'white supremacy' means in North Carolina than the subordination of an inferior to a superior race is an unpatriotic citizen."

He returned again and again to the future of the State under the suffrage restriction, writing in November, 1902:

> "It is a serious question whether 100,000 free men can maintain any satisfactory status in North Carolina without any political power or influence. I regret very much that we did not insist upon enlarging the suffrage by permitting any person otherwise disqualified, who possessed $300 worth of property, to vote."

In the interim between his retirement from the Superior Court bench in 1893 and his election as Supreme Court Justice in 1902, in addition to his engrossing law practice and his interest in public affairs, Judge Connor served as president of the Branch Banking Company of Wilson, having been made one of the executors of the large A. Branch estate. In administering this trust and as president of the bank, he proved faithful and efficient, the estate was handled wisely and under his management the bank grew into one of the strongest financial institutions in the State. He had respect for captains of industry and as legislator and judge was zealous to uphold property rights and to hold the scales of justice evenly between the weak and the strong. Personally, money-making never interested him. He had no urge to amass a fortune. His ambitions were wholly along other lines, and he ever recognized that the law was a jealous mistress. He thus expressed this opinion about the dangers of the love of money in 1902 in a letter to Judge Howard: "I do not believe it possible for any man who is inordinately fond of money to be a great man."

The educational history of North Carolina in the years he was in public life could not be written without reference to the contributions to public education by Judge Connor. In the early eighties, long before the inherent right of every child to school privilege at public expense was a recognized principle in North Carolina, he was one of the leaders in the movement in the conservative town of Wilson to levy a tax for the establishment of a graded school, which was won after a hard contest. In that decade there were those who held that to tax one man to educate the child of another was unjust. When, later, the movement was inaugurated for legislation applying the taxes of white people exclusively to children of that race, leaving to Negro children only such schools as could be supported by taxes paid by Negroes, it received the disapproval of Mr. Connor in a day before "the white man's burden" was generally recognized and carried out. In these matters, ahead of his time, he was a disciple of Horace Mann. He shared, in some degree helped to strengthen, the sound views which, under the leadership of

his friend, Governor Aycock, after 1900 became the educational creed and glory of North Carolina. As Senator in 1885, and as Speaker of the House of Representatives in 1901, the forces of education relied upon Judge Connor's intelligent and deep interest to increase the State's educational advantages.

Historians and students of the history of the State have been at a loss to understand the slow progress made in public education from the eighties up to the inauguration of Aycock. One barrier was the lack of resources and the inability of the people to pay the necessary taxes. Another was the slow acceptance of the State's duty to public education. But the chief obstacle was the Barksdale decision of the Supreme Court rendered in 1885. As long as that decision stood, no Moses could strike the rock from which would gush forth the healing streams. Legislative acts as to special districts could and did save the towns from the blight that denied good schools to children in villages and countryside. Because Judge Connor helped to free the school system, let us take a glance at the judicial fettering and unfettering of public schools.

The Constitution of 1868 made it the duty of the General Assembly to provide "by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years." It also declared that "one or more public schools shall be maintained at least four months in every year," and "if the commissioners of any county shall fail to comply with the aforesaid requirements of this section (that is, as to maintenance of schools for the minimum time) they shall be liable to indictment." The Constitution further provided for what was known as the "constitutional equation" between the tax on polls and the tax on property, fixing a constitutional limitation of tax on property of 66⅔ cents on each $100 valuation.

The General Assembly of 1885, of which Judge Connor was a member, directed that if the amount raised by the general State tax was not sufficient to maintain the public schools for at least four months, the commissioners should levy an additional tax to raise the required amount. The validity of this statutory provision was challenged in Sampson County. It was conceded that there was a conflict in the Constitution and the Court was required to decide which provision should control. The case came up from Sampson County on an appeal by the defendant from a judgment of the Superior Court.

It was held in the *Barksdale case,* in opinion written by *Smith, C. J.*:

> "1. While it is the duty of the county commissioners under Article IX, section 3 of the Constitution, to levy a tax sufficient to keep the common schools open for four months, in each year, yet

in discharging this duty, they cannot disregard the limitation imposed as to the amount of the tax to be levied by Article V, section 1.

"2. The act of the Legislature of 1885, chapter 174, section 23, which allows the commissioners to exceed this limit is therefore unconstitutional.

"3. The act does not come within the provisions of Article V, section 6, which authorizes a 'special tax' for a 'special purpose,' with the approval of the Legislature.

"4. When the Constitution imposes a duty and provides means for the execution which prove to be inadequate, all that can be required of the officer charged with the duty is to exhaust the means thus provided."

Fortified by quotations from opinions by *Chief Justice Pearson* and other eminent jurists, *Associate Justice Merrimon,* after quoting the Constitution commanding the maintenance of public schools "at least four months in every year" and *"shall* provide by taxation and otherwise for a general system of public schools," said:

"This important purpose being thus treated as fundamental and essential, and being so specially provided for, the intention that it should and must be executed at all events, as prescribed, could scarcely be expressed in plainer or more commanding terms. No provision of the Constitution is clearer, more direct and absolute. Its framers, whatever else may be said of their work, seem to have been specially anxious to establish and secure, beyond peradventure, a system of free popular education. They declared it was essential to wholesome government and human happiness, thus indicating its transcendent importance. Hence, the purpose was made special, and specially provided for; it was treated as important and essential, and the Legislature was, as it seems to me, required in imperative terms, and, at all events, to execute it by taxation, as well as by other means, and to emphasize and enforce the command, it was made indictable to fail to maintain such school for four months in each year. How was this to be done? How could it be done without money? And how was the money for this great purpose to be raised? Is it not manifest that it was contemplated that money sufficient for it would be raised by adequate taxation, and, if need be, without regard to the limitation upon the general taxing power of the Legislature, just as in the case of raising money to pay the public debt, supply a casual deficit in the treasury, or to suppress insurrection or repel invasion? The provisions of the

> Constitution, in the last-mentioned respects, are not stronger or more imperative than those in respect to public schools—indeed, generally, they are much less mandatory, and appear only by reasonable implication."

It has been said, and not without a measure of truth, that the great dissenting opinions of appellate courts have kept fresh and strong the growth of justice. Certainly it is true that the dissenting opinion of today, if it is founded upon sound principle, is the law of tomorrow. *Stare decisis* has too often upheld ancient rights and prerogatives. It has never initiated the necessary departure from ancient precedents. The opinion of the Court was rendered by that learned and honorable *Chief Justice W. N. H. Smith,* and the dissenting opinion by the *Associate Justice Merrimon.* By way of parentheses, may I venture the expression of opinion that in high character, in dignity and in ability, this Court has not more fully commanded the confidence of the people than when *Smith* and *Ashe* and *Merrimon* adorned the bench. The dissenting opinion rendered by *Justice Merrimon* has long been regarded as a judicial Magna Charta of public education in our commonwealth. This was not fully realized until a score of years afterwards when the Barksdale decision was reversed by the Supreme Court, of which Judge Connor was then a member.

May I be pardoned for a sidelight upon the attitude of a portion of the press toward the courts of the day before the judiciary enjoyed freedom from review by the Fourth Estate. Only a few weeks previous to the rendering of that decision I had been licensed to practice law. With the assurance of a young limb of the law, not yet fully conscious of how little a fledgling knows, as editor I assumed to reverse the decision of the majority of the Court. This was before I became conservative in comments upon the judiciary. Not content with editorially reversing the Barksdale decision, I essayed the rôle of prophet and predicted that the day would come when the dissenting opinion of *Associate Justice Merrimon* would become the law of this commonwealth, which had its face toward the future. I am afraid the young editor intimated that the two distinguished, able jurists who had, as he thought, hobbled educational progress, had been reared under an environment where the rights of property held supremacy, and in a day when public schools were deemed to be established for poor children and were therefore poor schools. The editorial literally glowed with praise of the dissenting opinion. It was called "great" and as "ushering in a new judicial vision." *Judge Merrimon* was held up as the great judge who deserved a place with the immortal jurists. A little later I was invited to dine at the home of *Judge Merrimon.* No invitation came to dine with

either of the other *Justices,* though the next year, and thereafter until he died, it was my good fortune to sit daily at the same table with *Judge Ashe,* where his courtesy and true nobility won my heart and admiration. If he ever read the editorial, he was so generous as never to mention it, and I have no doubt charged up any crudity to the propensity of youthful cocksureness. Equally good-humored was the attitude of the dignified *Chief Justice,* whose opinion had lacked editorial approval, as this incident related to me by Hon. Charles W. Tillett, of the Charlotte bar, the day after it occurred, shows:

"As *Chief Justice Smith* was leaving the Court," said Mr. Tillett, "I joined him and walked with him toward his home. I admired him genuinely. His greatness filled my eye, and as we walked, I said to him, 'You must be a very happy man, *Mr. Chief Justice.*'

" 'Why do you think so?' he asked.

"I recounted," said Mr. Tillett "his long leadership at the bar, following his distinguished service in Congress, and said:

" 'If I thought when I reach your years I would have attained your high distinction, with the regard and admiration of the profession and the State, I would be supremely happy!' "

"With a characteristic and grim smile, the *Chief Justice* replied:

" 'Ah, Brother Tillett, you may think so, but you would not be happy, seeing that your best prepared opinions are reversed by the youthful editor of the *State Chronicle,* even without so much as saying 'by your leave.' In view of this situation, can you call my position one to be envied?' "

When I next saw Judge Connor I told him the Tillett story and was gratified to find that he held the view *Justice Merrimon* had presented in his dissenting opinion. Though he would not have expressed himself so strongly as the *State Chronicle* did (he may have then seen himself a future member of this tribunal with the natural judicial feeling that the press sometimes errs) he enjoyed the Tillett story, but pointed out the danger of editorial reversal of Supreme Court decisions. "You know," he said, "the presumption is that the Court is right, even if in some cases it is a violent presumption." This declaration made in 1885 was not forgotten by the advocates of public education. When in 1907 Dr. J. Y. Joyner, State Superintendent of Public Instruction, arranged to test whether the Barksdale decision could longer retard better school facilities, I knew in advance that *Justice Connor* would unloose the Barksdale hobble in public education. All the school men felt then as always that the cause had in him a defender, whether as citizen, legislator, or judge. The case came up from Franklin County—*Collie v. Commissioners,* 145 N. C., 171—and was heard on appeal by plaintiff to the Supreme Court. It is interesting that Charles B. Aycock

was of counsel for the parties seeking to have the Barksdale decision overruled. As I heard the case argued my mind went back to the days in Wilson in the early eighties when Connor, to go on the bench, and Aycock to be the Educational Governor, were laying deep and broad the foundations upon which they rose to fame.

The Barksdale case was expressly overruled. It was held by a unanimous Court that "The Constitution must be construed as a whole to give effect to each part, and not to prevent one article from giving effect to another article thereof, equally peremptory and important. While Article V of the Constitution is a limitation upon the taxing power of the General Assembly, Article IX thereof commands that one or more public schools shall be maintained at least four months in every year in each school district in each county of the State, and should be enforced. Hence Revisal, sec. 4112, providing that, if the tax levied by the State for the support of the public schools is insufficient to enable the commissioners of each county to comply with that section, requiring four months school, they shall levy annually a special tax to supply the deficiency, is constitutional and valid, though exceeding the limitation of Article V. Anything beyond would be void." The able, unanimous opinion of the Court was written by *Justice Brown*, who relied upon and approved the principle laid down by *Justice Merrimon* in his great dissenting opinion. It is a matter of knowledge that *Justice Connor* was deeply interested in this reversal and rejoiced, as did all public school advocates, that the fetters had been removed, and that he had a voice in the reversal.

It may not be amiss to congratulate ourselves that this change of interpretation in the interest of public education is indicative of the consistent attitude of the Court in the years that have followed, as was particularly illustrated in the case of *Tate v. Board of Education*, 192 N. C., 516. That case, the unanimous opinion of the Court, emphasizes the constitutional duty of the General Assembly to provide by taxation and otherwise "for the maintenance of the public schools for a time of not less than six months in each year. The counties are mere administrative agencies for the maintenance and operation of the schools. It is the duty of the General Assembly to provide the funds, and of the counties to see that they are expended in the maintenance of schools for the minimum time." If proper credit is given to *Associate Justice George W. Connor*, son of Henry Groves Connor, who succeeded his father as Speaker of the House of Representatives, as Superior Court judge and as Supreme Court Justice, for writing the opinion of the Court, is it not permissible to say of his father that "though dead, he yet speaketh?"

PRESENTATION OF CONNOR PORTRAIT.

After becoming Justice of the Supreme Court, and later of the United States District Court, Judge Connor evidenced his continued interest in education. He responded to a call to teach law in the Summer Law School at the University of North Carolina, was urged to go to Chapel Hill as a professor in the law school. The invitation appealed to him, for as he grew older he drew nearer to youth. He was greatly tempted to round out his life in guiding the study of those who, in the years to come, would make and practice and interpret laws of his native State. What a benediction it would have been to the ambitious young manhood of North Carolina! The noble presence and guidance of one so rooted in true greatness at the University of the State would have provided an atmosphere which would have heightened the distinction of that institution which had always been very near Judge Connor's heart.

Judge Connor's life educational record is that, though denied public school or college or university training, his whole career illustrated his deep interest in providing the best opportunities for the youth of his town, county and State in its ever improving system of public schools from the lowest grade to the university. He was in the eighties a constructive pioneer, of which his friend Aycock was the most eloquent and convincing voice, and ended his educational career as sometime lecturer on law at the University of his State.

No man in North Carolina played a more important part in both judicial and legislative capacities than Judge Connor in removing the vested privileges under which the railroads of the State were escaping taxation. For sixty years the Wilmington and Weldon Railroad had avoided taxation through a provision in its charter granted in 1833 when at the outset of railroad development in America, North Carolinians were anxious to facilitate the building of these new iron lines of transportation across the State. That charter, granted by the General Assembly declared:

"The property of said company, and the shares therein, shall be exempt from all public charge or tax whatsoever."

That provision, and similar provisions in the charters of other roads, grew in injustice as the years passed. High rates and mounting profits of railroads brought not a cent in return to the State whose products were making the railroads rich. Growing sentiment against such a situation put the question into the courts, and at its January Term, 1870, the Supreme Court of North Carolina, in *R. R. v. Reed* (64 N. C., 227), held that notwithstanding the provision, a tax levied upon the franchise of the railroad company, by virtue of a statute enacted in 1869, was valid. In the opinion written by *Chief Justice Pearson* it was stated:

"By its charter, the Wilmington & Weldon Railroad Company has a franchise; and a provision is inserted therein, that 'the property of said company and their shares therein shall be exempted from any public charge or tax whatsoever.' *Non constat* that the franchise is not the subject of taxation; and the fact, if it be so, that the property of said company is exempted from liability to taxation for all time to come, only makes the franchise so much the more valuable, and on the *ad valorem* mode of taxation, there can be no difference."

The decision was sustained upon the authority of *R. R. v. Reed* (64 N. C., 155), decided at the same time, and involving the identical question. The order of Judge Watts in the Superior Court declining to vacate an order enjoining the collection of the tax on the company's franchise, was reversed. The contention of the railroad company in that case was that its charter, granted by the General Assembly, was a contract between the State and its stockholders, upon the principle of the *Dartmouth College case*. It was therefore contended that the tax was invalid as in violation of the Constitutional provision against impairing the obligation of a contract. Our Court, conceding that the *Dartmouth College case* was authoritative, held that the charter provision should be strictly construed, and that there was a distinction between the property of the corporation and its franchise. Upon such a distinction it held the tax on the franchise to be valid.

On a writ of error the railroad carried the case to the Supreme Court of the United States, where the decision of our Court was reviewed and reversed. *Justice Davis,* who wrote the opinion, said:

"It has been so often decided by this Court that a charter of incorporation granted by a State creates a contract between the State and the corporations, which the State cannot violate, that it would be a work of supererogation to repeat the reasons on which the argument is founded. It is true that when a corporation claims an exemption from taxation, it must show that the power to tax has been clearly relinquished by the State, and if there be a reasonable doubt about this having been done, that doubt must be resolved in favor of the State. If, however, the contract is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the Court to give effect to it, the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests.

"It may be conceded that it were better for the interest of the State, that the taxing power, which is one of the highest and most important attributes of sovereignty, should on no occasion be sur-

rendered. In the nature of things, the necessities of the government cannot always be foreseen, and in the changes of time, the ability to raise revenue from every species of property may be of vital importance to the State, but the courts of the country are not the proper tribunals to apply the corrective to improvident legislation of this character. If there be no constitutional restraint, in the action of the Legislature on this subject, there is no remedy except through the influence of a wise public sentiment, reaching and controlling the conduct of the law-making power."

By this decision the United States Supreme Court, while intimating that it wished the question was an open one, overturned the State Court's attempted distinction between the property and the franchise of the railroad. Thus in 1871 the improvident grant of the Legislature of 1833 was still the law of the State despite the fact that the State Constitution of 1868, looking to the future, expressly provided that the principle of the *Dartmouth College case* should not apply to charters granted by the General Assembly.

Despite the decision, during all the years between 1871 and 1889 the sentiment against the tax exemption grew. Some other railroads paid taxes, all the ordinary citizens and corporations did and the sentiment of injustice mounted into a feeling akin to resentment. The *State Chronicle* had more than once urged the General Assembly "to make or find a way" to end this immunity, but until 1891 there seemed to be an immovable impasse.

Governor Fowle, who shared the feeling against the immunity, determined to bring the matter again to a judicial determination. He believed that at least the branch lines of the Wilmington & Weldon Railroad were not sheltered under the immunity of the charter. By authority of the General Assembly, asked at the instigation of Governor Fowle, the newly created Railroad Commission assessed for taxation the portion of the Scotland Neck branch of the Wilmington & Weldon Railroad Company lying within Halifax County. In order to make a test case, Sheriff Allsbrook, of Halifax, attempted to collect the tax. Governor Fowle employed Robert O. Burton and S. G. Ryan to represent the State in its contention that the branch lines were not exempt. The railroad, as was expected, flew into court. On the bench was Judge Henry Groves Connor.

After a hearing in the Superior Court at Wilson, in which Mr. Burton made an argument which won high commendation, and the railroad attorneys reiterated the arguments about the charter contract, Judge Connor dissolved the injunction which the road had secured, holding that the branch lines were not exempt. Judge Connor's view ran counter

to the prevailing opinion of the legal profession, and, contrary to his usual custom as Superior Court judge, he wrote his decision and sent me a copy at the time. In the main it followed the general line later laid down by the Supreme Court of North Carolina when it affirmed his decision. It is to be regretted that his written opinion cannot be found.

When the case came up for hearing in the State Supreme Court, the justices were divided in their opinion. It does not often happen that the inside story of the discussions on a closely contested case in the Supreme Court reaches beyond the doors of the conference room, and in this case few knew at the time what was going on. When the case came up in conference, *Justice Davis* was ill and unable to be present. *Justices Avery* and *Clark* favored affirming Connor's decision. *Chief Justice Merrimon* thought that Connor should be reversed, believing that the decision of the Supreme Court of the United States guaranteed the immunity not only of the main line, but of the branch lines as well. *Judge Shepherd,* stating that the question was one upon which it was difficult for him to reach a conclusion, asked that the case go over until the Fall Term so he might have opportunity to give more time to its consideration. That was the narrow margin at the first conference. Shortly thereafter, feeling that he ought, even at the risk of his health, to give the decisive vote for ending exemption, *Justice Davis* came in a closed carriage to the Supreme Court room where he remained only long enough to vote to affirm Connor's decision. It was his last appearance at the Court. His closing judicial act was illustrative of a long and honorable career, where duty was the watchword of that noble man. Like his able colleagues, *Justices Avery* and *Clark,* and like Connor, he was keen to embrace the opportunity, when it could be done properly and legally, to deny immunity unless it was nominated in the bond.

What might have been the result if the case had gone over to the Fall Term can be only surmised. The legal issue involved was recognized as a close one. The successor to *Davis* might have taken the view entertained by the *Chief Justice.* If so, and if *Justice Shepherd's* study should have caused him to reach a like conclusion, which was not impossible or even improbable, the Wilmington & Weldon Railroad and other roads would have continued to enjoy exemption from all taxation, probably perpetually, certainly for years. How narrow is the margin in great issues in the courts and in public affairs! The eight to seven decision in the Hayes-Tilden contest is only one of the outstanding proofs of the uncertainty of court or commission determinations.

There are learned judges whose habit of mind never permits them to reopen a legal question once decided. *Stare decisis* is with them as binding as one of the Ten Commandments. Let a question be passed upon in an appellate court, and they accept it as binding, no matter

what changes occur. Jefferson admonished against slavish adherence to precedent upon the part of members of the judiciary, and pointed out how it often resulted in the miscarriage of justice. It was fortunate for North Carolina at that juncture, for its educational and other progress which were hampered by lack of revenue, that this tax case came before a Superior Court judge of Connor's readiness to follow the right, and to depart from former rulings when justice demanded it. Fortunate, too, that the Supreme Court contained likeminded men. Again fortunate that the decision of the Supreme Court on the case was written by *Justice Clark,* who had no reverence for precedent when it contravened his sense of right. His ingrained hostility to privilege in whatever guise it appeared ran through his opinions. In his opinion, in which the Court affirmed Judge Connor's decision, *Justice Clark* (110 N. C., 137) said that the defendant was forced to concede that under the decision in *R. R. v. Reed* by the Supreme Court of the United States, the main line was exempt from taxation by the State. *Judge Clark,* however, did not personally accept that view, for he called attention to the language of *Justice Field,* of the Supreme Court of the United States, in the *Delaware Tax Case* (18 Wall., 206), which he declared was significant. That language is as follows:

> "If the point were not already adjudged, it would admit of grave consideration whether the Legislature of a State can surrender this power (*i. e.,* the power of taxation) and make its action in this respect binding upon its successors, any more than it can surrender its police power, or its right of eminent domain. But the point being adjudged, the surrender when claimed, must be shown by clear, unambiguous language which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arises as to the intent of the legislation, that doubt must be resolved in favor of the State."

Having in mind this rule, the Supreme Court of the State, and afterwards the Supreme Court of the United States affirmed Judge Connor. In its opinion (36 L. Ed., 973), written by *Chief Justice Fuller,* the United States Court declared: "We concur with the State Court in the conclusions reached, as sustained by reason and authority."

As a result of these decisions, it was established that only the main line of the Wilmington & Weldon Railroad was exempt from taxation by the charter of 1833. The ending of this main line exemption followed soon after the loss of immunity on the branch lines. In the Legislature of 1893 the Wilmington & Weldon was forced to capitulate. The State found its way to end exemption in the expiration of the charter of the Petersburg Railroad, an essential branch line of the Wilmington &

Weldon system. That charter expired in 1891, and the railroad in the midst of the fight to end its tax immunity, immediately began bargaining for a renewal. It made a proposition to pay $20,000 as an annual tax if the State in return would give it certain privileges, including the renewal of the Petersburg charter. The Petersburg charter was the lever the State needed to pry off the tax exemption. Though a legislative committee approved the railroad's proposal, it was firmly declined by the Legislature after a bitter controversy which at one time threatened the exposure of officials charged with improper action to help the railroad. The result of the memorable conflict, in which Senator Benjamin F. Aycock, of Wayne, had the laboring oar, was that a compromise was entered into by which the Petersburg charter was renewed for only two years and an act passed forbidding the construction of a parallel line. When the two-year period expired the Wilmington & Weldon was forced to relinquish all tax exemption and the State rechartered the branch road.

Possibly the railroad would have fought to the end had it not seen the definite legal trend against its claims as enunciated by Judge Connor in the *Allsbrook case*. That far-reaching decision has resulted in putting on the tax books the properties of the Wilmington & Weldon Railroad, now the Atlantic Coast Line, which were assessed at $56,195,691 in 1928, and millions more of other railroads indirectly affected by the decision in the Allsbrook test case. In addition to paying the *ad valorem* tax on this huge sum to counties, school districts and municipalities through which it runs, that road in 1928 paid into the State Treasury $1,392,254. Other roads which in 1890 were claiming tax exemption also enrich the State and make possible its progress.

Again in 1901, this time as a legislator, Judge Connor played an important rôle in forcing the railroads to pay a just tax upon their vast properties. While the excitement incident to the impeachment trial was stirring Raleigh and the State, another controversy was also troubling Judge Connor. Throughout the Russell administration the railroads had been supremely active in politics, first in opposition to Russell, and, after Russell's capitulation, to the Railroad Commission, causing changes in its membership. Afterwards they fought against a demand on the part of the people themselves for higher railroad taxes.

The *News and Observer* and other articulate forces in the State in 1901 were demanding a complete reassessment of the roads. The *Morning Post* and other railroad partisans charged that an attempt was being made to saddle the railroads with unjust taxes. The *News and Observer* urged the Legislature to increase the taxes on the railroads, warning them in the words of Jeremiah Black that by dereliction of duty on the part of the Legislature "the little finger of the corporations has become

thicker than the loins of the commonwealth." This controversy faced Aycock as he came into office. Judge Connor, as a friend of the Governor and as a member of the House, ably assisted the Governor in seeking a satisfactory solution to the controversy. Unbosoming himself, as was his wont, to his close friend, Judge Howard, whom he called "my nearest and dearest friend," we find Judge Connor writing on 25 January, 1901:

> "I get very much disgusted with the tactics of the presidents (railroad). They seem to have been so long in the habit of doing things by indirection and force that they cannot understand the motives of candid, honest men. There seems to be a Tallyrandish code of conversation and conduct with them."

The railroad executives and officials not only came to the sessions of the Legislature in person in their private cars, attended by a retinue of lawyers and agents, but were clearly seeking to influence legislation in ways that did not comport with Judge Connor's sense of proper ethics. He did not feel free, because he hoped to aid in a satisfactory adjustment of the heated controversy with the three big railroad systems, to speak his mind frankly in public, but "his Irish was up" literally and otherwise. This is evidenced by the following expression in a letter to Judge Howard in February: "I would not be a railroad president for all the gold of Arabia or the wealth of India. It is evident that they usually deal with either sycophants or scoundrels."

Before going to Raleigh (24 December, 1900), writing to Judge Howard, he disclosed the railroad attitude and his own views:

> "I think from the investigation which I have given the subject and the determination of the counsel of the railroads to prevent the investigation, that we will show that the present assessment is very far below the value. I am opposed to a gross income tax, but I am more opposed to permitting Judge Simonton to interfere with the right of the State to collect her revenues."

Governor Aycock and Judge Connor were very solicitous to secure a settlement of the differences between the State and the railroads. So much so that Judge Connor requested the aid of Judge Howard, who maintained friendly relations with the Wilmington & Weldon Railroad officials. Here is the recorded story of a conference, that looked toward concessions and adjustments, as told by Judge Connor in a letter to Judge Howard, written from Wilmington 3 January, 1901:

> "After two days of wrestling we—that is, Aycock, Mr. Elliott (representing W. & W. Co.), and myself—got to a point last night which, I am quite sure, will bring us to a settlement of the rail-

road tax cases. I am very much gratified and relieved by this result. I did not see Mr. Walters (head of the Atlantic Coast Line), but Mr. Elliott said that they had requests from several sources urging a settlement. He is to see Colonel Andrews and the representatives of the S. A. L. at once and bring the matter to a head. I feel that it is very much better for all interests that a settlement be made."

The battle, which had raged for years, ended with the adoption of a preamble and resolution of the General Assembly carrying out the terms of the agreement.

Governor Aycock rejoiced that the long controversy could be ended, and leaned upon Judge Connor's counsel. It began with crimination and recrimination. It ended with a compromise, which, though not entirely acceptable, ended litigation and legislation which had held first place in popular attention for ten years. Judge Connor rejoiced to see a final settlement which healed the breach between the railroad and the State. He cared more for seeing a future sound policy established than immediate enrichment of the treasury. He never did love to pray judgment if substantial justice could be obtained otherwise. In this happy termination Judge Connor rendered a service which helps the State for all time. It also witnessed the end of privilege long entrenched.

Nothing in his public life better illustrates the manner of Judge Connor's thought and action than his part in the impeachment of two Supreme Court Justices in 1901. The State had just emerged from a period of political excitement which it is impossible for any one to understand who did not live in those days of political strife and bitterness. In 1894 by a fusion of the Republican and Populist parties the Democratic party lost control of the State for the first time since Reconstruction days. The Fusion government, headed by Governor Daniel L. Russell, became so obnoxious by 1898 to most North Carolinians as to create a near revolution. The condition in some parts of the State was well described by Governor Aycock when he said:

"Under their rule lawlessness stalked the State like a pestilence—death stalked abroad at noonday—'sleep lay down armed'—the sound of the pistol was more frequent than the song of the mockingbird—the screams of women fleeing from pursuing brutes closed the gates of our hearts with a shock."

No picture can be drawn of the revulsion toward what came to be known as Russellism, due as much to the crudeness and the ill flavor of Reconstruction evils, as to the corruption on the part of the whites and blacks suddenly elevated to power. The turning over of government in

eastern towns and cities to the control of Negroes and unfit whites jeopardized all that white men held dear. The indescribable conduct of some officials aroused the deep determination of Democrats and Independents to end the reign of terror and to restore peace and normal conditions. This rule of the Fusionists alarmed even some of those whose votes had helped to put them in power. The success of the Fusion movement in 1894 was made possible by economic disaster on the part of tillers of the soil. Four-cent cotton brought farmers to such distress as they had not known. Prevailing under the Democratic State and National administrations, farmers attributed their distress to that party. When Cleveland's policies ran counter to their economic beliefs, 50,000 farmers in North Carolina walked out of the Democratic party en masse. They joined the Populist party.

The bitterness that sprang up between Democrats and Populists, former political associates, had all the rancor of a family quarrel. Their estrangement made it easy for Republican and Populist politicians to organize a union of heterogeneous elements. It could not last, for oil and water cannot mix. The excesses and social disruption, followed by political distraction for four years, cemented the bulk of the white voters who, with the slogan of "White Supremacy," drove the Fusion administration from power. As an aftermath of the Fusion rule, came the impeachment by the House of Representatives of *Chief Justice David M. Furches* and *Associate Justice Robert M. Douglas,* both Republicans.

Upon coming into power in 1895 the Fusionists enacted legislation looking to displacing practically all Democrats still in office. This was followed by litigation over the right of the Legislature to displace an officer whose term had not expired. When the Democrats returned to power in 1899, they resolved to undo the work of the Fusionists. They enacted laws changing the functions of officials and sometimes changing the names of public agencies. A series of ousters and court decisions followed. The Supreme Court was composed of three Republicans, one Populist and one Democrat, who had been reëlected by all three parties in 1894. The partisanship of people and legislators permeated even to the chamber of the Supreme Court so that by 1900 the Democrats believed that the Fusionist Court was little more than a confirming body to hold Fusionists in office. The opinions of that Court, confirming the title of Fusionists in office, brought about in the conference of the Supreme Court as much ill feeling as existed in strictly political circles. *Justice Clark,* the only Democrat on the bench, wrote vigorous dissenting opinions against decisions of the Court. He declared that the judiciary was seeking at least a modified veto upon legislative action. He asserted in a dissenting opinion in the case of *Wilson v. Jordan* that "there is nothing in the Constitution of North Carolina indicating any

intention to give the judiciary any supervision or control over the law-making power," and he added a sentence which aroused the ire of his Fusion associates when he said: "On the contrary, while the courts cannot pass, in any, the most remote degree, upon the title to the seat of any member of the Legislature, that body can sit in judgment upon any member of the Executive or Judiciary branches of the State government by impeachment and remove him from office." That declaration cut to the quick. *Judge Furches* was the most partisan of all the Fusion judges. He was regarded by Democrats as a man into whose soul the iron of hate of Democrats had entered, so much so that his judgment was believed to be biased in cases when the contest was between Democrats and Republicans. He deeply resented, and naturally, the suggestion of *Justice Clark* that impeachment and removal from office might be invoked. In fact he regarded it as a threat, even an incitement to impeachment of those judges who had upheld the contentions of Republican officeholders. His resentment found expression in an opinion when these words were used:

> "It has been suggested by a member of this Court that the Legislature has the power to impeach a judge—that it has recently done so, and that there is no appeal from its judgment. Such a suggestion as this has never occurred in the history of this Court until now."

And he closed with this language:

> "Why it should have been made we do not know. But remembering our positions as members of this Court, we will not express our sentiments as to such suggestions, and will only say that, in our opinion, any member of any court, who would allow himself to be influenced by such suggestions is unfit to be a judge."

We may be sure that these exchanges between two Supreme Court judges did not escape the vigilant eye of the press. The public was soon informed of the conflict of opinions between *Clark,* Democrat, and the Republican members of the Supreme Court. *Justice Clark's* intimation of possible "impeachment" was commented upon, and some papers went further and predicted that if Fusion members of the Court did not watch their step, they might face a Court of Impeachment. The tension and the growing conviction that partisan bias controlled the majority of the Court culminated on 17 October, 1900. The Legislature had abolished the office of Inspector of Shell Fish held by Theophilus White. The Supreme Court confirmed White's title to this office of which the Legislature had undertaken to deprive him. *Justice Clark,* Democrat, and *Justice Montgomery,* Populist, dissented. The majority of the Court relied upon *Hoke v. Henderson* for their action. Those who

favored impeachment pointed out, by a review of the decisions in the officeholding cases, that they were not only inconsistent with *Hoke v. Henderson,* on which the Court relied, but were inconsistent with one another.

For example, in *Ward v. Elizabeth City,* the Judges held that the taking of new territory into the corporate limits of the city made it a different city, and operated to remove Ward from his office as city attorney, while in *McCall's case* they held that taking more territory (four counties) into the Western Criminal District did not make a new district, nor operate to remove the Republican from office. In *Day's case* they held that Day remained in his old office at his old salary, with his old duties and powers, and preserved the executive board to perform the new duties, whereas in *White's case* they put him in the new office, with the new salary, new duties and enlarged powers, thereby entirely destroying the board. Other inconsistent instances were cited. One Senator declared "As fast as their own ruling obstructed their power they were brushed away."

The order to pay White's salary was denounced as partisan by the Democratic press, which declared that payment of a salary to one undertaking to hold an office which had been abolished, was illegal and might bring trouble to the officials responsible for such diversion of public funds. Later a majority of the Court directed the Clerk of the Supreme Court to issue a mandamus to the State Auditor and State Treasurer to pay the salary of the Inspector of Shell Fish, but not before *Justice Clark* had written a vigorous dissent and had warned the State Treasurer that the Court could not legally order the payment of the money and that White's salary could only be paid when the Legislature made an appropriation for that purpose. However, upon the direction of the majority of the Court, the money was paid. And then the pent-up flood broke, producing the worst storm affecting the courts in half a century.

It was greater, perhaps, in fury and intensity than in Reconstruction days when *Chief Justice Pearson* said, "the judiciary is exhausted." In that era there was no impeachment of the judges who were severely criticized. The House of Representatives then brought articles of impeachment against the Governor instead, and he was found guilty and deprived of his office. The Republican judges then remained in office until their terms expired, but none of the members of that Court were reëlected.

The clear-cut issue presented to the people in 1901 was whether the action of the Legislature in choosing officials to carry on public duties could be overruled by a Court which they believed to be chiefly actuated by a desire to serve the party to which they belonged. As the time for the session of the Legislature drew near, some leaders of the Democratic

party began to talk seriously about impeachment, "so that judges should be taught that there was punishment for partisan decisions." It is not of record, but it was generally accepted, that when asked about the matter before the Legislature assembled, *Justice Clark* told those who approached him that clearly *Furches* and *Douglas* were guilty of actions that made them amenable to impeachment. *Furches* and *Douglas* believed *Clark* had advised and was chiefly responsible for causing them to face impeachment trial. Certainly *Furches* and *Clark* were by that time bitter enemies. The judicial differences had become personal and hostile.

Upon the death of *Chief Justice Faircloth,* who had participated in the decisions criticized, *Justice Furches* was appointed *Chief Justice* by Governor Russell.

Partisanship may have been present—it doubtless was—but the controlling motive with most of those favoring impeachment was that a court, which had violated the Constitution for the benefit of an ousted fellow partisan, might in larger matters seriously affect the powers of the legislative department and deplete the treasury. They held also that punishment ought to follow the diversion of public money out of the treasury without an appropriation by the only body competent to make such appropriation.

On 31 January, Locke Craig, of Buncombe, afterwards Governor of the State, offered a resolution in the House of Representatives for the impeachment of *Justices Furches* and *Douglas.* The Democrats, with few exceptions, favored this impeachment resolution. The Republicans and Populists lined up against it, and the debate and the vote would probably have been almost along strictly party lines but for one thing.

Enter Henry Groves Connor, member of the House of Representatives from the county of Wilson.

Judge Connor had been Speaker of the previous House. He had won State reputation as Superior Court judge, and was esteemed as one of the first men of the State. He was honored and respected by all. He believed the majority of the Court had rendered a wrong and dangerous decision. He felt they had been influenced by partisan bias. He was convinced, however, that the punishment and crushing humiliation of conviction and ousting from office and disfranchisement, were penalties too severe for their offending. He could not bring himself to favor such serious sentence in the absence of personal corruption. Always given to introspection, he quietly pondered the matter. He read and reread the decisions. The more he read and the more he communed with himself, the more he felt that in conscience he could not stand with the majority of his party. He hated to break with them on a policy which it later developed was favored by 60 out of 75 Democratic

members of the House. In his home in Wilson Judge Connor sensed that the influential opinion in the Legislature would be favorable to impeachment. He had been Speaker of the House when the position of Inspector of Shell Fish had been abolished. He believed no property right existed in the office. He placed the rights of the people above the rights of any official. Having voted to abolish the office, he believed White had no claim to it and, therefore, could be entitled to no compensation. He had followed the decisions of the Court with disapproval. He agreed with the position *Justices Clark* and *Montgomery* took in their dissenting opinions, but he disapproved *Clark's* statement which hinted at impeachment.

I recall talking with him during the Christmas holidays. He suggested, in the big brother attitude he always maintained toward me, that the *News and Observer* was making a mistake in predicting that the Legislature would impeach the judges. He thought it was making sentiment for that policy before the legislators could confer about the matter. In a matter touching the Court, he advised that the press ought not to print anything to add to the feeling against members of the Court, which the office-holding decisions had produced. In fact, in that as in other matters, he always held that the press was too quick to print what might occur in future trials. He often said to me that newspapers printed too many allegations about cases coming on to be heard. He declared they sometimes thus improperly influenced public opinion which was reflected in the jury box. He was never an editor and never could be convinced that if the newspaper waited for the orderly, and sometimes slow, processes of the court, it might as well go out of business—that it must be "a map of busy life" and print the news when it was news.

Generally, as to his doubts and trouble over the impeachment, however, he kept his own counsel. The day after Christmas in 1900, writing to his friend, Judge George Howard, with whom he carried on intimate correspondence for many years, and to whom he always unbosomed himself without reserve, Judge Connor wrote:

> "The talk of impeaching the judges is unfortunate. I cannot understand how they can justify their course, but we had better be patient. We have plenty of work to do without hunting up folks to punish."

Again writing to Judge Howard on 9 February, 1901, while the impeachment resolution was pending in the House, Judge Connor more fully and frankly stated his true position in these words:

> "Of course I am very much annoyed by the impeachment business. I am strongly impressed with the conviction that the Court was determined to nullify, as far as possible, the legislation of 1899,

and that it resorted to many strange and subtle decrees to do so, but I do not think it wise to press the matter to impeachment. I am not one of those who think in dealing with practical affairs it is the duty or matter of principle to press every question to a final test. I am convinced that it was neither wise nor prudent to press the matter beyond a dignified protest."

Shortly after thus concisely giving to Judge Howard his attitude, condemning the judges and opposing praying judgment and the severest sentence, Judge Connor introduced the following substitute to the impeachment resolution in the House of Representatives:

"Resolved, by the House of Representatives, the Senate concurring, That in issuing a mandamus to the State Auditor and the State Treasurer, in case of Theophilus White against Hal W. Ayer, State Auditor, and W. H. Worth, State Treasurer, lately pending before the Supreme Court, a majority therein concurring, assumed authority and power not conferred by the Constitution and laws of the State, but in derogation thereof."

Immediately another-to-be-learned Justice of the Supreme Court, Hon. William R. Allen, of Wayne, then member of the House and soon to be chairman of the Managers of the Impeachment, accepted Connor's statement of the illegal action of the judges, and moved to amend the substitute offered by Mr. Connor by adding the following, which he afterwards withdrew to support the committee's impeachment resolutions:

"That said Judges, *David M. Furches,* formerly *Associate Justice,* and now *Chief Justice,* and *Robert M. Douglas,* an *Associate Justice* of the Supreme Court, be impeached for high crimes and misdemeanors in office."

The difference between Judge Connor and Judge Allen was not in condemnation of the act. The Connor resolution declared that the judges had acted "in derogation of the Constitution and the laws." He had no defense to make of their decisions. Judge Allen, and those who agreed with him, declared that if, as Connor stated, the judges had violated the Constitution, the penalty for such violation should be exacted. It was on this point that the battle royal was fought. The Republican members spread their protest on the Journal upholding and commending and defending the judges, and declaring they had not violated either the Constitution or the laws.

The Connor substitute was the sensation of the day. He was known to have been sorely disturbed, but until his resolution was flashed on the wires, the impression prevailed generally that the Democratic mem-

bers were united for impeachment. Though on the vote on his substitute, Judge Connor could muster only twelve votes, beside his own, the fact that he opposed the severe penalty carried so much weight in the State at large that the advocates of impeachment for the first time doubted their ability to succeed. It soon became apparent the Connor substitute had been received with approval by many who believed in condemnation, but who followed him in this statement to Judge Howard: "I am not one of those who think in dealing with practical affairs it is the duty or matter of principle to press every question to a final test." As the years have passed, the wisdom of that expression is more and more manifest.

The debate in the House was heard with tense interest. The lobbies and galleries were crowded. The argument on the whole was upon a high plane. The preponderance of logic was with the advocates of impeachment, and they won by a vote of 62 to 33, not counting the pairs. It was a rather crushing defeat for Judge Connor. He so felt it, and regretted that his position brought about a coolness for a time between him and some of his closest friends. But he "could not do otherwise," though he believed the resentment of party leaders and party workers, who strongly condemned his course, would force his retirement from public life. No unhappier man walked the streets of Raleigh in those crucial days. Connor plunged into his legislative duties. Chairman of the committee on Education, he worked with zeal and diligence and leadership, but the sense of the loss of influence gave him hours of pain. However, this did not affect his faith in the righteousness of his course. He was "too fond of the right to pursue the expedient." His course coincided with the Emersonian rule: "What I must do is all that concerns me, not what people think. This rule, equally arduous in actual and intellectual life, may serve for the whole distinction between greatness and meanness." Whatever the consequences, if he must tread the wine press alone, he had the approval of his conscience. He could sleep with himself, untroubled. Beside this, nothing counts.

The impeachment trial began in the Senate on March sixth. Though there were five articles of impeachment, the last being an all-inclusive indictment of "the violation of the Constitution of North Carolina various times and in numerous decisions of said Court, commonly known as the office-holding cases," the gravamen of the charge against *Judges Furches* and *Douglas* was in these words:

> "That action of said Judges of the Supreme Court is hereby declared to be in violation of the spirit of the Constitution, and in defiance of the plain statutory law of this State, a usurpation of power subversive of the rights of the legislative department of the government."

Judge Connor in milder language had made a like condemnation in his substitute. He had even written an indictment quite as serious in his letter to Judge Howard in which he said he was "strongly impressed with the conviction that the Court was determined to nullify, as far as possible, the legislation of 1899," and in order to do so had "resorted to many strange and dangerous decrees." When the impeachment trial began, Judge Connor, his legislative duties of the session being over, went to his home in Wilson. Though holding himself aloof from taking sides while the Court of Impeachment was in session, he followed the trial with deepest interest.

I dare say that no tenser feeling ever permeated the Senate chamber than during the seventeen days consumed by the trial. The spacious chamber was crowded at every session. Perhaps some faint idea of the passionate partisanship manifested during the trial may be conveyed by a glance at the attitude of the wives of those active in this impeachment trial. Every day, just before the court convened, a score of well-dressed women entered the capitol. The wives of some of the lawyers of the respondents ascended to the Senate chamber on the western staircase and took their seats on the side reserved for the judges, their attorneys and friends. The wives of some of the managers and attorneys for the prosecution ascended by the opposite stairway and sat during the long sessions as partisans of their husbands on the side assigned to the prosecution of the judges. The women were intensely interested, perhaps as much from loyalty to their husbands as in the issue. The chasm for the time being affected the social life of the capital. Hosts were careful to keep in mind the acute situation created, for while the good women preserved outwardly every form of courtesy, both sides felt that there was a separation that could not be fully bridged. It was a camp of polite aloofness, not without some whispered conversation that showed how deep, even bitter, was the feeling in the opposing camps, alike of the women as well as the men.

It was more than a judicial trial. It could not be wholly divorced from politics. It had its origin in legislation ousting Democrats from office by the Fusion Legislature in 1895 and 1897, and in the counter legislation of 1899 to restore the exercise of the functions of a number of positions to members of the party whose representatives had been removed from office by the Fusionists. Democratic leaders gathered at the capital in full force. Republican politicians flocked to the city. The judges had the benefit of the active influence of the two giant corporations then powerful in the State. Their partisanship was attributed by some to the fact that in the presidential campaign of 1896 and 1900 the heads of these corporations had supported the Republican nominee for President, and that most Republican judges and leaders stood against any

trust legislation or prosecution. The two morning daily papers in Raleigh were arrayed on opposite sides. The *Morning Post* approved the course taken by the judges and championed their cause, and was severely critical of *Justice Clark*. The *News and Observer* believed that, having violated the Constitution and the laws, the judges should not escape the penalty for such violations, advocated conviction upon the charges. The press in the State as a rule took sides. The politicians of both parties likewise were arrayed, all the Republicans for the judges' acquittal, and most of the Democrats for conviction. However, there was a large element which, influenced chiefly by the position of Judge Connor, more and more came to his way of thinking. Indeed, it may be truly said that it was the attitude of Judge Connor condemning the decisions and orders of the majority of the Court, but opposing severe punishment, which, in the last analysis, resulted in the acquittal of the judges, though on one count a majority of the Court, but not the two-thirds necessary for conviction, voted "Guilty." The failure to convict, if I may venture to give an opinion, was due to two things and two things alone:

1. The position taken by Judge Connor. Though he could muster only twelve votes in the House for his resolution to condemn but not to punish, it received approval by many thousands outside that body, raising up strong protests against an extreme penalty—this, too, in an era of partisan feeling when neither party was fully free from playing for party advantage.

2. The Fifth Article of Impeachment imputed corrupt intent to the judges. One Senator, who voted for conviction on four articles voted "Not Guilty" on the fifth, saying: "By the vote I have given I have not intended, nor do I wish to be understood as imputing to these respondents dishonesty or corruption in office in the sense of Lord Bacon's impeachment, taking a bribe. I cannot agree that the law is, as argued by counsel for the respondents, that before I can reach a conclusion upon this article I must find a corrupt intent. Why the managers deemed it necessary in the Fifth Article to allege a specific intent I do not see, and, as that is alleged in this article, I cannot concur in the position of the charge."

It is not meant to say that Judge Connor's modified resolution of condemnation of the decisions of the impeached judges and his earnest plea against impeachment for high crimes and misdemeanors alone secured the acquittal of the judges. In any event, there would probably not have been the two-thirds necessary to convict. It is not too much, however, to say that with the tide running strong in favor of conviction, his early protest against severity stemmed that tide, in fact turned it, and in the end created a sentiment that prevented conviction. One who followed the Court closely could not fail to sense the growing feeling, as

the evidence and argument proceeded, that Judge Connor was right in declaring that the act of the judges was "in derogation of the Constitution and the laws of the State," and that "the Court was determined to nullify as far as possible the legislation of 1899, and that it resorted to many strange and subtle decrees to do so," but that there was lacking any such corrupt intent as to justify impeachment. In the popular mind, "high crimes and misdemeanors" imputed more than the partisan bias. The average man who sided with Judge Connor, and was influenced by his stand, could not make the distinction which lawyers made of the lack of personal corruption in "high crimes and misdemeanors."

The trial over, those who had stood for impeachment and conviction believed they had achieved a salutary result. They thought they had given pause to all judges when partisanship threatened to invade the court. They also believed the impeachment would avert what they feared, to wit, the possible Supreme Court decision that the suffrage amendment was unconstitutional. At that time the fear of such a decision sat upon the hearts of the leaders who had secured its adoption. Those who had opposed impeachment rejoiced in the verdict of "not guilty." They hailed acquittal as guaranteeing judicial independence and freedom from legislative and other influence. All unconsciously both sides felt that the Connor spirit had been present throughout and had largely influenced the final result. Often the man who stands between two contesting armies is crushed between them. The advocate of neutrality or mediation, when everybody is putting on the armor for a fight to the finish, is usually destroyed without benefit of clergy. Judge Connor's resolution of criticism was regarded as condemnation by the judges and their friends. Even so, they hailed it as a spar to keep them from drowning.

Both the sincere and the partisan advocates of impeachment had varying opinions. Some derided Connor, contending that he had given a verdict of "guilty," but refused to demand punishment. His resolution was variously called "an impotent gesture," a "straddle" or "courageous and wise declaration that met the exigencies." Partisan Democrats condemned him more and more as the trial progressed, and they saw that his position had made many converts. Some who had started out strong for impeachment came, as the trial went on, to the conclusion that there ought to be no verdict of "guilty." They were equally sure that acquittal and vindication did not fit the case. "How much better," they argued, "to put on record condemnation without asking removal from office in disgrace?"

These varied views of his position did not escape Judge Connor. He had keenly felt the criticism of such warm friends as Allen and Craig, and Rountree and Graham, to name only four leaders. He believed that most active Democrats shared their views. He did not doubt that

their disapproval would injure his party influence. This reflection gave him pause and regret. He voiced it to a few intimates. I might quote my recollections of what he said in this time of depression (all men who follow convictions which separate them from associates have that feeling at times, even if they conceal it), but it is better to recall his own words in the letter which he wrote to Judge Howard after the end of the impeachment trial. "I think the impeachment trial terminated very satisfactorily to the large majority of the people of the State" and in the following sentence he disclosed his conviction that the estrangement created by his disagreement with most party associates would be destructive of any political ambitions he might entertain: "I am content to retire from public life."

North Carolina people were bigger than he then appraised them. After the smoke of battle cleared away, the realization came on the part of all that Judge Connor had acted upon his sincere conviction at a time when he believed such action would be injurious to any desire for future promotion. Instead of its operating against him, many of those who had been most zealous for impeachment held him in even higher esteem. There is deep down in the hearts of men an admiration for any honest man who follows his conscience, who has in him something of the spirit of Luther. Many, sensing the partisanship of the court which led it to invent devious ways to throw Democrats out of office and protect Republicans in office, saw that the wiser course was the one proposed in the Connor substitute. Therefore, he lost no standing in his party, as was evidenced when in 1902 he was nominated by the Democratic party as Associate Justice of the Supreme Court. This honor was grateful to him. He had long cherished an ambition to serve on this Court. Indeed at one time he hoped to be Chief Justice and missed it by the narrowest margin. Writing on 3 January, 1901, he said: "If *Judge Faircloth* had lived twenty days longer, I have every reason to think that the aspiration of my life would have been realized." It is most probable that Governor Aycock would have named Connor to succeed *Faircloth* if the appointment had come to him.

It is significant that his main supporters for elevation to the bench in the close contest with an able and popular opponent, Judge George H. Brown, who was later to grace the Supreme Court bench, were the Managers for Impeachment on the part of the House. This was also true of others who had been in the early stages most critical of his moderate course of action. That fact is the best tribute to the sense of justice and admiration of courage that is the highest attribute of our humanity. If the impeachment trial, or Judge Connor's part, entered at all into that hard-fought contest, it was so small an influence as to be negligible. In fact, within a few weeks after the termination of the trial, it was a

closed incident. Just as Connor's opposition to impeachment was no bar to his elevation to this bench, just so a few years later, when Hon. William R. Allen, Manager in the Impeachment trial, who added lustre to the Supreme Court by his all too short service on this bench, was a candidate for Justice, his advocacy of impeachment did not affect the result in the least. The same is to be noted in the case of *Justice Walter Clark,* who was credited by *Judges Furches* and *Douglas,* and by many others, with inspiring the impeachment of his colleagues, and who had for this cause been assailed more bitterly than Judge Connor. When he became a candidate for Chief Justice, no appreciable opposition was due to his dissenting opinions or his opposition to the majority of the Court in the office-holding decisions or to the advocacy of impeachment.

The storm had raged violently. Then there was a great calm. Asperities and bitterness were not only forgiven; they were forgotten. They disappeared as if they had never shaken the capital.

The record of Judge Connor as Associate Justice of the Supreme Court, covering six years, is found in the volumes of North Carolina Reports and is fresh in the recollection of the people. He brought to this Court a high ideal of duty, knowledge of the law, sincere worship of equity, freedom from slavery to precedent, and a passionate desire to interpret the law as something vital and beneficent in the expanding humanities and industries of the commonwealth. By his votes in conference and his written opinions, he lived up to his exalted conception of the duty of a jurist. Always governed by a strict sense of propriety and ever mindful of the circumspection imposed by his high calling, Judge Connor refrained from active participation in public affairs during his judicial terms. However, he never allowed his life to lapse into the past, and always held firm convictions on public questions, stating his views forcibly upon proper occasion. Although a man of vigorous opinions, his views were so free from bitterness that he never engendered resentment in others.

Above everything else his opinions breathed his great regard for the rights of the citizen, his life and liberty as well as his property. He was never more stirred at what he thought was error than when the Court in the appeal of *S. v. Lilliston* (141 N. C., 857) denied the motion for a new trial upon newly discovered evidence, as well as upon other points. He wrote probably the most vigorous of all his dissenting opinions, in which he said:

> "I have never been able to understand why, if this Court has the power to grant a new trial for newly discovered evidence in a case involving property of ever so small a value, it has not like power where the liberty and life of the citizen is involved. I have

read with great care all that has been said upon this subject. The force of the argument which deprives us of power to grant this relief, to my mind, applies with equal force against our power to grant it in a civil action. It is one of those questions, which to my mind, will only be settled when reasons more cogent than any yet advanced are found to sustain the conclusions of the Court. The argument *ab inconvenienti* does not impress me. When life and liberty are outstanding, I cannot conceive the force of this argument."

His natural tendency to equitable principles gleam through his opinions in the Supreme Court Reports. Indeed he was peculiarly interested in equity. In every case possible he insisted upon equitable relief.

Just as it fell to his lot as Associate Justice to reverse *Hoke v. Henderson,* so he was called to write an opinion upholding "the Connor Act," the passage of which he had secured as State Senator in 1885. In the case of *Collins v. Davis* (132 N. C., 106) he dealt with the act bearing his name. He held that no notice, however full, can take the place of the registration. This perfected titles by registration.

It was not only in his decisions that Judge Connor showed his belief that law was neither static nor a procrustean bed. He did not believe that man should be trimmed to fit the laws of yesterday, but that statutes should be framed to protect the rights of man. As has been seen, conservative toward change as he was, he did not hesitate to overrule decisions which he believed were founded on wrong principles or erroneous precedents or when new conditions demanded changed interpretations. In legislative halls, in public addresses, in private letters and in suggestions to legislators he set out the needed judicial and legislative reforms. He believed in the election of judges by the people and said such methods of selection "upon the whole secured better results than either executive appointments or legislative elections," and in proof of his position said, "Since 1876, with few exceptions, we have secured a representative judiciary." He held that opinion in 1912, after he had gone on the Federal bench by presidential appointment. In a long letter to Judge Whitfield, Judge of the Supreme Court of Florida—a relative of his wife—Judge Connor went at length into his well considered conclusions as to judicial reforms. "I believe it should be possible and practicable," he wrote, "to adopt Codes of Procedure simple in their provisions, prompt and efficient in their results, with very much less expense to litigants than those which we now have both in State and Federal practice." And he added: "We have not done our duty in chopping off the dead limbs and permitting fresh growth." Writing again of his conceptions:

"Technicalities—like the fictions have been useful in primitive conditions—are scaffolds which were necessary in the process of building, and should drop off when they have served their purpose, but should not be rudely torn down by ignorant iconoclasts lest they leave the last state worse than the first. The lawyer must ever keep in mind the truth that the jurisprudence of a people is a growth, development, and not a thing to be manufactured, patented and labeled as perfect. Growth is essential to purity."

In 1912, in a personal letter to Dr. Dred Peacock, son of an old friend, upon receiving his license to practice law, Judge Connor gave expression to views he had long held and discussed with his associates:

"The cunning and curious learning of the old common-law lawyers in regard to contingent remainders, executory devises, the rule in *Shelley's case,* etc., etc., is antiquated. All entails should be prohibited and the method of conveyancing and recording deeds should be made simple and cheap. There is abundant room for the work of the intelligent reformer, but he should be profoundly learned in the reason and writing of the law before he is permitted to undertake to reform the law as it is. More than half the reformers need to be reformed."

The office-holding cases, which were the occasion of the impeachment trial, were to follow Judge Connor on the bench of this Court. Not long after qualifying as Associate Justice of the Supreme Court of North Carolina, a case came up in which the much disputed decision in *Hoke v. Henderson* was invoked. This was *Mial v. Ellington,* heard on appeal from Wake County Superior Court, at August Term, 1903. When a private citizen Judge Connor had expressed to friends his disbelief in that doctrine. During the impeachment trial he was even more convinced that it, like its prototype, the *Dartmouth College case,* was contrary to the spirit of the Republic. It was, therefore, gratifying to him to be on the bench when that doctrine was overruled, and it was forever settled in North Carolina that no officeholder has property rights in a public position. *Judge Connor's* opinion in *Mial v. Ellington,* 134 N. C., 414, reversing *Hoke v. Henderson,* is justly regarded by the lawyers of the State as one of the great opinions of our Supreme Court. It is to be noted that both *Douglas* and *Montgomery* dissented. If opinions were still being influenced by party, this time three Democrats ruled and the two Republicans stood for the old position which had precipitated impeachment.

He was gratified that the reversal of a court opinion, long followed if not respected, which had created a crisis in the State, should have been

received with such approval. Writing to Judge Howard (21 December, 1903), Judge Connor said: "The decision in regard to *Hoke v. Henderson* has received well nigh the unanimous endorsement of the bar. I was surprised to see how uniform was the current of authority and thought upon the question."

Conservative to the extreme in preserving rights and liberties embedded in the statutes and decisions, it was only when they protected privileges, immunities or exemptions that he took genuine pleasure—indeed it gave him a thrill—in restoring to all the people what had been enjoyed by a class. He thus illustrated Tennyson's perfect picture of the true conservative. He was fond of quoting these lines from the poet:

"May freedom's oak forever live,
With stronger life from day to day.
That man's the best Conservative
Who lops the moulder'd branch away."

Instead, as has been shown, of Judge Connor's opposition to impeachment standing in the way of preferment to judicial honors in North Carolina, the time was to come, during his distinguished service as Supreme Court Justice, that his independent action was to secure for him national recognition. In 1909 a vacancy in the Federal Judgeship of the Eastern District of North Carolina was to be filled. Nearly every Republican lawyer in the district was a candidate. There was a contest for endorsements. In addition, there were charges and counter charges as to some of the candidates, which so disgusted President Taft that he determined to name none of the avowed candidates, but go outside his party and find the fittest lawyer in North Carolina for the position. No President has been more solicitous to preserve the high standing of judicial appointments than Mr. Taft. It was—it is—a passion with him. I recall a question he asked me in Washington after he had been made Chief Justice. Speaking of the gratification Judge Connor's course had given him, Mr. Taft said: "Have you followed my appointments to the bench in the South?" I told him that I had kept up with them only in a general way, but with gratification. With a characteristic chuckle, he then detailed how he had refused to permit politics to govern his judicial appointments, having regard only to making the Federal bench deserve the confidence of the people of the South. This led him to ignore party lines. He had made White, a Confederate soldier and a Democrat, Chief Justice of the United States, and he had selected other Southern Democrats. Looking about to lift the appointment above politics, he scanned the record of North Carolina jurists. The record

of Judge Connor appealed to him. He learned that in 1894 the Republican party in North Carolina had, without his knowledge, tendered the nomination to Judge Connor as Associate Justice, thus testifying to its confidence in him. President Taft read the record of the impeachment of two Republican Supreme Court Judges. Naturally he was informed by party associates that they were not guilty and was told that they were the victims of partisan politics. He read some of the opinions written by Judge Connor. It was said at the time that, among the opinions of Judge Connor which most favorably impressed President Taft was one which illustrated his attitude towards the protection of property rights. This was in the case of *Daniels v. Homer* (135 N. C., 219). He dissented in one of his ablest opinions, and it was commented upon in various legal magazines throughout the country. The property involved was infinitessimal in value. He was interested in the right of the citizen to have the question as to whether or not he was using property in violation of law passed upon by a court before it could be destroyed by a ministerial officer—the right to be heard before judgment was announced. He said: "I cannot assent to the validity of any legislative enactment depriving the citizen of his life, liberty or property which will not stand the test of the standard prescribed by the Constitution." The same question was presented in *S. v. Jones*. He vigorously contested the right of a town by legislative enactment to condemn a man's property for streets without notice from the inception of the condemnation proceedings. All that President Taft learned about Judge Connor made such an impression on him that he resolved to ask him to accept the position of Judge of the Eastern District of North Carolina. By neither word nor gesture had Judge Connor indicated a desire for the appointment. No friend, by his request or knowledge, turned a hand to secure him the proffer of the judgeship. It came to him unsolicited (to the objection of most Republican political leaders in the State), but to the satisfaction alike of broad-gauged Republicans and Democrats. When he wrote Judge Howard in 1901 that "I am content to retire from public life," he little thought his leadership against impeachment would be no deterrent to his elevation to the Supreme Court of his State or prove the stepping-stone to his elevation to the Federal bench, where he was to lift the Federal courts to a plane they had not hitherto, since the War Between the States, occupied in this and other Southern States. It was no promotion to him from the Supreme bench of the State to the Federal District bench. It carried, however, the imprimatur of national recognition, increased compensation and guarantee of retirement pay. These appealed to Judge Connor, for he had never accumulated even a competence and was dependent upon his judicial salary. Already passed fifty,

with no financial provision for old age, he was happy to make the exchange. There was another and a more compelling reason. From 1865 up to 1909 the Federal Courts in the South had been regarded as alien. The earlier appointments after the war of the sixties had often gone to men of Northern birth, coming South and taking part in reconstruction politics. When Southern-bred men had been appointed, they were too often politicians, sometimes without the requisite learning, sometime without high character and public confidence. During and following reconstruction some of their courts were openly partisan and some judges lent themselves to what the dominant Southern sentiment believed was judicial or near judicial persecution. There were notable exceptions, but even then, as in the case of Judge Seymour, who grew into the esteem of the bar, the courts were everywhere regarded as alien even when not inimical to Southern policies and views. Devoted alike to his profession and to his State and to the reunited Republic, Judge Connor saw in the tender of the Federal Judgeship an opportunity to bring the Federal Courts into the same relationship in their sphere as the State courts occupied in their jurisdiction. He had long deplored the lack of confidence in the Federal courts and had felt that their influence was weakened because of their alien sympathies, or the belief that they lacked touch with the people of the South. It was with the desire to restore the Federal courts in the confidence of the people that he responded to the call to transfer his judicial labors from this Court to the courts set up by the Washington government. The presence of a home Democrat of marked ability on the Federal bench in Eastern North Carolina was a sight so strange that, for the first time, many citizens visited the court-room to witness the transformation. They soon realized that there was nothing inherent in Federal courts that was alien. On the contrary they found no difference whatever except as to the character of litigation. Justice was dispensed with mercy—some thought the Judge leaned too much to mercy as he grew mellow after he passed three-score. The bar and the public sensed a new atmosphere. Taking frequent occasion in his charges to grand juries and at other times to explain the Federal courts, Judge Connor lived to see the court over which he presided regarded by the people it served as being their tribunal and one to which they might appeal with a sense of complete confidence and from which they might expect only justice. He did not follow the custom of other Federal Judges in this State of wearing a robe upon the bench, and conducted his courts with a freedom from formality in keeping with the simplicity of his private life. Without the aid of any frills or furbelows his courts had an impressive air of dignity imparted by the personality of the presiding judge. Courts over which he presided never suffered from lack of respect nor was it ever necessary for resort to any

artifice to secure respect. He never found occasion to cite any person for contempt of his court. By his spirit and manner, added to his ability and fairness, a revolution in public sentiment as to Federal courts in this State was wrought so silently as not to be apprehended. If a tablet shall be placed to his memory in the Federal Court over which he presided, to commemorate his service, it should read:

"IN MEMORY OF
HENRY GROVES CONNOR.
HE RESTORED RESPECT AND CONFIDENCE TO THE
FEDERAL BENCH IN NORTH CAROLINA."

If there had been no impeachment trial, if Judge Connor had not stood for mercy and moderation, if President Taft had not entertained loftiest ideals which made him elevate the bench above politics, the day of the rightful place of the Federal courts in North Carolina's estimation would not have been witnessed by this generation.

There are three standards by which a man is measured. The first, and one usually accepted, is the estimate of those near to him in boyhood and youth. "The boy is father to the man" is generally accepted. Therefore sayings and doings related of early life are woven into his life story as the best indication of what he is to be. How did he bear himself in his home? With his intimates? In his daily contacts? The answer to those questions determine for most biographers the inner soul and real spirit of the man. It is not unerring. Courtesy to those near calls for some repression of the natural self, and intimates do not always see beneath the surface. Incidents related by associates do not always give the true insight into the man, though they illustrate and satisfy natural curiosity. Sometimes the modern Boswell confounds his own views with the observations of his hero.

Is there not a better standard? If a man is given to introspection, if he puts his thoughts and feelings on paper, the real man is more truly seen than in the stories about his precocity or the recollections, often faulty, of those related to him by ties of blood or companionship. It sometimes happens that they know only the side disclosed in the home. This is particularly true with one who, like Judge Connor, had great reserve. Knowing him from early boyhood, enjoying his friendship and confidence for half a century, it seems clear to me that he often disclosed his philosophy of life more fully in his letters, particularly to those of common aspirations, than to those nearest to him. If you would know the Judge Connor, whose memory we honor today, you will

find him analyzed quite as truly in his addresses and letters as in personal intercourse, though there is, of course, lacking in the written word the personal charm which attracts and holds.

The public knew him as lawyer, legislator, judge. He was also a man of letters and fortunately he has bequeathed biographies and addresses. These would give him a high place if he had no other claim to distinction. All that he wrote, too, was in the leisure hours which he snatched from his arduous professional and public labors. In his historical contribution upon the State Constitutional Conventions he traces the movements of the tides of the State's development as found in its fundamental charts. He was all the more qualified to write of changes in the Constitution because of his own part in amending the State Constitution, as well as his knowledge of how the fathers dealt with its growth and expansion.

He mastered a style that was his own, and he never fell into the mistake of thinking he must write down to his readers. His style was like the man, more argumentative than declarative, reaching its height in measuring everything by the common denominator of righteousness. Thus in his legal opinions as in his addresses to young men and his historical and biographical writings, "he had great intellectual generosity, power to entertain truth and to see new relations of things." He was remarkably felicitous in strengthening his utterances by authoritative quotations, as he loved to support his judicial opinions by reference to declarations by the great of the earth. These quotations indicate his choice of reading. He chose the mental and more aristocratic of law and letters as his models, and imperceptibly was influenced by their style as by their wisdom. He did not go afield for them, but drew upon and they dropped in their proper place as an essential part of a mosaic. Always in what he wrote, as in his conversation and his addresses, there was revealed a mind as one with lofty thoughts. James Bryce might truly have used of him the words Judge Connor quoted as applying to another:

> "As dignity is one of the rarest qualities in literature, so elevation is one of the rarest in oratory. It is a quality easier to feel than to describe or analyze. One may call it a power of ennobling ordinary things or showing their relation to great things, of pouring high emotions around them, of bringing the worthier motives of human conduct to bear upon them, of touching them with the light of poetry."

In addition to other writings and biographies, notably his Life of John A. Campbell, Associate Justice of the United States Supreme Court, five of his addresses on eminent lawyers would make a volume

covering the lives and achievements of illustrious members of the bar during the most important periods in the history of our commonwealth. These five lawyers he portrayed are stars of the first magnitude in our firmament, more firmly fixed by his appraisement—James Iredell, William Gaston, George Davis, George Howard, William T. Dortch. It was such exalted men, and such only, whose virtues appealed strongly enough to him to evoke his discriminating appreciation. No higher tribute could be paid to Henry Groves Connor than to say that he was worthy of a niche with that illustrious quintette, to whom he was akin by learning and by statesmanship and character. No man can write biography, long or short, without putting himself in it. It was Howard to whom Connor was most affectionately attached, to whom he gave his fullest confidence, and to whom he looked most confidently for counsel. He had friendship and admiration for his preceptor, Mr. Dortch. He was intrigued and held by Iredell's great ability. He had genuine admiration for George Davis as this tribute shows: "North Carolina never bred a finer gentleman, nor one who more completely commanded the love and reverence of all who knew him." But Connor reaches new heights when he writes of Gaston. He was his ideal. His career inspired him as did that of no other North Carolina lawyer. So much so that he seems constrained in his portraiture, fearing to give full reign to his almost adoration. Because his head and heart commanded the highest tributes his hand could pen, he seemed to fear exaggeration of statement. Running as a thread through much that he wrote is such admiration of Gaston the lawyer, Gaston the judge, Gaston the statesman, Gaston the man, Gaston the Christian, that Judge Connor discloses in many ways that of all the men who lived in this State, Gaston most fully filled his idea of the highest conception of a great and good man. He could not have honored Gaston so much if this patron saint had not measured up to the high qualities Judge Connor had fixed for himself. He was fond of talking of Gaston, of quoting from him, particularly the following admonition of Gaston in the Constitutional Convention of 1835: "Make it right so it may last." Judge Connor made that admonition his rule of action in public and private life. He also quoted with approval another maxim by Gaston in the same Convention: "If righteousness exalteth a nation, moral and religious culture should sustain and cherish it." His appreciation of Gaston reached high water mark in his estimate in Gaston's memorable Commencement Address in Chapel Hill in 1832. In a day when discussion of the policy of slavery was regarded by many as unfriendly criticism of the South, Gaston told the young graduates and the State that "it is slavery more than other causes that keeps us back in the career of improvement." He added this indictment of the peculiar institution: "It stifles industry

and represses enterprise, it is fatal to economy and providence, it discourages skill, it imperils our strength as a community and poisons morals at the fountain head." Those courageous words, taken in connection with the sensitiveness of the predominant public sentiment, were regarded by Judge Connor as proof that his exemplar was a prophet who dared to sacrifice popularity to tell his countrymen the truth. More than once Judge Connor demonstrated like bravery. Was it inborn? Or, did Gaston's example incite him? Certainly he entertained the views in 1913 to which Gaston gave expression in 1832, for in a private letter to a friend, Judge Connor wrote:

> "The truth is slavery was like a cancer on the body and could only be cut out by going very close to the vitals. I am glad that it was done before my day as, with my convictions, I would probably have been compelled to seek a home where there was no slavery. I could never have lived in a slavery community with my convictions. With this intense feeling on that subject, I am equally intense in my feeling that, as an exercise of reserved sovereignty, the State of North Carolina had a right to withdraw from the Union."

There is a third criterion that discloses the aspirations and standards better than personal contact or letters or speeches. It is to ask of the man under discussion: Who were his heroes? What sort of man did he hold up to himself as a model? Herein you have the true measure of the man's very self. Given the characters the man regards most highly, or the biographers he finds most satisfying, and you understand the man, sometimes better than his closest friends or his correspondents from whom he withholds no confidence. Outside Judge Connor's personal associates—and he numbered choice spirits among his intimates and attached them to him with hooks of steel—who were the world figures who did most to stimulate him? In the field of statesmanship, William E. Gladstone was regarded by him as nearest perfection, as was Phillips Brooks in the spiritual world. He read the latter's sermons religiously and assimilated them. "O that we had a Phillips Brooks in every parish!" he once wrote. In a letter to Judge Howard in December, 1903, Judge Connor said:

> "I have today been reading Morley's Life of Gladstone. What a splendid, moral, spiritual and physical type of man he was! Morley says Gladstone thought of the church as the soul of the State; he believed the attainment by the magistrates of the ends of government to depend upon religion; and he was sure that the strength of a State corresponds with the religious strength and soundness of the community of which the State is the civil organ. He said when a

young man: 'I am willing to persuade myself that in spite of other longings which I often feel, my heart is prepared to yield other hopes and other desires for this, of being permitted to be the humblest of those who may be commissioned to set before the eyes of man, still great even in his ruins, the magnificence and the glory of the Christian truth.' "

Judge Connor's admiration of Gladstone was largely due to their common belief in the Christian religion and in liberalism that kept itself free from radicalism. It was, however, heightened greatly by the magnificent historic fight Gladstone made for Ireland. The cause of Ireland was close to Judge Connor's heart, partly because of the Irish blood in his veins and partly because of his innate belief that no people were wise enough or good enough to govern other people. The first kindled his enthusiasm. The second appealed to his seasoned faith in the doctrine defined by Wilson as "self-determination." He believed in it for Ireland, the home of his forbears, as he believed in it for England and America. When he talked with friends of the Gladstonian policy of home rule there was enthusiasm and sympathy for his own race which shone above the principle involved. Blood will tell.

In his career as legislator, he doubtless often asked himself, "What would Gladstone do under those circumstances?" If he didn't ask that question and let his course be governed by his conception of what the answer would be, undoubtedly, all unconsciously Gladstone helped to determine his actions.

There is still another measurement of an introspective man. What did he think of himself? Few men, even with judicial minds, can justly appraise their lives and pass in judgment upon themselves. We are admonished not to think of ourselves more highly than we ought. It was a lifetime habit of Judge Connor to weigh men and measures, to X-ray his own motives and hopes, and in periods of depression to undervalue his contributions and usefulness. Among his papers was found an unsigned page, typewritten, evidently a putting on paper his self-appraisement. That paper reads:

"On Thanksgiving Day, 27 November, 1919, I was in Raleigh and dined with a gentleman who interested me very greatly. My only reason for doing so was that I had no other invitation. He was, as it happened, just my age. He was not especially interesting in conversation and regarded by many of his friends as rather boring. While his friends think him vain and conceited, I am quite sure that, to some extent at least, they are mistaken. He has a sufficiently good opinion of himself, but is not conceited. The truth is that while young he was quite "cock sure" of the correct-

ness of his opinions, but experience and association with men of sense has taught him that in many of his conclusions he was in error and, at 67, is far from certain about anything. A long experience at the bar and on the bench, in which he has met many defeats and committed many errors, has made him much of a doubter. He has read somewhat, but has not digested well what he has read. He is given to talking over much, but on this day he was very quiet—in fact he talked not at all. His dinner was very simple and he ate sparingly—chicken liver and gizzard, rice and gravy—followed by a cup of custard, constituting his menu. He is thought by his friends to have many fads and his family, who know him best, regard him as approaching his dotage. His fads and fancies are very harmless. He is free from dislikes or prejudices in regard to people and kindly disposed to his fellowmen. His trials and troubles, of which he has had many, have not made him pessimistic, but he is inclined to think the present conditions following the World War unsatisfactory and looks to the future with apprehension. He is fond of his friends and enjoys their association, but dislikes crowds, and avoids strangers. He is withal a fairly well conditioned man of his age. Health in fairly good condition."

Like all ambitious men, given to severe self-examination and absorption in books and in professional service, Judge Connor had his seasons of depression. In such periods he felt the need of friendly sympathy. He turned to Judge Howard for never failing understanding, and sometimes to other friends to whom he could voice his yearnings. Writing to Judge Howard on 16 May, 1892, he said:

> "It seems to me that as I go along my mistakes stand like armed obstructions to my progress, and which way soever I turn they confront me. They go to bed with me and they are with me in the night season; they greet me in the morning and dog my steps at noonday. They make the past unpleasant to look back upon and the future uncertain. My life has always been haunted by the spectre of ultimate failure. It has been the history of all to whom I have been related. No one can ever know what a burden it has been to me or how much it has weakened my endeavors."

In the next sentence he disclosed how friendships lifted him to his normal self, for he added: "My friends have been a source of complete pleasure and strength." His life shows how mistaken he was in saying that reflection of "mistakes" and "burdens" had "weakened" his "endeavors." No man fully understands himself. Judge Connor's record

shows that, after periods of depression, he emerged with new confidence and new courage. When he wrote of his fears, or committed them to his intimates, the very giving expression to them operated in releasing him from their power, so that he was able to act in the spirit of the poet:

"That men may rise on stepping-stones
Of their dead selves to higher things."

These words of Judge Connor show how he rose out of depression into strength:

> "It is moral courage which sustains a man in the hour of disaster and defeat, which gives dignity to his character and commands the respect of all good men. It makes men afraid to do wrong and unafraid to do right."

Religion, reverent faith, was the rock upon which he rested. No depression, no anxiety, no bereavement, no travail of spirit (and all these came to him in periods of his life in larger measure than seemed his share) nor the more dangerous seasons of success and victory which blessed his life, drove him into loss of faith in God. Reserved in speaking of his experience, he illustrated his faith by his walk and conversation.

In a letter written to Judge Howard on 7 January, 1896, he reveals his belief that it is not in acceptance of creeds, but experience that unites Christian men, his disapproval of ecclesiastical pomp, and the danger to his own church (Protestant Episcopal, of which he was long a consistent communicant) from sacerdotal system:

> "On Sunday I dropped a little into the 'Confession of St. Augustine.' It is very interesting as setting forth the mental and spiritual experience of a sincere man. Part of it reminds one of the experience of a Primitive Baptist. After all there is much sameness in the experience of men, although they may adopt different formulæ for the expression of their feelings. I read with interest last night an account of the elaborate and magnificent ritualism, with which Sattali was made a Cardinal in Baltimore on Sunday. To me it was the merest show and tinsel—self-glorification and man worship—and yet millions of humble, devout Christian men and women find solace and strength in it and would go to the stake, as Sir Thomas Moore did to the block, to testify their devotion to it. Again this same ecclesiasticism which produces and sustains this pageantry and pomp today sends more missionaries, with the spirit of the martyr and monks, than our Protestantism with its more spiritual, and, I think, more orthodox conception of Christ and His

Kingdom. That an old man in Rome, with no temporal power, can by the office which he holds, command the loyal allegiance of thousands and hundreds of thousands of learned, wise, and so far as we can see, devout men all over the world, is a mystery. I cannot comprehend it—it impresses me only as a study. Men are singular animals and more singular in respect to their spiritual natures. I do not believe at all in what is called a sacramental system, and yet I am inclined to think that it is the basis and the sole basis upon which organic Christianity can be permanently maintained. I am quite sure the Episcopal Church will ultimately drift into it. As the basis for personal religion, I think it is degrading and destitute of real communion with God; it brings in the priest between a man and his Savior—and this, of course, I reject strongly. These and many others are grave problems. We can think of them humbly and pray for light."

Would you understand the mainspring of the life of this learned lawyer, just judge, wise legislator, sincere patriot and friend of his fellowmen? Perhaps in none of his expressions did he sum up his belief that virtues bring forth fruit after their kind and that citizenship and useful service are based upon Christianity than in this philosophy of life which he gave to young men:

"The highest and best standard of citizenship is always measured by faith in God and man. I have no confidence in the political purity and welfare of a community that is not based upon Christian manhood. You need not talk to me about a man's having faith in man who has no faith in God. It cannot be."

Here was his faith. His life rested upon it. Broad, tolerant, able, he moved through life, a clear-eyed man in a busy world.

"So," he said, "it has been given to us to carry the light of Christian civilization, where, I do not know, but wheresoever His hand points and guides and directs it is our duty to go."

He held to that duty. He carried that torch until his hand fell forever. And he handed it on undimmed to us who follow. This example of his life should give us zeal to carry it on.

His end was as his life—it came quietly. He felt its coming. Like a Christian philosopher he regarded it as no enemy, but as the last friend opening the portals to a new existence when physical powers in this life waned. He found death "a haven and a rest after long navigation," for "the noble soul is like a good mariner for he, when he draws near the port, lowers his sails and enters it softly with gentle steerage; for, in such a death there is no grief, nor any bitterness."

May it please your honors, I am privileged in the name of his family to present the portrait of Judge Connor to this Court on which he served with distinction, and to this reborn old commonwealth which his statesmanship helped to awaken to a higher destiny. The portrait is the creation of a gifted artist, Mrs. Mary Arnold Nash, of Chapel Hill. She has transferred to canvas the noble countenance that betokened a noble soul. As succeeding generations look upon it, read his opinions, and contemplate his inspiring career, they will be stimulated by his high emprise and honorable example. Thus he will abide with us to bless the State that loved to do him honor.

REMARKS OF CHIEF JUSTICE STACY, UPON ACCEPTING PORTRAIT OF FORMER ASSOCIATE JUSTICE HENRY GROVES CONNOR, IN THE SUPREME COURT ROOM, 19 FEBRUARY, 1929

The Court is pleased to have this portrait of former *Associate Justice Henry G. Connor,* and it has heard with gratification the thoughtful and discriminating address on his life and character.

His opinions are to be found in nineteen volumes of our published Reports, beginning with the 132d and ending with the 150th. They reveal a quality of mind, peculiarly his own, and a heart which beat in unison with the throbbing impulses of a great State, ever struggling for a fuller and freer life.

He was a living embodiment of the aphorism:

> "There is nothing so kingly as kindness,
> And nothing so royal as truth."

The lives of many have been enriched by the rare charm of his friendship, and in the memory of those who knew him best, the gentleness of his spirit still abides. Strong in action, loyal to his purposes, upright of life, he wrought nobly and well; and the State is immeasurably richer for his having lived and labored in it.

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.