

**ADDRESS**  
**BY A. D. MACLEAN**  
**ON**  
**PRESENTATION OF THE PORTRAIT**  
**OF**  
**STEPHEN CAMBRELENG BRAGAW**  
**TO THE**  
**SUPREME COURT OF NORTH CAROLINA**  
**ON TUESDAY, 1 SEPTEMBER, 1931**

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The presentation to this Court of the portrait of a departed friend and former law partner is attended with sentiments both of satisfaction and of sorrow.

Stephen Cambreleng Bragaw, the second of a family of eight children, was born in the town of Washington, Beaufort County, North Carolina, 22 February, 1868, and died there in his sixty-second year, 8 January, 1930. His father was John Goldsmith Bragaw, a native of Long Island, New York, who came to North Carolina in 1859, and in the War Between the States cast his fortune with his adopted State. In 1864, he married Ann Cambreleng Hoyt, of Washington, descendant of Ann Caldon, a native of Scotland, who married Colonel John Patten, also of Beaufort County and an officer in the Revolutionary War. From this marriage of Ann Caldon and John Patten was descended Churchill Caldon Cambreleng, who removed to New York, became a member of Congress from New York City, was Chairman of the Ways and Means Committee and of the Committee on Foreign Affairs, and in 1840 was appointed Minister Plenipotentiary to Russia. His brother, Stephen Cambreleng, was the maternal uncle for whom Stephen Cambreleng Bragaw was named, and was a distinguished lawyer and jurist of New York City.

The Bragaw family traces its origin in America to Bourgon Bracard, a French Huguenot, who settled on Long Island in 1726, where some of his descendants have since lived in the home built by him. They also were active partisans in the Cause of Independence and attained prominence in the campaigns conducted in that section during the Revolution.

This sketch of Stephen Bragaw's honorable, and even distinguished, ancestry is not out of place here, because it was part of the man himself. Always he took a proper pride in it, and his daily walk and conversation, his contact with his fellow man and the friction inevitable to the

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practice of his profession were tempered by the consciousness of a background and of the blood of gentle folk in his veins. Your Honors, before whose Forum all men are equal in respect of their legal rights, will not take it amiss, therefore, that I have called attention to his gentility, which in his case was both a quality and an ornament. This quality was emphasized also in the place and in the period of his upbringing, but it implies nothing of ease or of wealth, nor any lack of diligence or necessity, as may be understood at once upon recollection of the fact that he was born and lived in a small town, which but a short time before had been nearly destroyed by the besom of war and its well-to-do citizens reduced almost to penury. His parents were economical, industrious people, and, while as a boy he may not always have found working in the garden, caring for the poultry and milking the cows congenial tasks, he certainly was not above them, and to perform them thoroughly was part of his valuable training.

It may be of special interest to those whose acquaintance was limited to his later years to know that as a youth he was unusually strong and virile, fond of all out-of-door sports, particularly baseball and football, and that he was made Captain of the first team at the University of North Carolina to play intercollegiate football. But he was more than an athlete, and early in life developed a love of literature, which was fostered by his home environment, and the private schools of his home town, with a year at Trinity School, Chocowinity, qualified him as an alternate to pass the examinations at Annapolis, although upon failure of the regular appointee his mother objected to a naval career, and consequently he returned to his home and worked in a store, studying at night, until he was able to enter the University, where he remained for three years, but did not graduate because of the necessity of going to work again. At the University, besides going in for athletics, he was a leader in the intellectual and social life of the student body, joined the D. K. E. Fraternity and was one of its outstanding members. At the end of his third year there, he taught school at Pollocksville, Jones County, was a teacher in the New Bern Collegiate Institute from 1889 until the summer of 1891, when in two months and ten days at Chapel Hill he completed the full law course then required and was licensed by this Court to practice law in September, 1891. With twenty-five dollars saved up, he at once began the practice of law in New Bern, and in 1893 was elected its City Attorney. In the same year he was married to Miss Maude Haywood Amyette, of New Bern, then and since one of the State's best known and most charming women, and with her as his helpmeet moved in 1894 to St. Louis, Missouri, as President of the Gilbert Elliott Collection Company, a position tendered

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him as the result of some excellent legal work in New Bern, but which he had to give up because the climate there and overwork had impaired his health, inducing his return to Washington, North Carolina, in 1895, where he located and thereafter continued to reside.

He was not without honor in his own country, serving as Mayor in 1897-8, as City Attorney from 1900 to 1906, inclusive, as County Superintendent of Schools in 1902-3, and as State Senator from the Second Senatorial District in 1904. He was a member of the Episcopal Church and of the Masonic Fraternity, a Democrat in politics and a Trustee of the University. In 1912, Governor W. W. Kitchin appointed him Judge of the Superior Court from the First Judicial District, upon the resignation of Judge George W. Ward, and he was thereafter elected for the full term, but resigned in 1914 on account of his health, and resumed the practice of law in his home town. At different times he had as partners Collin H. Harding and Hallett S. Ward, and upon his resignation from the bench became a member of the firm of Small & McLean, discontinuing that connection several years prior to his death in order that he might devote himself more to associate and consultative employment with other attorneys than to the general practice, as also to conserve his health, which necessitated the closest attention and care by himself and his devoted wife.

So much in outline of Judge Bragaw's life, which little exceeded three score years and was cut off in the fullness of his mental powers, before the light of his glowing intelligence had been dimmed by physical infirmity. He was a student of the law—with him it was always a fresh subject—and he could cite the cases decided by this Court with a greater facility than any lawyer in his District. Thorough preparation was perhaps his outstanding characteristic, so much so that a former partner has said that he was fortunate in having a reasonably slow mind, but Judge Bragaw was much more than a mental plodder and routine practitioner. Not only learned in the law, he was a fine examiner and a brilliant advocate and in the full tide of argument before court and jury he was a master of diction and of eloquence studded with gems of classical allusion and apt quotation, with now and then a humorous sally. Even more, he knew not only what the Court had decided and where to find it, but why and whether it had rightly decided because he was deeply versed in the philosophy of the law, in its origin and development, and its proper application to a given state of facts. It followed, therefore, that in his later years he became a lawyer's lawyer and was frequently consulted or retained with other lawyers in doubtful cases. But any estimate of him as a lawyer is incomplete without reference to his constant courtesy to the court, to his associates and to his

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adversaries, including parties and witnesses, and this courtesy, be it said, was not put on and off like a garment, but was an enduring quality of the man, part of his nature and inheritance, and he never discarded it himself nor failed to esteem it in others. From what has already been said, his fitness for judicial position also becomes apparent, and equipped as he was with smooth, easy manners, broad sympathy for those in distress and an extensive acquaintance with human nature, his term on the bench of the Superior Court was an honor to him and to the profession, and a satisfaction to his family and friends, in which he and they took a just pride, and the incidents of which he liked to recall in after years. While his term was short, it was long enough to justify the impression that he was one of the best balanced and best equipped men who have sat on that bench, and the distinction and experience it added to his learning and capacity led some of his friends to propose that his connection with the University Law School would be helpful to that institution, but this never happened, and he continued in active practice for the remainder of his life.

As a man Judge Bragaw was likable, kindhearted, fond of the amenities, of social contact and intercourse with his friends, devoted, I need hardly say, to his father, who survived his mother by many years, and to his brothers and sister, and reluctant always to leave his own fireside. His marriage was not blessed with children, but to the day of his death he and his wife, who had supplied and tended his wants and whims, were lovers, and this High Court, chiefly occupied with practical concerns, with prosaic cases and often with human nature at its worst, will not fail to understand the relationship that made him "Laddie" to her, nor misjudge the devotion to each other that they often expressed in poetry of tender sentiment. Living by the river which they loved to watch in the evening of their years, she awaits the summons to cross over and join him on the other side, and that due respect may be paid to his memory, she has asked me to present to Your Honors this portrait of an outstanding member of our profession, a learned and well poised judge, a true gentleman.

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REMARKS OF CHIEF JUSTICE STACY, UPON ACCEPTING PORTRAIT  
OF THE LATE STEPHEN CAMBRELENG BRAGAW, IN THE  
SUPREME COURT ROOM, 1 SEPTEMBER, 1931

Stephen C. Bragaw was a "knight without fear and without reproach." No lawyer fought more valiantly than he, and none excelled him in the cultivation of the gentler virtues. Indeed, it may be said of him:

"His life was gentle, and the elements  
So mix'd in him, that Nature might stand up  
And say to all the world, 'This was a man!'"

"No profession," says Mr. Robbins in his *American Advocacy*, "not even that of the doctor or preacher, is as intimate in its relationship with people as that of the lawyer. To the doctor the patient discloses his physical ailments and symptoms, to the preacher the communicant broaches as a general rule only those things that commend him in the eye of heaven, or those sins of his own for which he is in fear of eternal punishment, but to his lawyer he unburdens his whole life, his business secrets and difficulties, his family relationships and quarrels and the skeletons in his closet. To him he often commits the duty of saving his life, of protecting his good name, of safeguarding his property, or regaining for him his liberty. Under such solemn and sacred responsibilities, the profession feels that it owes to the people who thus extend to its members such unparalleled confidence the duty of maintaining the honor and integrity of that profession on a moral plane higher than that of the merchant, trader or mechanic." Similar thoughts were often expressed by Judge Bragaw.

We are fortunate in having this excellent portrait of the distinguished lawyer and judge who so worthily exemplified the ideals of the legal profession. The Marshal will hang it in its appropriate place among his peers as a worthy tribute to one who served well and ably his State and its people.

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ABANDONMENT see Parent and Child.

## ABATEMENT AND REVIVAL.

B Pending Action (Failure to plead pending action is waiver of objection see Pleadings B f 1).

*b Same Subject of Action*

1. Where notes secured by a deed of trust are given as collateral security for another note, and the payee of the note secured by the collateral notes institutes action thereon against the maker and at the same time has the trustee in the deed of trust advertise the land securing the collateral notes, *Held*: an action instituted in another county, by the maker of the collateral notes and others, to restrain the sale of the land and to have the deed of trust canceled upon allegations of payment of the collateral notes is not the same as the action brought solely on the note secured by the collateral notes, and the defendant's plea in abatement in the second action is bad, since a final judgment in the first action would not support a plea of *res judicata* in the second. *Brown v. Polk*, 375.

ABUSE OF PROCESS see Process D.

ACKNOWLEDGMENT see Deeds and Conveyances A f.

## ACTIONS.

A Grounds and Requisites (Husband's right to maintain action in tort against wife see Husband and Wife B d).

*a Subject-matter: Moot Questions*

1. Where action for construction of will presents only moot question the action will be dismissed. *Finley v. Finley*, 1.
2. The Declaratory Judgment Act, chapter 102, Public Laws of 1931, does not extend to a submission of a theoretical question or a mere abstraction, and this proceeding, instituted before the probate of the will to determine whether the mutual will of a husband and wife is revoked by the subsequent marriage of the husband after the wife's death, is dismissed. *Poore v. Poore*, 791.

B Forms of Action (Either summary proceeding or action may be brought on clerk's bond see Principal and Surety C b 1; what actions may be united see Pleadings A a, D b; consolidation of actions by trial court see Trial C c, Criminal Law I f).

*a Legal and Equitable Remedies*

1. Legal and equitable rights and remedies are now determined in one and the same action. Const., Art. IV, sec. 1. *Woodall v. Bank*, 428.

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C Pleadings, Evidence and Trial.

*a Burden of Proof*

1. Where adverse possession is set up as a defense in an action in ejectment such adverse possession must be established by the greater weight of the evidence. *Hayes v. Cotton*, 369.