

ADDRESS
BY JOSEPHUS DANIELS
ON
PRESENTATION OF A PORTRAIT
OF THE LATE
JUDGE ALPHONSO CALHOUN AVERY
ASSOCIATE JUSTICE OF THE SUPREME COURT
OF NORTH CAROLINA
APRIL 11, 1933

I am privileged today to come into this chamber consecrated to Justice to render what to me is a near filial duty. In a very real sense, as to my attitude on some important public questions, I am a son of Alphonso Calhoun Avery. He came into my life in the first years of my editorial work in Raleigh. He honored me with his friendship, counsel and affection which enriched my life until he fell on sleep. In the days when Superior Court judges rode the circuits from Cherokee to Currituck (alas, that statewide rotating was replaced by a hybrid system which denies the most perfect school for training appellate justices) he frequently spent a week-end in Raleigh while holding courts in the counties contiguous to the capital. He was deeply interested in every problem which touched the life of the commonwealth which his forbears had done so much to establish, "some part" of which he could have truly said "I am." Seeing my youthful ambition to be of some service to the State, Judge Avery on those visits and by frequent letters of advice, endowed me with the fruits of a ripe and rare experience born out of a life of dedication to the public weal. Often he guided me in policies for the rebuilding of an ancient commonwealth after the ravages of a war in which he was a true Knight Unafraid, and later a brave member of the Vigilantes in the night of Reconstruction when a price was put upon his head by the minions of Kirk's Army.

Alphonso Calhoun Avery, born on Swan Ponds plantation in Burke County, 11 September, 1835, was the son of Isaac Thomas and Harriet Eloise Erwin Avery.

He graduated at the University of North Carolina in the Class of 1857, standing first in his class. He studied law under *Chief Justice Pearson*.

Reared on Swan Ponds plantation in Burke County by a father who owned a hundred and fifty slaves, he was early inured to labor, for his wise father saw to it that his sons served an apprenticeship between the plow-handles. To the inheritance of robust physical powers, youthful

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toil, lightened by the sports and social joys of rural life in the late fifties, he owed the ability to out-work youthful associates during four score years. One secret, in addition to this physical perfection, of his ability to carry on with vigor for so long a period was his vital interest in whatever touched life and his fellow men. "I am a man and whatever concerns man interests me," is the epitome of his life. As a boy, as a college student, as a soldier, as a politician, as a jurist ever and always he touched elbows with his associates, loved fellowship with his kind, and had an absorbing passion for the rights of man. This dominated all his thinking and all his acts. That consecration for equality ran like a thread through his political career as legislator and comaker of the Constitution of 1875 and in his zeal for sound reforms. It is the warp and woof of his more than five hundred opinions filed while he was a member of this Court. Conspicuous evidence of this was seen in his earnest advocacy of the creation of a regulatory Railroad Commission in years when public service corporations were in politics up to their eyes. Belief in State control grew out of no hostility to corporations, but out of belief that they were the servants and the people were the masters. He was always deeply interested in public improvements. Indeed among his earliest contributions in public life was the originating and securing of a law in the General Assembly of 1866-67, in which he served as State Senator from Burke, Caldwell and McDowell counties (this being the last Legislature before the Reconstruction era), which resulted in the extension of the Western North Carolina Railroad to Asheville. In less than six months after the passage of the Avery Act (chap. 106, Laws of 1866-67), grading was let to construct the road from Morganton to Asheville.

Comradship with the men with whom he served in the war was a vital part of Judge Avery's life. Every man who wore the gray was his brother. And to the end of his life this brotherhood persisted. As an illustration of it, his neighbors will recall that when the plan was projected of erecting a monument on the courthouse square in Morganton in memory of the men of Burke County who had followed Lee, Judge Avery insisted that the name of every soldier who went out from that county should be inscribed upon it. Some of his associates held that there were so many volunteers in the county it was impracticable and also unprecedented to erect a shaft containing so many names. No argument dissuaded him. He maintained that every man who responded to the call in the sixties, if a monument was to be erected at all, should have his name recorded so that his children to the remotest generation when they visited the county seat could read there that when the State called upon her sons, their forbears left the plow and the shop and the office and responded to the call of their country. "Equality in honor as equality in sacrifice," was his ultimatum. There may be other

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monuments like it, but certainly the descendants of the brave men of Burke from the humblest to the highest are commemorated alike on that monument. This insistence upon having the names inscribed was born solely out of Judge Avery's belief that every man having equally consecrated his all and placed his life in jeopardy, should be equally remembered if any monument was to be erected.

Judge Avery was twice married, his first wife being Miss Susan Washington Morrison, daughter of Rev. R. H. Morrison, a distinguished Presbyterian divine, who was first president of Davidson College, and sister of Mrs. Stonewall Jackson and Mrs. D. H. Hill.

Justice Avery was the father of a large and interesting family. He was survived by two children of his first marriage, A. C. Avery, Jr., a member of the Asheville bar, who, as an officer in the Spanish American War, preserved the Avery patriotic devotion to duty, and the late Mrs. Susan Avery McBee. A son by his first marriage, Isaac Erwin Avery, the brilliant City Editor of the *Charlotte Observer*, the author of "Idle Comments," and an alumnus of Duke University, died in 1904.

His second wife, to whom he was married in December, 1889, honors us by her presence today. She was Miss Sara Love Thomas, daughter of Col. W. H. Thomas, long a leading citizen of Western North Carolina, and Sara Love Thomas, granddaughter of Robert Love, the founder of Waynesville. Three children of the second marriage survived: Lenoir T. Avery, officer and overseas veteran of the World War, Gladys Avery, who is now Mrs. Charles W. Tillett, Jr., and the late Edith Avery Noble, who was the first wife of C. S. Noble.

He is survived by the following grandchildren: Susan Brenizer, who became Mrs. Clarence Naff; Elizabeth McBee, who became Mrs. Capus Waynick; Alphonso Avery McBee; Silas McBee; William Johnston Avery; Arnette Hathaway Avery; Thomas Lenoir Avery; Gladys Avery Tillett; Charles Walter Tillett, III; Sara Avery Tillett; Edith Avery Noble; Margaret Noble; Gertrude Noble.

There is something in a name, even if the great poet held otherwise. This is particularly true of the names given to their children by people with deep religious or political convictions. It was characteristic of the Avery family. The first Avery to hold high place in North Carolina was Col. Waightstill Avery, who, after graduation at Princeton, moved from Connecticut to North Carolina in 1769. He was probably led to make this his adopted State by association at Princeton with classmates from this State. Dr. Ephraim Brevard, Adlai Osborne and Rev. Hezekiah Bach. From his arrival here, in every crisis of the State, in peace and in war, an Avery has always made full proof of patriotism and leadership. Waightstill Avery was one of the great men of his time. More of the State Constitution adopted at Halifax was in his hand-

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writing than of any other member of that body. He was a signer of the Mecklenburg Declaration of Independence, was Attorney-General and held many positions of honor and usefulness, and was regarded as one of the ablest lawyers of his day. He owned the most extensive library and was the best classical scholar of his generation in Western North Carolina.

The following incident in Colonel Avery's life is given in "The Averys of Groton" by H. D. L. Sweet and Volume One of "The Groton Avery Clan" by Elroy Avery:

"It is related in Parton's 'Life of Jackson' that when Old Hickory was Young Hickory, just twenty-one years of age, he fought the first duel of his life with Colonel Waitstill Avery, a distinguished member of the bar of North Carolina. Young Jackson had a criminal case before the court at Jonesboro, in which he was deeply interested, Colonel Avery being counsel on the other side. In the course of the trial, Avery was severe in his comments upon some of the legal positions taken by the younger lawyer, and used language which he afterward admitted was too personal and sarcastic.

"On the second morning of the trial, Jackson, acutely mortified by the repetition of the offense, tore a blank leaf from a law book, wrote a challenge upon it, and gave it to his antagonist with his own hands. This challenge, now before us, yellow with its ninety-four years, is the relic to which we refer. We copy from the original:

'August 12, 1788.

SIR When a mans feelings & charector are injured he ought to seek speedy redress: You rec'd a few lines from me yesterday, & undoubtedly you understand me. My charector you have injured; and further you have Insulted me in the presence of a court and a larg audiance I therefore call upon you as a gentleman to giue me satisfaction for the same; and I further call upon you to give me an answer immediately without Equivocation and I hope you can do without dinner untill the business is done; for it is consistant with the charector of a gentleman when he injures a man to make a speedy reparation; therefore I hope you will not fail in meeting me this day from yr. Hbl. st.

Andw. Jackson.'

"Coll. Avery.

"P. S. This Evening after court is adjourned.

"The duel was not fought before dinner, as the impetuous young advocate desired, since Colonel Avery could not immediately 'find a friend.' It occurred just after sunset. Fortunately, neither of the combatants was hit, and they left the ground very good friends."

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As evidencing Waightstill Avery's reputation as a leader in the revolution, Cornwallis caused his office and library to be burned when the British occupied Charlotte. He lived up to the Avery tradition, as revealed in a letter written by his brother Solomon from New England in 1783, in which he said, "Eleven Averys were killed in the fort at Groton and seven wounded. Many Averys have been killed in this county, but there have been no Tories named Avery in these parts."

The name of the original Avery who came to this State was derived from an ancestor who was baptized "Wait-Still-on-the Lord Avery." This was in a generation of Ephraims, Hezekiahs, Josiahs, Ruths, Marys, Elizabeths, Naomis and others from Bible characters. In the Avery family the robust and sturdy qualities, which are the ripe fruit of staunch faith in Calvinism, have long remained.

You can understand the political faith inherited by Judge Avery by recalling that his middle name was Calhoun. His father was an ardent disciple of the South Carolina master of logic. I should like to emphasize the part filial devotion played in the making of Judge Avery's life, a pride that stimulated him to high endeavor to worthily bear a distinguished name. The fact that Waightstill Avery signed the Declaration, that his forbears in peace and war were leaders, did not in his opinion give him any distinction unless he tried to carry on in high public service. He was a Democrat and a Democrat who believed in the Jefferson doctrine of equality, and that merit and service alone entitled a man to recognition. He did not take any stock in inherited prerogatives. His sentiment toward his father and grandfather, and other relatives who had done the State some service, could have been expressed in the following poem:

"I follow a famous father,
His honor is mine to wear—
He gave me a name that was free from shame,
A name he was proud to bear.

"He lived in the morning sunlight
And ranked in the ranks of right,
He was always true to the best he knew,
And the shield that he bore was bright."

Col. Isaac Thomas Avery was a State's Rights Democrat "of the most straitest sect." The right of a sovereign state to secede from the compact was his political creed and John C. Calhoun was his political prophet just as belief in Calvinism was his religious creed and John Calvin was his religious prophet. William Waightstill Avery, the elder son of Col. Isaac T. Avery, and brother of Judge Avery, was long the leader of the stalwart Democracy of Western North Carolina. In 1860 he was chair-

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man of the North Carolina delegation in the Charleston Convention. He was chairman of the Platform Committee of the convention which nominated Breckinridge for President. Upon Lincoln's election he at once urged the secession of the State and was one of the members of the Provisional Congress.

If you admit the premise of Calvin's and Calhoun's teachings, the man has not been born who can answer the advocates of those two doctrines. Nothing but civil war caused acceptance of the doctrine that this is "an indissoluble union of indestructible states."

The Averys made full profert and sacrifice of their belief in the right of a state to withdraw from the Union in putting their all on the altar of their faith. Too old to be accepted as a soldier, Col. Avery saw all his sons enlist in the Confederate Army, saying to them in spirit: "Return with your shield or on it." He died in 1864 at the age of eighty, heartbroken by the supreme sacrifice of two of his sons, who died valiantly battling to establish a Southern Confederacy, and deeply solicitous for the safety of the other two fighting for the principles they had learned from their father. The oldest brother, Col. Waightstill Avery was mortally wounded in repelling an attack of a detachment of Kirk's Army, who had crossed from Tennessee into the mountains of North Carolina. Willoughby, the youngest, lingered for several years after receiving severe wounds. C. Moulton Avery was the first to die on the field of battle, losing his life in the baptism of blood at Spottsylvania Court House. A brief time after, leading his soldiers in the second day's fighting on the fateful field at Gettysburg, Col. Isaac E. Avery fell in the advance upon Cemetery Heights. He led the brigade on horseback, being the only mounted man of the advancing columns until he fell from his horse mortally wounded by a ball which passed through his neck and shoulder. After falling from his horse he took from his pocket a pencil and piece of paper, on which he wrote in indistinct characters with his left hand (his right being paralyzed) the following message:

"Major, tell my father I died with my face to the enemy.

I. E. Avery."

That immortal scrap of paper with its faded inscription has been preserved in the State Museum. It is worthy to rank with the historic words of Nelson and other renowned heroes. The other son, Alphonso Calhoun Avery, a twin in courage of the gallant casualty at Gettysburg, served with distinction, being first lieutenant of Company E, Sixth N. C. Regiment, of which his brother, Isaac E. was captain. He was in the bloody battle in Manassas, arriving on the field at a crisis and was given credit for being partly instrumental in turning defeat into

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victory. Both brothers were complimented for their excellent bearing on the field of battle. When his brother was promoted to the colonelcy of the regiment, Judge Avery was made captain. A short time thereafter he was commissioned a major and adjutant general of Gen. D. H. Hill's Army of West Virginia. Upon Hill's transfer to Chattanooga, his adjutant general went to the West, serving on the staff of Breckinridge, Hindeman and Hood, being with Hood at the retreat from Dalton to the Chattahoochee River. Toward the end of the war, after the death of his brother, he was commissioned as Colonel and given the command of a battalion in Western North Carolina. In April, 1865, shortly before Johnston's surrender, he was captured by Gen. Stoneman and was sent as a prisoner of war to Camp Chase and Johnson Island, being released in August of that year.

Shortly after being released from prison he and his fellow-soldiers were confronted with a situation where neither life nor property was safe. Government was unable to give protection. In North Carolina, as in California in the days of the Vigilantes, it was necessary for patriotic citizens to band themselves together for the protection of womanhood and to prevent the destruction of the civilization which had been builded in the South through the long years. In that crisis—really a revolutionary crisis—new conditions demanded new duties. Led by the late Col. W. L. Sanders, long Secretary of State, Frederick N. Strudwick, Alphonso C. Avery and other kindred spirits, there came into being in this State an organization known as the Ku Klux Klan. Justice Avery was the chief spirit in this organization in Western North Carolina. Like other able men, who were associated with him in the State, he utilized this outside-the-law organization for protection in a day when they could not secure it from government. The excesses committed elsewhere by this organization were contrary to the purpose and spirit of its organizers. When government by the people was restored, these distinguished patriots, recognizing that they had taken the execution of the law into their own hands only as a necessity required in a grave extremity, disbanded the organization. The true story of that period of the Vigilantes in North Carolina and other Southern states, known as members of the Ku Klux Klan, in days when terror stalked abroad is yet to be fully told. That body in the late sixties and early seventies was as unlike the spurious attempt to revive the K. K. K. in other years as real chivalry is unlike pseudo chivalry. When it is written, the courage of brave men in stress will constitute a new chapter of devotion.

The spirit of the men who rode by night and put their lives in jeopardy in that distressful period bound them together with hooks of steel. Many years afterwards in a contest for nomination for high office, I expressed surprise to Judge Avery that he was supporting a

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certain man for office. I said to him, "This man is not standing for the policies that we believe in." He took me off to one side and said,

"My young friend, there are some partnerships in life born under conditions worse than war that can never be dissolved. I saw that man in the early seventies venture and dare everything for what was then essential to the preservation of society. I sensed then the stuff of which he is made. He may not agree with us on this policy, but he is a man who would die rather than fail to do his patriotic duty. Moreover, even if I have to risk the loss of this policy, neither height nor depth nor any other creature could separate me from him or him from me. We were bound together in a compact in which we knew it might be sealed with our blood."

The most important decision, so far as placing property which had long enjoyed exemption from taxation on the taxbooks, rendered by the Supreme Court in fifty years was when this Court affirmed the decision of Judge Henry G. Connor, then on the Superior Court bench, in the *Allsbrook case*. By that decision and concurrent legislation the property of the Atlantic Coast Line was valued for taxation at \$56,195,691. In addition to paying the ad valorem tax on that large sum to the counties, municipalities and school districts through which that road runs, it has in recent years paid into the State Treasury annually in franchise tax sums averaging a million and a third dollars. When originally chartered, in order to encourage the construction of a railroad through the heart of Eastern North Carolina, the Legislature granted full exemption from taxation. This was in 1833 and it was not until the early nineties and the great decision of this Court rendered by Associate Justice Clark—later Chief Justice—affirming the decision of Judge Connor that this exemption from taxation came to an end. All victories over privilege have come through long conflict and travail. It was so in this matter. When I had the honor to make the address upon the occasion of the presentation of the portrait of Justice Connor to adorn these walls, I undertook to tell the story of the inception and progress of legislation and litigation which reversed the Supreme Court of the United States, culminating in Justice Connor's decision in the *Allsbrook case* and its approval by this appellate body.

While credit is due to many patriotic legislators and other officials and jurists for the epoch-making end of the discrimination, the large part played by Justice Avery has never been recorded. It should be made a part of the permanent records of the commonwealth and of this Court.

During the days of agitation for a reopening of the question of exemption of taxation upon that railroad, it may be truly said that most lawyers regarded the decision of the Supreme Court of the United States upholding exemption as final. Not so Justice Avery. His was the

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type of mind that was never closed. "*Stare decisis*" was not ultimate with him. Justice was his passion and hostility to privilege was in the marrow of his faith and practice. The enactment of chapter 544 of the Laws of North Carolina of 1891, which repealed all authority for the connection of the line of the Wilmington and Weldon Railroad with the Virginia line between Black Water and the crossing of the Clarks-ville road over the State line was essential in the contest to place property of the railroad on the taxbooks. The bill which ordered this property listed for the next and subsequent years and opened the door for the taxation of its franchise was written by *Justice Avery*. It was introduced in the House by the late Alfred D. Jones of Wake County, who was afterwards in the Cleveland administration Consul General at Shanghai. It was enacted after one of the bitterest fights in the annals of the General Assembly.

This was only a part of *Justice Avery's* activity in overturning a precedent of a generation, but his participation was never known to the public or appreciated by it. After the case was argued before the Supreme Court, and ably argued on both sides, the Court held its decision under advisement for a period. As the session drew to its close *Justice Avery* feared that unless the decision was made at that session of the Court, by probable changes in personnel of this body, the fight might be lost. *Justice Davis*, a distinguished member of this Court, was nearing the close of an honorable career. He passed away shortly after he had given the casting vote that upheld the famous *Allsbrook case*. I shall never forget the deep anxiety of *Justice Avery* in those days. The Court was divided, *Chief Justice Merrimon* believing that the decision of the Supreme Court of the United States was final. *Associate Justice Shepherd* wished the case to go over until the next term so he could give it a more thorough consideration. *Justices Avery, Clark* and *Davis* believed that the decision of the lower court should be upheld, but *Justice Davis* was ill and for weeks he could attend no conferences of the Court. His last official act was when *Justice Avery* pointed out to him that unless the decision was made at that term of Court the cause might be lost. *Judge Davis* decided even at the risk of his life to act. Accompanied by *Justice Avery* and a nurse, he came to the last conference of this Court he was permitted to attend. Clear of mind but weak of body, when the roll was called in this tribunal, *Avery, Clark* and *Davis* voted for affirmation and exemption of railroads from taxation came to an end in North Carolina. But for the zeal, persistence and earnestness of *Justice Avery* a different ending might have come of that long litigation.

In his eight years upon the Supreme Court Bench, *Judge Avery* filed more than five hundred opinions. They are found in the Supreme Court

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Reports from the 102nd to the 119th. While these opinions run the whole gamut of the law, civil and criminal, he apparently paid particular attention to four subjects: (a) the homestead, (b) ejectment and boundaries, (c) fraud and fraudulent conveyances, (d) insurance.

He brought to the discussion of these four subjects a wealth of legal learning, and all of his opinions have a marked clarity of diction. In all of his opinions he speaks "as one who had authority, and not as the scribes." The value of his legal pronouncements is shown by the number of times that his opinions are cited in subsequent Reports with the approval of his successors on the Supreme Court Bench.

In many of his opinions Justice Avery discussed and decided the quantum of proof necessary to establish various pertinent facts. An instance of this is *Harding v. Long*, 103 N. C., 1, in which he distinguishes between the quantum of proof necessary: (a) to correct a deed on the ground of mistake, (b) to establish the fact that a deed absolute on its face was intended as a mortgage, and (c) to establish a resulting trust arising in a verbal agreement to buy for another; in which three cases he held that the proof offered must be "clear, strong, and convincing," as distinguished from an action to set aside an instrument for fraud in procuring its execution, in which last mentioned case he held that it only required that proof "to the satisfaction of the jury" be adduced. The decision in this case is cited and approved in twenty-two subsequent decisions of our Supreme Court.

His decisions on fraud and fraudulent conveyances were particularly clear and convincing, and are still studied and relied upon both by bench and bar. *Nixon v. McKinney*, 105 N. C., 23; *Bobbitt v. Rodwell*, 105 N. C., 226, and *Goldberg v. Cohen*, 119 N. C., 59, are among the many opinions he filed which illuminate the question of fraud and fraudulent conveyances he therein discussed and decided.

Possibly no judge advanced from the Superior to the Supreme Court Bench was better versed in the law of the "action of ejectment," "color of title," "adverse possession," "boundaries and surveys," and the "construction of deeds and conveyances." He was at home as well in deciding upon riparian rights on the sounds and rivers of the coastal regions as he was on the boundaries and surveys in the mountain coves. *Ruffin v. Overby*, 105 N. C., 78; *Gilchrist v. Midland*, 108 N. C., 705; *Wool v. Edenton*, 115 N. C., 10; and *Stack v. Pepper*, 119 N. C., 434, are cases illustrating the learning and clarity of expression which he showed in his opinions on these subjects.

While not given to any large extent to filing dissenting opinions, he had only been on the Supreme Court Bench a few months before he filed a strong dissenting opinion of about fifteen pages in *Jones v. Britton*, 102 N. C., 166, in which the question at issue was whether the owner of a homestead could be enjoined from selling merchantable

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timber from the homestead lands at the instance of a creditor holding a docketed judgment. In this case the majority opinion was that an injunction would lie, while *Justice Avery* held that the homesteader had the right to sell the merchantable timber.

Another very interesting dissenting opinion was filed by *Justice Avery* in *Mattie M. Tate v. City of Greensboro*, 114 N. C., 392, in which the plaintiff sued the city of Greensboro for damages for destroying the three oak trees which stood on the sidewalk in front of her premises and shaded her lawn. The majority opinion filed by *Justice Burwell* held that the city authorities had the right to remove the trees and that the plaintiff could not recover; while *Justice Avery* held that the abutting landowner had property rights in the trees in front of her premises and that the city had no right to remove them unless in fact they obstructed the free use of the street or sidewalk. There runs through his dissenting opinion (in which *Justice McRae* concurs) a sense of outrage that these fine oaks were slaughtered at the whim of a street committee. *Justice Avery* was a great tree lover and would have agreed heartily with Joyce Kilmer's poem:

"I think that I shall never see
A poem as lovely as a tree.
Poems are made by fools like me,
But only God can make a tree."

In *Bresee v. Stanly*, 119 N. C., 278, in which *Judge Avery* held that the promise of one who, while an infant, had contracted a debt, to pay it after reaching his majority, must be unconditional and express, to amount to a binding ratification; he quotes as an illustration the note given by John Huggins to James James in Iredell County, as follows:

"I, John Huggins, agree to pay James James, one hundred and fifty dollars, *whenever convenient*; but it is understood that *Huggins is not to be pushed*."

Justice Avery loved his work on the Supreme Court Bench. He thoroughly enjoyed the intimate relations he held with his associates and the lawyers appearing before the Court, and for many of them he often spoke in strong terms of affection. He was a loyal friend and was always particularly kind and helpful to the younger members of the bar.

After his retirement from the Bench he taught a law class in Morganton and engaged in a large practice in the courts of Western North Carolina. Age did not dim his remarkable intellect; but the passing years seemed to mellow and sweeten his life, and he passed into

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the shadow with the love, admiration, and veneration of all who knew him. He died as he had lived, a devoted member and loyal ruling elder in the Presbyterian church.

The truest summation of the life and character of Alphonso Calhoun Avery is found in his own words depicting the career of another illustrious son of the commonwealth. It is in these words:

“Brave as a lion in battle, firm as a rock in the councils of the State or on the Supreme Court Bench; to his family he was as gentle, as sympathetic, as tender as a woman. Before his God, he was as humble as a little child.”

REMARKS OF CHIEF JUSTICE STACY, UPON ACCEPTING PORTRAIT
OF THE LATE ASSOCIATE JUSTICE ALPHONZO C. AVERY,
IN THE SUPREME COURT ROOM, 11 APRIL, 1933

The Supreme Court of North Carolina was increased from three to five members by the constitutional amendment of 1888, and Hon. James E. Shepherd from the eastern part of the State and Hon. Alphonso C. Avery from the western section were the first to fill these new positions. It is a matter of common knowledge that two strong and virile personalities were thus added to the Court.

Justice Avery, who was a gallant Confederate soldier, had also served in the State Senate, as a member of the Constitutional Convention of 1875, as a Presidential Elector, and as a judge of the Superior Court, before being elected to the Supreme Court. His term here was for eight years, and his opinions, always pithy and vibrant with the life of his times, are to be found in nineteen volumes of our Reports, beginning with the 102nd and ending with the 119th. Regardless of the subject, whenever and wherever he wrote, the lawyer delights to read.

The Court is pleased to have his portrait look down upon us in this chamber, so that we, and those to come after us, may be inspired by his countenance as well as by his written word.

The Marshal will see that it is hung in its appropriate place, and these proceedings will be published in the forthcoming volume of our Reports.