

ADDRESS
BY JUNIUS PARKER, Esq.
ON
PRESENTATION OF A PORTRAIT
OF THE LATE
WILLIAMSON WHITEHEAD FULLER
TO THE
SUPREME COURT OF NORTH CAROLINA
BY HIS FAMILY
10 DECEMBER, 1935

May it please Your Honors: I have been asked by Mrs. Fuller, her son and daughters, to speak for them in presenting to the Court this excellent portrait of their husband and father, W. W. FULLER, Esq. They hope that it will take its place here among the portraits of North Carolina lawyers who have aided this Court in attaining and maintaining its high position among the appellate courts of America. It is fitting and in accord with precedents that, accompanying the portrait, there should be an attempt to characterize and appraise the man and his life.

WILLIAMSON WHITEHEAD FULLER was born on August 28, 1858, in Fayetteville, North Carolina, the son of Thomas C. Fuller and Caroline Douglas Fuller—born Whitehead. His academic education was at Little River Academy, then a school of high repute near Fayetteville, the Horner and Graves Academy, then a notable school at Hillsboro, and the University of Virginia. He read law at the law school of Judge Dick and Judge Dillard at Greensboro, and was admitted to the bar at the January Term, 1880, of this Court. He began the practice of the law at Raleigh in association with Merrimon & Fuller, a firm then composed of Judge Augustus S. Merrimon and Judge (then Colonel) Thomas C. Fuller, which had succeeded, during 1879, Merrimon, Fuller & Ashe, a firm of which Capt. Samuel A. Ashe was also a member. Early in 1881 he moved to Durham, and for a short while practiced law there in association with W. S. Roulhac, Esq. Following the death of Mr. Roulhac he practiced law in Durham without a partner until in 1889 he formed a partnership with his brother, Frank L. Fuller, Esq., which continued until 1895. He moved then to New York, and, until his retirement in 1912, he practiced law there. In 1880 he married Annie M. Staples, of

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Greensboro, and they had six children: Thomas Staples Fuller, a member of the bar of this Court and now a practicing lawyer of New York, Janet Douglas, Margaret Hereford, Caroline Whitehead, Annie Norman, and Dorothy. One of these, Annie Norman, who had become Mrs. Drury, died in 1917, but Mrs. Fuller and all the other children survive. From his retirement in 1912, Mr. Fuller lived at the country home he had built at Briarcliff Manor, near New York, and on August 23, 1934, he departed this life. He never held nor sought public office. • During his residence in New York he was at one time or another a trustee of the Endowment Fund of the University of Virginia, President of the New York Southern Society, President of the North Carolina Society in New York, and President of the New York University of Virginia Alumni Society.

The foregoing is a statement of what are usually deemed material biographic facts, but short and simple as the statement is, the life and the personality of Mr. Fuller abounded in interest and charm. We who knew him well doubt whether we shall look upon his like again.

In our estimate of any man, emphasis may conceivably be placed on one or more of three aspects: What he has, what he does, and what he is. I leave out of consideration the first of these—although, subconsciously at least, we are prone to think that accumulation of wealth is a sort of measure of success in life—because it certainly was not in the gamut of his ambition or scheme of life. It is the other two aspects that are to be considered in attempting to characterize him: What did he do? What manner of man was he? These two aspects undoubtedly are related to each other: What a man is—in mind, character, and personality—is above all things influential in conditioning and limiting his activities and achievements. It is true, also, that the activities of a man have influence in the development, and so the final quality, of his mind, character, and personality. Notwithstanding these influences and interrelations, there is a distinction between what a man does and what he is, so that, occasionally at least, we meet men whose achievements have been indubitably notable but whose personal qualities are not significant; on the other hand, we meet men whose achievements have not been notable, but whose very being is a delight and benediction to those with whom they come in contact.

In both of these aspects Mr. Fuller's life was engaging and distinguished. It was a life, too, that to an unusual degree may be inspected in these two aspects separately, because of its sharp division between a period of activity and a period of retirement: From 1880 to 1912 he lived a life in which personality and its qualities were important, but which was primarily activity and achievement. From 1912 to 1934 his activities, principally friendly and benevolent, were worth while to a

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great many people, but he was interesting, primarily and principally, because of what he was and not because of what he did.

Of his period of activity, let us look first at his professional achievements in North Carolina. He came to the bar before he was twenty-two years old. He moved to Durham almost precisely contemporaneously with the formation of Durham County. He left Durham and North Carolina before he was thirty-seven years old. At that early age he undoubtedly had achieved the most lucrative practice in North Carolina. He undoubtedly was accounted by the judges and the bar of the State as one of the half dozen of its best equipped and ablest practitioners. He was not a specialist, but covered the whole field of law as practiced in North Carolina. Members of the North Carolina bar then achieved, and perhaps yet achieve, their general reputations principally in trial work. In any trial—whether the issues of fact had to do with the guilt or innocence of one accused of a petty crime, or whether the issues were so pervaded and affected by equitable considerations, or so involved, that in most states they would be tried by a chancellor—he was without a superior in the courts in which he practiced, and to those of us who had to contend with him he seemed without a rival. His ability in arguments addressed to a trial judge or to an appellate court was as remarkable as his ability before a jury. As would best serve his cause, he was terse and homely, but always urbane and gracious, or scholarly and philosophic, but always practical and persuasive. In his office—in advising with respect to, and operating the legal machinery of, a business matter; in the administration of estates; drafting contracts; taking care of legal details incident to business misadventure—he was as efficient as he was in the trial of causes or in his arguments in appellate courts. His practice extended beyond Durham County, not because he sought its extension, and not because there were days of idleness in Durham, but because his efficiency became notable and known beyond the borders of his own county. He was at home and distinguished in every court, state and federal, to which a North Carolina lawyer goes. He was at home as well, practical, wise and helpful, in every sort of conference in which a North Carolina lawyer participates. I think he never tried a case in admiralty, and while he appeared in at least one patent case, he would have resisted the suggestion that he was a patent lawyer. With these two exceptions (and they are not within the activities of the general practitioner anywhere) he was a master in all the activities of a North Carolina lawyer—eminent if not preëminent in every one.

In 1890 Mr. Fuller was counsel in Durham of W. Duke Sons & Company, large and prosperous manufacturers of tobacco and cigarettes. It was in that capacity that he, in that year, coöperated in the organiza-

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tion of The American Tobacco Company. Each of the five manufacturers who participated in that organization was represented by his own counsel. Mr. James B. Duke, by virtue of his genius in business and organization, became the head of The American Tobacco Company. It was Mr. Fuller, then a little over thirty, and not one of the other and more conspicuous lawyers who had been active in the organization of the company, who was called on from time to time to advise Mr. Duke and his associates in the early activities of the great industrial enterprise they had launched. In 1895 these calls had become so frequent that he was asked, and consented, to move his residence to New York City. From that time until his retirement in 1912 he devoted himself to the service of The American Tobacco Company. The corporations that were his clients became numerous, and they existed under the laws of several states and several foreign countries, and they did business in every state and nearly every foreign country. Their business activities were of various kinds. But they were all connected in some way with The American Tobacco Company.

It is a mistake to believe that a legal question is interesting only in proportion to the amount of money or property involved. Whether it concerns common law, equity, commercial law, or practice, the litigation upon whose outcome there depends only a trifling sum may engage the ability and interest of the real lawyer as completely as if there were millions at stake. The trend of jurisprudence may be influenced, too, by small as well as by large cases—if you measure the case by the amount at issue. Reviewing Mr. Fuller's professional life in North Carolina and comparing it with his professional life in New York, I realize that in New York he was engaged in larger matters—though the North Carolina lawyer has in hand large matters, too. But I am not sure which life was the more interesting or significant from the lawyer's standpoint. In New York questions of inheritance, descent, and distribution no longer engaged him. He had litigated cases, but matters of practice were left by him to associates more familiar than he with the practice in their particular courts. Real estate law, with all the fascinating common law learning that is a part of it, was not for him. He had little experience in New York with the ordinary phases of commercial law—the law of commercial paper, of checks, and bills-of-lading. Litigation involving the construction of contracts might have been, but were not, within his activity—he drew or participated in drafting many and complex contracts, but it is a tribute to him that, so far as I recall, no resort to a court was ever made to construe even one of them.

The practice of law by Mr. Fuller in New York, though, was not without intense interest from the professional standpoint: A temporary but widespread and vehement objection to the consumption of cigarettes,

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which found expression in statutes passed in several states to prohibit their sale, carried him into many courts throughout the country in cases that involved the constitutional boundary between the police power of the state and the exclusive power of the federal government to regulate interstate commerce. Litigation participated in by him helped to clarify the jurisprudence, particularly of New Jersey, in the matter of corporate reorganization. He had to give consideration to important and difficult questions of taxation, state and federal. The enactment of the Federal Anti-Trust Law was substantially contemporaneous with the formation of The American Tobacco Company, and he watched, and was a part of, the whole interesting development of the law on the subject of intercorporate relationship and industrial monopoly from the *Knight case*, in which the Court held that manufacturing enterprises were not within the valid operation of the Federal Anti-Trust Law at all, until and including the determination by the Court that the American Tobacco combination itself must be dissolved. This outcome, it should be added, was not because of any transaction which Mr. Fuller had advised, nor, for that matter, against which he had advised, but resulted from the creation and application by the Court of the famous and perhaps wholesome "rule of reason"—a rule of construction that makes a statute, and a penal statute at that, very like a constantly developing principle of equity jurisprudence, and condemns a result reached over a period of years if the Court concludes, as of the time of its judgment, that such result is within the ban of the legislative intent. Following that decision, and as the last of his professional activities, he cheerfully, courageously, and with high sincerity of purpose, coöperated with other counsel, officers of the companies affected, the Attorney-General of the United States, and the United States Circuit Judges in New York, "to bring about a condition in harmony with the law" with the smallest possible injury to thousands of security-holders. Besides all these activities, purely professional, during the years of his active life in New York, he rendered constant day by day service as counsel and adviser of his client and its officers and employees, where considerations of law, of business, of policy, and of propriety, were all involved. In New York he had all the duties of the general counsel of a great enterprise, and was eminent in the discharge of every one of them.

When we turn from Mr. Fuller's achievements to the qualities and mode of life that made these achievements possible, we naturally think first of his genesis, the qualities of his stock. His maternal grandfather was Williamson Whitehead, for whom he was named. His maternal grandmother, Janet Douglas Whitehead, was born Eccles. Williamson Whitehead was a successful and highly respected merchant in Fayetteville. The Whitehead family, though, and the Eccles family, have not

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many kin in North Carolina or in America. They were, not long before Mr. Fuller's generation, a part of the large and fairly long-continued Scotch immigration that made the Cape Fear section of North Carolina a Southern Nova Scotia. Through a paternal ancestor, Bartholomew Fuller, he was a second cousin of Edwin W. Fuller, whose "Sea Gift" and "Angel in the Cloud" were, in fiction and poetry, respectively, North Carolina classics in the last decades of the nineteenth century. Through the same ancestor he was a second cousin of Patrick Henry Winston, Sr., and so was of kin to the Winstons of his own generation, who have achieved so much in law, letters and scholarship. Through his grandmother, born Robateau, he was a second cousin of Mrs. Allison F. Page, and so was of kin to the Pages of his own generation, distinguished for their business achievements and public service. Through his great-grandmother, born Cooke, he was a third cousin of Judge Charles M. Cooke, a finely typical North Carolina lawyer whose memory still abides. In his lineal ancestry there seem to have been no lawyers until the generation immediately preceding his own. His father, Thomas C. Fuller, was notable in every branch of the law, but was primarily an effective and eloquent advocate. An uncle, Bartholomew Fuller, of less general fame, was esteemed by all who knew him as a sound and cultured lawyer. In his own generation the inheritance that urged him to, and fitted him for, the practice of the law, found expression in his two brothers, capable and eminent lawyers, and is carried on worthily in the generation that has followed him.

The qualities of character and mind that were in his blood showed constantly in him and his life. They were innate in him and were developed by the life he lived. Integrity and a keen sense of right and wrong were his by inheritance and, while integrity is perhaps neither enhanced nor abated by one's career, I verily believe that a discriminating and just sense of the difference between right and wrong—the difference between propriety of conduct and impropriety—is developed and refined in the proper practice of the law to a greater extent than in the pursuit of any other profession or vocation. A gift for lucid exposition and persuasive utterance was his by nature, and that, too, was increased by his culture and his activities. He had always personal charm and distinction, and, akin to them, the endowment that is very real, though it baffles adequate definition or description, that we call "personal magnetism." This last is a quality that standing alone gives no assurance of a successful life, but when combined with character and high mentality adds enormously to the effectiveness of those two basic qualities. Even strangers were drawn to him and, as with the magnet and metal filings, the closer the approach the greater the drawing-power.

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In his professional life there was undoubtedly a combination of good fortune with his own energy and capacity. His father had been consulting counsel for some of the large business enterprises in Durham, and so he was introduced without wearisome waiting into the practice of the law—by no means lucrative at first, but sufficient in extent to give opportunity for industry and energy. His marriage was early and fortunate, and his home life was happy and restful. He was in Durham—first when it was a village, then a town, and before he left it a city—and it was always throbbing with life and growth. His friend and client, James B. Duke, was a colossus in business, and induced him to a larger field of action. All this was good fortune, but it might all, but for efforts of his own, have been of no avail. Even in his young days he sowed no wild oats—and the sowing of wild oats, to say nothing of their reaping, takes toll of time and energy. He was seriously bent, so long as he was active at all, on the business of life, and even more seriously bent on serving every client—however large and however small the matter involved—to the best of his great ability. In this service he spent himself without stint and without economy.

These were the characteristics—inherent qualities and habits of life—that made the man as he seemed to be to those who knew him in the years of his achievement.

Early in 1912 Mr. Fuller retired from all professional activity. From then until the end, more than twenty-two years, he lived the life of a cultivated gentleman at his beautiful home overlooking the Hudson. His visits to New York City were not numerous, because, much as he enjoyed his fellow men, or some of them, he found the city irksome. He enjoyed his visits to North Carolina because he loved its very soil, but even here he loved best the places where the soil is visible. He lost none of the personal qualities that characterized his years of activity, and perhaps gained no new qualities—but there was a change of emphasis. Clarity of mind remained, but sentiment was permitted a larger place in his thought and his life than in the years that were past. A whimsical humor that had been held in check was permitted its full play, to the delight of those who had the double advantage of his friendship and his companionship. A talent which had always been a significant part of him, the talent for friendship, became positive genius. During the years of his activity he had enjoyed good books, and in the years of retirement he gave longer hours to that indulgence. He came to know and appreciate pictures and sculpture. Most of all, he loved the loveliness of natural things—flowers and trees, the flow of the majestic river and the palisades beyond, the colorful pageant of the dying woods that we call Autumn, and the recurring mystery of the resurrection that we call Spring. The gift for rhyme and rhythm that was conspicuous

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in his cousin, Edwin W. Fuller, was his, too, as he discovered in his days of leisure. He used it, though, only for the pleasure it gave himself and his family and intimate friends, and made it the vehicle for the expression of his devotion to his friends, his loyalty to institutions—the Presbyterian Church, for instance—and his joy in the beauties of the natural world.

I must dwell a moment more on his rare gift for friendship. I do not mean that he was the friend of *man*—he was not especially interested in man in the abstract. Nor do I mean that he was the friend of all men—indeed, while he tried to be just in his judgments, there were some men he did not like at all. His friends, though, he would think for and work for and suffer for with all his mind and heart. And as he gave his own affection, so he won and held the affection of others. A diverse company come to the mind of one who knew him and his friendships: There were governors and senators, and those who claimed to be only politicians. There were college presidents and poets and sculptors and men of real learning and men of only quaint and curious lore. There were captains of industry and men of inherited wealth who had never been in the market-place. There were lawyers and judges—some of them cultured and able and some whose culture and ability only his fond and partial eye could see. There were plain and unlearned, but genuine and sterling, folk. There was the colored man in Fayetteville who, when he came to make his will, thought of “Mr. Willie” as his wisest and truest friend. There was the colored man in Durham who, long after Mr. Fuller left Durham, was the proud possessor of clothes given him by “Mr. Willie,” and who when accused of bootlegging, felt an assurance, justified by the event, that no jury in Durham County “was gwine to send Mr. Willie Fuller’s coat to jail.” I know not what test admitted one into the circle of his friends. But those who were in that circle were the better, and by much the happier, for being there.

The long restful afternoon and evening of Mr. Fuller’s life—with its share of serene, sunlit hours and its share of clouds—ended, so far as it was of this world, in the sunset of August 23, 1934. But the glow of that life lasts far beyond the setting of the sun. Not for many a year will his face and figure and radiant personality go from the memory of them that loved him, nor will the tradition of him and his deeds and words go from them who from their fathers know of him. “The days of the life of a man may be numbered, . . . and his name shall be perpetual.”

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**REMARKS OF CHIEF JUSTICE STACY, UPON ACCEPTING PORTRAIT
OF WILLIAMSON WHITEHEAD FULLER, IN THE SUPREME
COURT ROOM, 10 DECEMBER, 1935.**

W. W. FULLER, who returns to us in remembrance today, was a distinguished member of a family in which legal ability has long been a notable trait. Endowed with unusual native intelligence, educated in the best schools of his day, brilliantly successful in his profession, he steadfastly adhered throughout a long and useful life to the fundamentals. He kept himself firmly rooted in the soil. He put first things first.

The changing scenes of a rapidly developing industrial system forced him to move to the metropolis of the Nation. There he acquitted himself as a lawyer with honor and distinction, but his noble spirit never changed. He was the same "Mr. Willie" to the humble Negro servant who had known him in his youth. He retained his devotion to the abiding institutions of his native heath. He still delighted to return to the ancestral home in the spring to see the wistaria in bloom. With a brilliant career at the bar behind him, he returned to the farm, there to enrich his great soul at Nature's fountain. He was indeed a part of all that he had known. All nature interested him. No man was so humble as not to feel a comradeship for him, none so high in power and prestige as not to respect his ability and admire his character.

The out-of-doors refreshed his soul continually. He was fully and keenly alive. He had poise, dignity, urbanity, and prestige, for he was a master in all that he undertook to carry out, but there was nothing of pomposity in his make-up. His was a great inheritance, the best that the South could offer; he lived in days that sorely tried the traditions of an age materially crushed by war; there was great temptation to forsake the old for the new, but while ever alert to the developments of a new day, achieving great success, he remained in spirit an heir of the noblest traditions of the Old South.

We are glad to have this portrait of a distinguished lawyer and a great gentleman. The marshal will hang it in its appropriate place. The fine appreciation of his life and character by his friend and ours will be published in the forthcoming volume of the Reports.