

ADDRESS
BY CAROL D. TALIAFERRO
ON
PRESENTATION OF A PORTRAIT
OF THE LATE
HERIOT CLARKSON
TO THE
SUPREME COURT OF NORTH CAROLINA
NOVEMBER 10, 1942

May it please this Honorable Court:

The family of the late Senior Associate Justice Heriot Clarkson have done me great honor in choosing me to present his portrait to this Court. Certainly they could have chosen no one who had for him a higher admiration or more affectionate regard; nor who owes a greater debt for the example of his great life.

Heriot Clarkson was born on August 21, 1863, in Richland County, South Carolina, to William Clarkson and Margaret Simons Clarkson. For a few years thereafter his family lived in Columbia, South Carolina; but moved to Charlotte, North Carolina, in the year 1873, and Charlotte was thereafter "home" to him. He was descended on both sides from a long line of cultured gentle folk of mixed Scotch and Huguenot blood; and although he exhibited no slightest trace of snobbishness, he was justly proud of his ancestors, intimately acquainted with their history and constantly endeavored to emulate their best qualities.

Judged by modern standards, his formal education was rather brief. After primary school education of the character then in vogue in the South, he entered the Carolina Military Institute, which was then conducted by Col. J. P. Thomas, in the city of Charlotte. However, his family, as was the common lot in our Southland at that time of *post-bellum* disorganization and depression, could not afford to furnish him with higher educational opportunities; nor could Heriot Clarkson, the young boy, have accepted the sacrifice which it would no doubt have entailed upon his parents had he accepted such opportunities. Therefore,

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he proceeded to carve out his own career, and at the age of seventeen he became office boy and, later, law clerk in the Charlotte law offices of Col. Hamilton C. Jones and General Robert D. Johnston. He applied himself with industry, became enamoured of the law, and after three years had saved enough to enter the University of North Carolina Law School on January 4, 1884, graduating therefrom at the head of his class on October 5, 1884. Thus, we see evidenced in his youthful years those qualities of ambition, determination to succeed and loyalty to a task which he exercised so fruitfully in his later years.

Young Lawyer Clarkson was admitted to the bar of this Court on October 7, 1884, and returned to Charlotte, where he immediately engaged in the practice of the law. In 1888, he formed with the late Hon. Charles H. Duls a partnership which continued until the elevation of Judge Duls to the Superior Court in June, 1913. Thereupon, he took your speaker into partnership; and this association continued, changed only by the admission of his son, Francis O. Clarkson, therein upon his return from World War I in 1919, until Justice Clarkson took his seat upon the bench of this Court.

Justice Clarkson was always a very active, industrious and successful practitioner of the law and attracted a clientele of the most varied kind. He was a most able adviser, who always chose the safer course and attempted to spare his clients the vicissitudes and expense of litigation; but once having joined issue with an opponent before a jury, he was magnificently effective and secured a very high percentage of favorable verdicts. This was brought about not only by his knowledge of the law, but also by his industry in the preparation of his causes and the dynamic, straightforward, forceful way in which he presented his cases to the court and the jury.

In 1905, Justice Clarkson was appointed by Governor Charles B. Aycock as Solicitor of the then Twelfth Judicial District, composed of Mecklenburg, Gaston, Lincoln, Cleveland and Cabarrus counties, and served in that office until he voluntarily retired therefrom in 1911. As Solicitor, he won the admiration and respect of all classes and sought courageously to enforce the law against high and low alike. It will be recalled that, during his service as Solicitor, the prohibition question was a burning issue in this State; and although in the campaign, which resulted in the adoption of State-wide prohibition in 1909, Justice Clarkson took a most active and leading role, and no doubt at that time displayed many evidences of extreme partisanship, yet in the performance of his duty as Solicitor to indict and try one accused of violation of the liquor law, he showed the same fairness, humanity and sense of justice that he displayed in the trial of any other defendant. Indeed, he seems to have leaned over backwards in this attitude; because he habit-

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ually refused to excuse jurors whom he knew to be violently opposed to prohibition, taking the position that the trial of the defendant was not a partisan issue, but one of the enforcement of law and justice. This attitude seems to have added to, rather than to have reduced, the number of convictions secured in his court. The fairness, ability, learning and courage with which he performed the duties of Solicitor are attested to by the fact that, during the six years of his service, only one case which he prosecuted was overruled by this high Court. This is a remarkable testimonial; a record no doubt without parallel.

To us of the bench and bar who realize how much energy, study, thought and time it takes to successfully practice law, it is astounding that he still had in reserve sufficient energy and time to take a successful and leading part in so many movements for the public good.

Justice Clarkson was never an ambitious politician for the sake of publicity or purely political honors; to him, politics were merely the means of accomplishing something for the public weal. However, he did take an active part in politics from the latter standpoint, and was a life-long, militant Democrat, serving with distinction in a number of political offices. In 1887, after having practiced law for only three years, he was elected an Alderman and Vice-Mayor of Charlotte and held the same offices for several terms thereafter. He served a number of terms as City Attorney of Charlotte and compiled two official Codes of its ordinances. He was a charter member of the Democratic Club for White Supremacy; and as a member of the Legislature of 1899, he was one of the leaders in the fight for the so-called Grandfather Clause in our Constitution. He always stood for purity of elections, and in 1901 he drew the first Registered Primary Law applicable to Mecklenburg County and the first Australian Secret Ballot Law for the city of Charlotte. Although he was always ready to fight the battles of Democracy, Justice Clarkson, after the adoption of the Prohibition Law in this State, took only such part in politics as is the duty of every loyal citizen, until in 1920 he managed the successful gubernatorial campaign of his friend and our distinguished fellow citizen, the Hon. Cameron Morrison.

Justice Clarkson probably became first well known to the whole State of North Carolina through his early, successful and unceasing fight for prohibition. Although there were so many good causes which appealed to his heart, it may be said that his desire to eradicate the evils of liquor was with him an overwhelming passion. It was in 1892 that, as an Alderman of the city of Charlotte, he cast his first vote against liquor, and from that date forward and until his death he maintained and conscientiously fought for his deep conviction and belief that the misuse of liquor was one of the greatest scourges of our civilization. In that fight, as in no other, he was in truth a partisan; but a partisan without

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bitterness, without hatred; being motivated solely by a determination to remove from the weak the terrible temptation of liquor. We have all heard some professional political prohibitionists sneeringly described as "voting dry" and "drinking wet"; we have all heard men accused of using prohibition for political purposes; but I can state without fear or contradiction by one single voice, that the sincerity of his belief and the purity of his motives on this or any other issue have never been questioned or challenged. In spite of the highly controversial character of the prohibition question and the extreme bitterness of the contests, he always won and retained the confidence and respect of his opponents. As Chairman of the Anti-Saloon League, he conducted the campaign which resulted in the abolition of the saloon in Charlotte in July, 1904. In 1908, as President of the Anti-Saloon League, he managed the campaign as a result of which the State voted for prohibition in North Carolina; and he drafted and helped secure the passage through the succeeding Legislature of the act which implemented this vote of the people. Later, after the adoption of national prohibition, in which he also took an active part, he was chairman of the committee which drew and sponsored what we know as the Turlington Act, adopted in 1923.

But Justice Clarkson's fight for purity in politics and against the evils of liquor were but two of his many strivings for the moral, social and material uplift of his city and State. I venture to set out a partial list, which is astounding in its variety, quality and volume, of his activities and accomplishments:

For a number of years he served as an officer in the State Guard. Beginning in 1888, he served continuously for thirty-five years as a Director of the Charlotte Young Men's Christian Association, ending his service only upon going upon the bench; and in 1935, he was made President of the Interstate Young Men's Christian Associations of the Carolinas and served as such until his death. While a member of the Legislature in 1899, he collaborated with the late Daniel A. Tompkins in founding the Textile School at State College. He drafted and secured passage by the Legislature of the charter of the Society of the Cincinnati and was made a hereditary member thereof. He was one of the promoters and drew the charter of the Charlotte Crittenton Home and was thereafter at all times its active patron and adviser. He was one of the promoters and drew the charter of the Charlotte Carnegie Library. He drew and secured passage of the original Parks and Playgrounds Act for the city of Charlotte, providing therein for accommodations for both races. He was chairman of the committee which in 1905 drafted the Building and Loan Law of this State, and for more than thirty years acted as attorney for one of these associations in Charlotte. He drew and secured passage of the first Drainage Law for Mecklenburg County

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and served for years as attorney and adviser of the Drainage Commission appointed thereunder. He acted for six years as Director of the State Hospital at Morganton. During the first World War, he was Chairman of the Legal Advisory Board under the Draft Act. In 1917, he drew and secured passage of the act authorizing the establishment by counties and cities of reformatories for women, and under that act he secured the establishment of the Mecklenburg Industrial Home. He took a leading part in drafting what we now know as the Municipal Act and the Municipal Finance Act. He was Chairman of the Committee of the Good Roads Association to prepare highway legislation in 1921, and took a leading part in the drafting and subsequent passage of this legislation, services which were recognized by the presentation to him of the pen which signed the bill. He served for years as a member of the North Carolina Historical Commission. He was for many years a very active member of the Board of Trustees of St. Peter's Hospital in Charlotte, probably the first charity hospital established in this State.

On December 10, 1889, he was married to Miss Mary Lloyd Osborne, of Charlotte, a daughter of the late beloved Colonel Edwin A. Osborne, which was, I am sure he felt, the most successful step of his life. This union was blessed with four splendid children, who now survive: my loyal friend and partner, Francis Osborne Clarkson, who is following so valiantly in his father's footsteps, Edwin Osborne Clarkson, of Charlotte, the Reverend Thomas Simons Clarkson, now a chaplain in the United States Army, and Margaret Fullarton Clarkson, now the wife of John Garland Pollard. I believe that Justice Clarkson's home life should be described as ideal; and we can no doubt attribute in large measure the courage, zeal, patience and faith with which he attacked every problem of his life, to the sustaining sympathy and encouragement which he received at his own fireside.

Justice Clarkson was born, baptized and confirmed in the Protestant Episcopal Church, and during all of his life took an active, leading part in the church. At the age of twenty-three, he was elected a Vestryman of St. Peter's Protestant Episcopal Church, in Charlotte, and thereafter served from time to time, and until his duties took him to Raleigh, as Vestryman, Junior Warden and Senior Warden. He took a leading part in building the present St. Peter's Episcopal Church in Charlotte. As a memorial to his father, William Clarkson, who fought so valiantly in the cause of the South, he erected St. Andrew's Chapel, near the city of Charlotte. I have heard him say that every gentleman should attend church at least once every week; but his religion did not stop with its formal observances. It is hard to pick out the predominant element of his character, but it is very certain that charity ranked high among his attributes. His hand was forever stretched out: either to lift the fallen,

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to aid and guide the weak, to assist the struggling, to give a "pat on the back" to the one who overcame his difficulties; or to strike down those whom he thought were imposing upon the helpless and weak.

For himself he set the highest standards: in thought, in speech, in action; and be it said to his glory that he came as near living up to those self-imposed standards as it was humanly possible for him to do. But he never judged another by the standards that he set for himself, being ever ready to forgive the weakness and faults of others and to bear without malice any wrong that was done to him. I well remember that when I entered his office as a callow young lawyer I saw pinned up over his desk, written in his own handwriting on a slip of foolscap paper, this text: "Count that day lost whose low descending sun has seen by thy hand no generous action done." I believe that text epitomized his life and character.

In June, 1923, Justice Clarkson was appointed by Governor Morrison to the seat on the bench of this high Court left vacant by the death of the dearly beloved and respected Justice Platt D. Walker. This was a drastic change in the routine of a life the major portion of which had been spent in an active legal career and as a humanist battling in the political arena for the betterment of mankind; and he was faced with a difficult task in donning the robe of the learned Justice Walker. However, it soon became apparent that Justice Clarkson was destined to become outstanding among those who have so well administered the business of this Court. The bent of his mind was such that he could never have much patience with the refined technicalities of the black letter law; nor could he be frightened by precedents when he was convinced that the precedent was not in accordance with human justice. One who has assiduously read his opinions delivered for this Court, and his opinions dissenting from the majority of the Court, is left with the impression that he first carefully mastered and analyzed all the facts in the case; that he next carefully studied all the legislative enactments and judicial decisions bearing on the questions at issue, and that he then decided in his own mind in the light thereof what was right and just in the ultimate ethical sense, and declared that, so far as he was concerned, to be the law. In writing an opinion, he never forgot that it would probably become a ruling precedent; and that principles of law laid down were of little value unless all of the facts and circumstances of the case were furnished for a proper appraisal of the points of law decided. To my mind, it is impossible to read one of his decisions without fully realizing the whole background of the case, all of the facts involved and the exact principle upon which the case was decided.

Justice Clarkson's first opinion concurred in the decision of the Court upholding the conviction of the defendant in the case of *State v. Steen*,

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185 N. C., at page 776, where he spoke boldly against awarding new trials for harmless or unsubstantial errors. His last opinion was in the case of *State v. Johnson*, 220 N. C., at page 773, in which he took a strong stand for enforcement of law, decency and morals. Between these, his first and last opinions, through thirty-six volumes of our reports, he displayed a courageous and unremitting zeal to preserve the ancient landmarks and foundations of our democratic form of government; to see that no pains were spared to render justice to the underdog, and to be sure that no demagogic appeal resulted in injustice to those in a higher estate. As is pointed out in the resolution adopted by this Court upon Justice Clarkson's death, twelve of his opinions were affirmed, and only one reversed, by the Supreme Court of the United States; and at least forty-seven of his opinions were deemed of sufficient importance, as establishing some new principle of law, to merit publication in *American Law Reports*.

Justice Clarkson's opinion in the case of *Hinton v. State Treasurer*, 193 N. C., 496, upholding the constitutionality of the statute, providing for the sale of State bonds for the purpose of aiding veterans of the World War in acquiring homes, is a fine example of his complete grasp of the law, and at the same time of his realization of the human values involved.

A good instance of the tremendous care which he took in setting forth the facts and the law is his opinion in the case of *Reynolds v. Reynolds*, 208 N. C., 578, wherein he upheld the right of the Superior Court to approve a family settlement under a disputed will, with a view to obviating acrimonious family disputes and litigation. His statement of the facts and his opinion on the law in that case cover some fifty pages and set forth with meticulous care every fact and analyze every decision bearing upon the question.

Another decision typical of Justice Clarkson is his opinion in the case of *Corporation Commission v. Transportation Committee*, 198 N. C., 317, wherein he upheld the order of the Corporation Commission requiring bus lines to provide separate accommodations for white and Negro passengers; but spared no pains to insist that accommodations so separately provided should be equal.

It is unnecessary for me here to discuss in more detail Justice Clarkson's work as a member of this Court. In his opinions printed in the reports of this Court he has left a permanent record of a conscientious, just, able, industrious and inspiring judge; one of which his family, his friends and his State can be justly proud.

Justice Clarkson died at the home of his son in Charlotte on January 27, 1942, after a short illness and while still in harness. His last few active days were spent in his dearly beloved Little Switzerland, his haven

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of refuge and rest. Justice Clarkson never indulged in any sports; he never played any games; he never had any light diversions; he got his chief pleasure in life out of performing well the tasks which came to his hands, out of facing his difficulties with courage and faith, and, above all, from association with his fellowman. His only hobby was Little Switzerland, which was never planned as, nor ever became, a commercial enterprise; but was founded for and still remains a haven of rest and a place of beauty. I cannot help but think that Little Switzerland, his only hobby, was not in the first instance, or ever, primarily for his own pleasure and enjoyment, but rather that he planned it for the pleasure and enjoyment of others.

In recognition and appreciation of Justice Clarkson's character and achievements, the University of North Carolina conferred upon him the honorary degree, Doctor of Laws, in June, 1928, with the following citation:

"Lawyer of distinction with a long record of honorable service at the bar, he has played an important role in the social, civic and religious life of Charlotte and of North Carolina. As champion of education, State-wide prohibition, good roads and internal improvements, he has wrought well and successfully for the general welfare and advancement of this commonwealth. During the past five years he has served with ability and devotion upon the Supreme Court of North Carolina."

Justice Clarkson lived his life courageously, honestly, charitably, chastely, but withal humanly. He would neither have claimed nor accepted any reward or praise for these qualities which he considered the *sine qua non* of a gentleman; but what he did wish to earn, and did deserve and earn in the greatest measure, was the love of his fellowman. I believe he can best be described by the words "a sincere humanist."

The life of Justice Clarkson should prove a comfort and an inspiration to all of us who have survived him and to those yet unborn. In inscribing his epitaph, I think we can paraphrase in reverse Marc Anthony's famous reference to the dead Caesar:

"The good that he did lives after him;
No evil is interred with his bones."

ACCEPTANCE OF CLARKSON PORTRAIT.

REMARKS OF CHIEF JUSTICE STACY, UPON ACCEPTING PORTRAIT
OF THE LATE ASSOCIATE JUSTICE HERIOT CLARKSON, IN
THE SUPREME COURT ROOM, 10 NOVEMBER, 1942.

The Court has heard with interest and appreciation the carefully prepared address of Mr. Carol D. Taliaferro of the Charlotte Bar in delineating the career and services of the late Associate Justice Heriot Clarkson, and in presenting his portrait to be added to those whose likenesses have been preserved to us through the generosity of families and friends, and whose lives and labors reflect credit upon the judiciary of the State. The appraisal is complete within itself. It needs no amplification. The members of the profession all know, from Justice Clarkson's own pen, the contribution he has made to the law of the Commonwealth, as recorded in his opinions in thirty-six volumes of the North Carolina Supreme Court Reports, beginning with the 185th and ending with the 220th. These will endure and carry to later generations a just conception of who he was and what he did while with us.

It has aptly been said that one who serves here really never ceases to be a member of the Court. The sitting members are only a part of that greater Court which participates in the settlement of controversies. The opinions of our predecessors are daily cited as controlling. Their views are to be found in the long row of volumes before us, and they continually play a part in the consideration and decision of causes. The written word abides, but it is powerless to transmit the outer personality of one as seen and known by those among whom he lived and had his being. This can best be done by the art of photography or the painter's brush. In galleries the world over are to be observed the features of those who deserved well of their countrymen.

We welcome the opportunity of receiving this splendid portrait. The Marshal will see that it is assigned to its proper place, and these proceedings will be published in the forthcoming volume of the Reports.