

GEORGE
HUBBARD
BROWN

*Late Associate Justice
of the Supreme Court of
North Carolina*



IN MEMORIAM

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Remarks of Chief Justice Stacy from the Bench, Tuesday, March 17, 1926, Regarding the Death of Former Associate Justice, George H. Brown.

GENTLEMEN of the Bar: Before proceeding with the usual work of the Court, we pause to express the sense of loss and sorrow which has come to us in common with all the people of the State, in the death of Judge George H. Brown, of Washington, N. C., formerly an Associate Justice of this Court. For sixteen years he bore the burden of intense judicial labor as a member of the Supreme Court and his opinions, always forceful and characterized by clearness and aptness of phrase, are to be found in forty-four volumes of our Reports, beginning with the 137th and ending with the 180th. The law of the State has been enriched by his untiring efforts, as both Bench and Bar will readily attest. His ripe learning and massive intellect, logical and orderly in its processes, were diligently employed, over a long period of time, in writing just judgments into the book of the law of a great people. For the profession he served so long and well, his work will stand as his monument. He wrought mightily in his day and has earned a lasting peace.

In recognition of his great work, the Court, when it adjourns today, will take its adjournment out of respect to his memory.

Memorial of Judge George Hubbard Brown,
by Jno. H. Small, delivered before the
North Carolina Bar Association at
Wrightsville Beach, N. C.,
July 1, 1926.

GEORGE HUBBARD BROWN was born in Washington, North Carolina, on May 3rd, 1850, and died in the same town on March 16, 1926.

His heredity and family relationship are associated with the town of Washington and Beaufort County. His parents were Sylvester T. and Elizabeth (Bonner) Brown. His paternal ancestors bore an honorable part in the war of the Revolution, among them Captain George Hubbard, whose name he bore, and General Thomas Holliday. On his maternal side he was descended from James Bonner, the founder of the town of Washington, prior to the Revolution. His grandfather was Richard Bonner, a man of unusual business capacity and who was at the time of his death the wealthiest citizen of Beaufort County. I confess to both an interest and faith in heredity. A distinguished student of psychology wrote that whenever he met or read of a man who had made an unusual impress upon his generation, his first thought was to make inquiry about his mother. More than the father, the sedulous care and devotion of the mother, moulds the character and life of the son. The mother of George H. Brown transmitted to this son her fine intellect, her wisdom, character and courage.

On December 17, 1874, George H. Brown married Laura Ellison Lewis. She was the daughter of Henry A. Ellison and Eliza A. (Tripp). Her father was of English descent, while her mother traced her ancestry to an early French Huguenot settler. Mrs. Brown's forbears were also long associated with

the upbuilding and progress of Washington and Beaufort County prior to the Civil War. They had pride and intelligence and were forceful and influential. Their fine qualities are inherent in Mrs. Brown. Their married life embraced half a century and more. She was a partner in the early struggles of her husband and concededly was a potent factor in his successes and triumphs. Her strength and courage and wisdom lightened the obstacles and pointed the way to further progress. She still survives. May the happy memories of yesterday temper the sorrows of today.

The recital of birth and death may be made of all men. We are born, we live through a shorter or longer series of years, then death. This span of seventy-six years was filled with fruitful activities which may be briefly summarized. His boyhood comprised the period of the War between the States and its cruel aftermath. Poverty was universal, from which his parents did not escape. Educational opportunities were limited, but he was fortunate at the age of 16 in being enrolled at Horner's School then located at Oxford, N. C., which he attended for two years. This marked the end of his scholastic training. During his mature years he often recalled the elder Horner and commended his fine qualifications as a disciplinarian and teacher. He credited this great teacher with having aroused those latent talents of mind which at a later period were illustrated in his distinguished career. Stern necessity impelled him to consider the earning of a livelihood and as a temporary expedient he entered service in a telegraph office and in a brief time learned the art. His quickness of mind and application soon made him an expert and at the age of eighteen he secured a position in New York City where he took rank among the speediest manipulators of the key. During his service in the big city, Thomas A. Edison occupied an adjoining

desk. Their mentality was not unlike and perhaps neither dreamed then of the distinction in diverse lines which came to each.

But biography and life in the metropolis furnished no lasting attraction. Ambition accentuated the yearning for another vocation. Combined with the clicking of the key and the restful repose of sleep, were dreams of professional conquests in the old home state. He returned to Wilson, N. C., about 1870, where his parents then lived and began the study of law between the intervals afforded by his duties as telegraph operator. In 1871 he returned with his parents to his natal home in Washington. Immediately he resumed the study of law under the guidance of James E. Shepherd, who even then was recognized as a diligent student and master of legal principles. Judge Shepherd later married Minnie Brown, a sister of the subject of this sketch. The relation of preceptor and pupil ripened into a sincere friendship which continued during the life of each.

Young Mr. Brown stood his bar examination and received his law license in 1872. The report was current at the time that his answers to the questions propounded by the Court were concise and accurate, indicating even then his clearness of perception and his aversion to redundancy and verbiage. His youthful dream had been realized, he had mounted the first step in the ladder of his profession. Promptly he opened a law office in Washington. The proverbial slowness of clients to seek the novitiate in law was also his fate but by some occult process the public soon perceives and welcomes the man who has faith in himself and the capacity to convert hope into fruitage. Insignificant causes and meagre fees were regarded by him as momentous issues, which likewise impressed his humble clients, and through them his name and capacity spread throughout the town and county. Very soon came the opportunity of a partnership with the late Fenner B. Satterthwaite.

The association was mutually fortunate. While the antithesis of each other in type of mentality and disposition, yet each excelled in his respective talents. Mr. Satterthwaite was a gifted and successful trial lawyer. I have heard his contemporaries characterize him as the most unique, resourceful and formidable *nisi prius* lawyer of his time in Eastern Carolina, and particularly in capital cases. At the same time he was far from studious, averse to the details of the office, and exceedingly fond of hunting, in which he frequently engaged. Mr. Brown, on the contrary, was diligent and determined to woo the good graces of that jealous mistress, the law. His cases were carefully prepared both as regarded the facts and the law. In this respect he was a model exemplar for the younger members of the bar. In a complicated civil suit it was an inspiration to observe him present the material facts and then cite and apply the law. The firm of Satterthwaite and Brown enjoyed an extensive and lucrative practice until the death of the senior member about 1882.

The author of this sketch became the partner of Mr. Brown about 1885 and the firm of Brown and Small continued until the elevation of the senior partner to the bench in 1889. It has always been a pleasure to recall that the invitation to this association was initiated by Mr. Brown, in itself a high and appreciated compliment.

During the early professional years of Mr. Brown, Washington had an unusually able bar. Among these were Col. D. M. Carter, Judge Edward J. Warren, Judge William B. Rodman, Major Thomas Sparrow and his son George A. Sparrow, and Judge James E. Shepherd. There must not be omitted from this galaxy of legal lights the name of Chas. F. Warren, the only son of Judge Warren. He was admitted to the bar only about two years later than Mr. Brown. Mr. Warren was a prodigy in industry which, combined with a robust mentality and a militant spirit, soon gave him high place in the profession.

To have earned recognition and respect of those paragons of the bar and to have attached a large clientele in the face of such odds, implies a tribute to the mentality, equipment and industry of Mr. Brown.

It may be appropriate for me to set down here some of the impressions I derived by observation of and association with Mr. Brown as a practitioner. He studied the law of each case but he made no elaborate notes or citations. His analytical mind discarded the immaterial and retained the controlling facts. He stated the law with precision and always predicated it upon some fundamental proposition. He cited few authorities and always stood ready to differentiate the cases cited by his adversary. There were no court reporters during that period but he took few notes of the evidence. His retentive memory, refreshed by a few catch words, usually enabled him to recall and quote the testimony correctly. His quick mind immediately detected an error, an omission or weakness in the armor of his opponent. He admitted he was familiar only with the basic rules of evidence and yet he rarely was in error either in the presentation of or objections to testimony. His requests for instructions to the jury were brief but they never failed to state clearly his contentions as to the law. He had no unusual gifts as a speaker and rather disdained so-called oratory. His arguments to the jury were mainly in colloquial style, expressed in simple words but clear and forceful. He always prepared and argued his appeals before the Supreme Court. I think his briefs never covered more than three pages. There was no redundant material, no quotations from text-books or reports. He did not cumber his mind with irrelevant material. He knew his objective and he sought the most direct route to its attainment. He was frank and insistent in his arguments to the Court, but always respectful.

The career of the lawyer was to end. He was to be elevated from the bar to the bench. In 1889 he was appointed a Judge of the Superior Court by Gov. A. M. Scales to fill a vacancy in the First Judicial District. He was then 39 years of age and had been 17 years at the bar. I can recall the expression of some skepticism as to his judicial fitness and some slight opposition to his appointment became manifest. He had been active in politics, having served for some years as Democratic County Chairman. He had been loyal to and aggressive in support of candidates for various offices. He was never insincere or un-candid in his political activities. He had been a candidate for Congress in a prolonged and tempestuous convention in the First Congressional District, in which Major Louis C. Latham won the nomination. He had appeared as attorney in many contested cases in Beaufort and adjoining counties in which the fervor of combat had left some wounds not yet healed. These were sufficient to engender criticism and opposition but they were soon to be silenced. At that time rotation of judges carried them to every county in the State. Judge Brown soon won distinction on the bench. His ready knowledge of the law, his speedy dispatch in the trial of causes, his fairness to the lawyers, his uniform courtesy to jurors, and withal his maintenance of the dignity of the bench and respect for the Courts, earned for him an enduring name and rank among the many fine *invi prius* judges who have dispensed justice in North Carolina.

After a service of 15 years as judge of the Superior Court, he was elected, in 1904, as an Associate Justice of the Supreme Court of the State. His record in the Court of last resort is embodied in more than thirty-two volumes of reports. It is not appropriate here to cite any one or number of his opinions. A large majority of the lawyers either argued cases before that Court or were familiar with his decisions. In all the future,

so long as the bench and the bar shall seek the guiding principles of the law for application to the varying facts involving the rights of persons and property, will the opinions of Judge Brown be studied and remain a factor in their adjudication. His incisive intellect, his legal acumen, his accurate processes of deductive reasoning, his clearly expressed conclusions, have served to make his opinions beacon lights in the search for the law. He was re-elected in 1912. At the end of his second term, after sixteen years distinguished service, he declined a renomination. He retired at the close of 1920. An acute attack of influenza in 1918 had impaired his vitality, and he was not content to serve longer, except upon the assurance that his strength would permit the continuance of the same high type of service.

After retirement, Judge Brown resolved not to resume the active practice of the law. I think he appeared in only one case, involving an important issue, in which the State of North Carolina was the defendant. The five leading railroads intersecting the State instituted a suit in the Federal District Court seeking to enjoin the State Commissioner of Revenue from collecting certain *ad valorem* property taxes and franchise taxes. By reason of the momentous problem, involving the taxing power of the State, the Governor requested Judge Brown, with other eminent counsel, to assist the Attorney-General in defending the suits. He co-operated actively in preparing the cases, and also in the trial in the District Court. The suit having been brought under section 266 of the Judicial Code, the hearing in the court below was held before three Federal judges, who denied the injunction. The plaintiff railroads appealed to the Supreme Court of the United States. Learned briefs were filed in that Court by both sides. An indication of the self-reliance and learning of Judge Brown was disclosed in the filing of a separate brief, which again illustrated his

accurate mental processes. It is interesting to recall that in the opinion of the Supreme Court, which was favorable to the State, many of his propositions and contentions were embodied. I think he made as a condition of his retainer by the State that he would accept no compensation.

In addition, he occasionally presided at special terms of court by designation of the Governor. Otherwise, he lived quietly at his home. Much of his leisure was spent in his library. He read rather rapidly, particularly of the lighter class of literature, but he comprehended and retained the salient thoughts.

He possessed the faculty of mental concentration in an unusual degree. It required no power of the will apparently. In a moment he could fasten his mind upon a given subject, and as easily release it. Again he could concentrate for hours without giving evidence of weariness. He had the capacity to think deeply. He respected precedents, but he would not accept them blindly. If his reasoning rejected them, he had the intellectual courage to discard them. He has been known to shatter faulty precedents, and always effectively.

What we characterize as the personality of a man is always interesting. It is the basis of our conversation about other men. I have referred to the intellectual equipment of Judge Brown, and it would be unusual if a man so highly endowed mentally should not be interesting otherwise. Viewing the lighter side of his nature, he had few fads or hobbies. When a young man, and particularly during his life as a practicing lawyer, he was exceedingly fond of good horses. Those who knew him in those days will recall that his only recreation consisted in driving a handsome horse and buggy. In those days lawyers did much more traveling over the highways than at present, and he always took pride in having a speedy and handsome horse. Occasionally his passion for horses would

induce him to make trades, or incidentally to engage in horse-trading, to use the colloquial description of the time. His elevation to the bench deprived him of former opportunities for owning and driving a spirited horse, but his first love abided with him to the end. He had little tolerance for the automobile. I have heard him say there was no exhilaration so acute as holding the reins over a well-matched and well-bred pair of horses. He cared little for hunting or fishing, but in his younger days he would travel miles to witness an evenly matched horse race. The vice of gambling never attached to him in the form usually practiced. Neither did he take undue chances in business ventures. Rarely, if ever, did he deal in securities or commodities on the exchange. His mind functioned with such accuracy that he was not inclined to venture anything of value on a mere hazard or chance.

He craved the society of his friends, and was occasionally argumentative in conversation, but never unduly persistent or offensive. Like most of us, he sometimes discussed other men, and particularly men in the public eye, but very seldom spoke unkindly even of those he criticized. He was disposed to uncover the good traits and to conceal the weaknesses of his fellows.

Did he have faults? Certainly, and he was always willing to make the admission, but, if any, they were faults personal to himself and which wrought no injury to his associates or his friends. I recall writing some years ago for some occasion a personal sketch of him, and, after he had read it, he asked why I had not mentioned some of his faults. In discussing our contemporaries, either in life or death, let us remember the admonition of the gentle Nazarene, "He that is without sin among you, let him first cast a stone."

In character he was above reproach. It is true, he possessed what we call the acquisitive talent, and by industry and

economy he accumulated what may be considered a substantial fortune, and particularly in view of his meagre income as a judge. He was slow to enter into obligations, but prompt and accurate in their fulfillment. Quite naturally he expected others to live up to their obligations. He incurred few debts and was dissatisfied until they were paid. There was nothing artificial about him, and he always strove to be natural.

In conclusion, I may say that this memorial represents an effort to portray an unusual man. He was a consummate lawyer. He was a great judge, both in the *sibi prius* and appellate courts. His intellectuality was perhaps his chief attribute. He has left the imprint of his life upon the administration of the law in his native State, and it may truly be said that "his works do follow him."



Before the Supreme Court of North Carolina. Memorial Address on Presentation of Portrait of Justice George Hubbard Brown by Robert Watson Winston.

*M*AY it please the Court: It is becoming quite customary, I observe, to refer to "the old court" as though the term had a definite meaning. And in one sense it has. To every lawyer the old court signifies the court which examined him and granted his license. Thus to me, the old court is Smith, Ashe, and Ruffin. To most lawyers, however, at this time the old court is Clark, Walker, Connor, Hoke, and Brown. Some day, your Honors—may the day be far distant—you yourselves will have become "the old court."

Now the court composed of Chief Justice Clark and the Associates I have just called over, was as typical a body as could have been chosen—taken as a whole, they were the Old North State in epitome. As geographically the State of North Carolina lies in the North Temperate Zone, so politically and economically her courts and other agencies of government lie between the 32d and 36th degrees of north latitude. In nothing is the good State radical, except in conservatism.

In the generalization which I am now making, I do not refer to the individual members of the old court, but to that body as a unit. For individually only two of its members, I should say, were typical of the State—probably only one. Certainly the Chief Justice, with ideas of judicial progress which startled even the sagebrush courts of the northwest, was not typical of the good Old North State; nor was Walker, with the exclusive aroma of the Cape Fear; nor Brown, with a total indifference as to whether his decisions pleased or displeased the *News and Observer*. As concerns the other two Judges,

Connor and Hoke, it must be said of the former, there was a judicial tenderness and equipoise, which places him in a class by himself, his sweet-spirited soul could not typify the rough hail-fellow-well-met, unconventional commonwealth of North Carolina. Hoke, then, with his loud, honest laugh, his hearty ways, his assumed air of Democratic lineage and environment, undoubtedly stood for the unconventional old Tar Heel State. This attempt at classification is subject, however, to your Honors' better judgment and correction.

Taken as a whole, the old court had all the earmarks of the great State they served—courage, honesty, fairness, poise, and intellect. In a poem called "Hatteras," the author, Joseph Holden, draws a strong picture. Halfway between the poles lies the State of North Carolina. The north wind, rushing down from one pole, challenges the south wind, rushing up from the other, to mortal combat. The challenge is accepted, and they meet; off Hatteras, the Golgotha of the sea, they fight. Mountain-high roll the waves, "beckoning the white-winged brides of the ocean to watery graves." As with the physical forces of North Carolina, described by the poet, so with her social and political. Extremes challenge each other to combat; they meet, but neutralize one the other. The north wind of radicalism often challenges the south wind of conservatism to combat, and they meet on North Carolina soil. It seems certain that something terrible is going to happen at last; but, when the flurry is over, there stands the Old State serene and smiling and firmly fixed to her ancient moorings.

By one or two votes only the impeachment of the judges was defeated; by one vote of this Court the scheme to run out Kilgo and the Dukes, thereby depriving the State of eighty millions for education and charity, was likewise defeated. It must be admitted that the resultant of all the work done in North Carolina is good, the tendency is upward. Analyzing

the composite picture of the old court, can it not be said that Clark was the exponent of radicalism? Hoke the exponent of democracy, and Walker the adherent of precedent? Undoubtedly of the five Connor was the chancery judge, while Brown was the law judge. Out of this mixture of radicalism and conservatism, of democracy and aristocracy, of equity and jurisprudence, came the old court. And of it it must be said that the whole was greater than the sum of its parts. For behind this Court stood nearly three million freemen, and behind it also stood an honest record of justice tempered with mercy. Like the compensating clock, with a pendulum of steel and mercury, the steel pressing downward, the mercury pressing upward, the resultant is always the correct time.

The part George Hubbard Brown played in this judicial drama was unique, more so, perhaps, than that of any other actor on the boards. From the day North Carolina judges were elected and not appointed, Judge Brown filled a place no other judge has ever filled—he was the acknowledged exponent of the vested interests of the State. Not only did he not cater to the people, he advocated principles they opposed. On the bench he stood for property and property rights as much as for the rights of persons. Not only did he do this, but he gloried in the fact; and so long had he stood for equal and exact justice to corporate interests, his course—paradoxical as it sounds—had become a source of strength and not of weakness. In party conventions and at the polls the State of North Carolina, with its checks and balances adjusting the rights of persons and the rights of things, looked to George H. Brown to represent the latter. For sixteen years Justice Brown was the judicial shock-absorber of the Court, absorbing and short-circuiting wildcat legislation, as the lightning-rod short-circuits a flash of lightning.

Within their sphere he considered the people supreme, but no farther. In matters of finance and in all other technical matters he felt that the people had not sufficient knowledge or information to vote intelligently. For example, on the issue of gold and silver as the basis of monetary value, or on the question of freight rates, that is to say, of the cost to a railroad to transport commodities per ton per mile, he would prefer an opinion of Secretary Mellon or of A. P. Thom, general counsel for the united railroads, to that of the people. Herein lay the difference between Brown and Connor—when Connor decided against the people, it put him to bed; when Brown decided against the people, he went his way rejoicing.

Naturally, such a man was not a reformer; yet the reformers admired him more than they did one another. In truth, if there be one thing the average reformer seems to dislike more than another, it is a brother reformer. It follows, therefore, that Clark, the radical, was closer to Brown, the stand-patter, than to Hoke or Connor, the conservatives. Of Brown, Clark expected nothing, and was not disappointed; of Hoke and Connor, Clark expected much, but often failed to get it. These men would not leave a well-beaten judicial highway to tread an obscure mountain trail. A few years ago, when important rights of Chief Justice Clark were to be adjudged, Justice Brown wrote the opinion, deciding in favor of the Chief Justice. Though Judge Clark and Judge Brown stood at the two ends of the political poles—one a disciple of LaFollette, the other of Grover Cleveland—they were the best of friends, and so were Judge Brown and Josephus Daniels. There may be another reason for this kindly feeling for Judge Brown by the reformers, he was the most impersonal of men—intellectual, thoroughly detached, and unemotional. He never scolded nor fussed; he could sit by and see a man make a fool of himself without losing his temper, or he could

write an opinion cutting up some utterly baseless, useless, and absurd case with as much gravity and seriousness as though the matter were of real importance. And yet he had little patience with slipshod methods or with mediocrity. We hear of judges who are patient with young and poorly prepared lawyers—sitting quietly and listening to nonsense by the hour—Brown was not that kind of a judge. The moment a lawyer wandered from the issues, he would call him back, often doing this so brusquely as to give offense. But when the opinion came down it was apparent that Justice Brown had been sounding a proper note of warning.

Judge Montgomery, in an opinion, once said of Justice Brown that of all the Superior Court judges, he was the best. It is easy to understand why a Supreme Court judge should make this statement; the judge of an appellate court likes a case well made up—issues clear-cut, evidence admitted or excluded without hesitancy or dodging. That kind of a trial judge George H. Brown was. Having no judicial hobby to ride, he did not hold court with a brass band. He was neither a candidate for Governor nor Senator. In fact, of him I should say that none surpassed Judge Brown in the performance of his duties as a *viri prius* judge. I have never known one to surpass him in the elimination of extraneous matter, and in discovering the real points of a case. The issues culled out by him and put to the jury were sharp and clear-cut, like the edges of a diamond. When going from county to county and holding court he was simply holding court—not teaching Sunday school nor running a chautauqua.

From boyhood up George H. Brown was a leader. At the school of James H. Horner at Oxford, where the lad was a pupil for two years—all the schooling he ever had, by the way—no one surpassed the young fellow. His nickname shows the position he filled—"Magnus Brown," the boys always

called him "Great Brown." And great he was. In the first place, he was physically a man, being well proportioned, closely knit together, and the impersonation of power and authority. Some five feet nine inches tall, weighing about one hundred and eighty pounds, dignified, severe, silent, courageous, loyal, no flatterer, with only a handful of friends, because he cared for no more, one may search the annals of the State and not find his match. A remark of Emerson might be applied to Justice Brown, so thoroughly impersonal and detached was he. Speaking of Thoreau, and of his individuality and aloofness, Emerson declared that he would as soon think of offering to walk down the street arm in arm with an elm tree as with Thoreau. As Justice Brown sat on that bench, your Honors, and asked some searching question, his rich deep voice had the note of finality. In fact, his voice seemed made to order—voice and head fitting together to a nicety. And such a head! Every feature ample, nose, mouth and ears large, forehead expansive, and a countenance as inscrutable as the Sphinx. His movements were slow and judicial, and though well-groomed, he was thoroughly simple and unaffected. Taking him all and all, he might have sat on the English bench with Mansfield, or on the American bench with Marshall, without loss of dignity or prestige to either. When Rufus Choate was called on to drink to the health of Lemuel Shaw, he responded: "To the Chief Justice! We believe he is ugly, we know that he is great." The latter part of this toast describes Justice Brown.

And no one more looked the part than he. Essentially he was the judge. Speaking few words from the bench, when he did speak it was to the point, and generally a vital point. It has been said of one of the judges of this Court that when he smiled or nodded an approving bow one might be sure he was going to lose his case. Not so with Judge Brown. There was no camouflage about him; one always knew where to find

him. Not double-faced, what he professed to be that he was. Unlike the man in the boat, he did not look one way and row another. And he was the essence of loyalty. If you were his friend, behind your back he was more your friend than to your face. He suffered no one to speak ill of his friends or of the principles he stood for.

Not only was Judge Brown a fine specimen of physical manhood, he likewise possessed a vigorous and a remarkably clear intellect. He did not juggle or play tricks with his intellectual processes; he was not everlastingly searching around for some reason to support a false theory. For example, believing that property needs protection as much as persons, in suits for personal injuries, when the injured party was negligent, he opposed mulcting the innocent corporation with damages. While on this bench his opinions were generally short and to the point. To him law was quite simple, law was but a rule and a rigid rule at that. If one followed the rule, he should be protected; if he disobeyed, the rule he should suffer. With judges the emotional often sways the reason, and the law becomes uncertain and variable. Hence, the old maxim, "Hard cases are the quicksands of the law." Judge Brown had no trouble of this kind. Like Chief Justice Ruffin, he was a believer in the letter of the law, in the law as written. Better an occasional hardship through the courts than that the whole system of jurisprudence become a mere game of chance. Hence, Judge Brown adhered to the letter of the law. With him commercial paper was sacred. Notes, bills, bonds, these must be paid, and whenever a commercial paper got into circulation, having been duly negotiated, it was to Judge Brown a courier without luggage, almost as sacred and indefeasible as United States currency. So as to real estate. In trials of title to land, Justice Brown stood by the ancient landmarks; he was no innovator.

Courts, in their eagerness to give expression to the mores of the people, to put themselves in line with the best thought of the community, often become legislators. Brown never did this. With Bacon, Justice Brown agreed that the province of a judge is to declare the law, not to make it, *dicere non facere*. The new idea that judges should not express their own views and convictions, but should search around and find out the wishes of the best element in society, and give expression to the same, regardless of law, he scouted. Satisfied with jurisprudence as it is today, he was not desirous of overturning it, or of falling back on the judicial "recall." His aim was to follow in the footsteps of Ruffin, of Gaston, and of Rodman, and to do this without fuss or feathers. Hence, he wrote no startling opinions. Coke and Blackstone were good enough for him, his only fear being that he could not equal the masters of the law.

During his two years at school under the elder Horner, he learned how to study, how to train his mind. "Old man Jim," as he loved to call his great teacher, taught him to be intensive, not extensive, taught him that one must know *such* and not many things. To those two years Judge Brown ascribed his success in life. Undoubtedly his accuracy, his correctness, and his directness must be ascribed to this period and to this training. Three books of Caesar, the first book of Livy, and a little of Virgil, was about all the Latin Mr. Horner required. But what he taught, he taught. About fifty lines a day, four days in the week, would be the extent of the week's work. Then on the fifth day, Friday, would come the review. Every line that had been gone over during the week would be reviewed on Friday, and every tense, mood and construction again inquired about and impressed upon the mind of the pupil. Under drilling of this kind, young Brown was put in the way

of accurate thinking—when he was only sixteen years old—and until the day of his death continued the process.

There is a French saying that one should have a conscience even in his amusements; that one should not be amused at anything unworthy of laughter. In this high standard Justice Brown concurred. His sense of humor being subtle and selective, buffoonery and coarse jokes he abominated. A good story-teller himself, he was interested in such wit as had a flavor of the Attic or was natural and spontaneous.

Having ideas of the kind I am endeavoring to describe, and yet living in a pragmatist day—a day when the absolute has given place to the relative, perhaps wisely, Justice Brown must be called our Dissenting Judge—he was unwilling to bend the law to meet difficult situations or to win popular favor. Thus he could never bring his logical mind to the point of agreeing that one who is not a party to a contract, though interested in its performance, could sue into the same and recover damages for its breach. Hence, to his way of thinking, there was no legal basis for an action by the citizen of a municipality against a water company when the citizen's property had been burned for lack of pressure, in violation of the terms of the contract between the town and the water company. Cases also involving what is called mental anguish for failure to deliver a telegram made no appeal to Justice Brown; they were illogical in principle and a mere attempt at arbitration. *Lawrence v. Telegraph Company* (171 N. C., 240).

Therefore, in a suit against a telegraph company for failing to deliver a message to a laborer announcing the death of a person who, ten years before, had employed plaintiff, Judge Brown dissented from the opinion awarding damages. He was satisfied that it was a fake case. Though the plaintiff testified that "not being a pallbearer at a funeral was grievous to his very mind and soul," Justice Brown could see no basis

for a suit. As the learned Justice put it, "the man's agony was of that kind that can only be assuaged by mental solatium." Along the same line he likewise dissented in *Horton v. Railroad* (169 N. C., 166). In this case, the dissent was based on the idea that the plaintiff assumed the risk of injury from a defective water-glass. As the plaintiff was operating the engine equipped with a standard water-glass, the dissenting opinion reasoned that the injured man was acquainted with the situation, and took employment subject to the same.

In his dissenting opinions, however, Judge Brown was always fair and courteous, ascribing no sinister motives to his brethren. It is a rare gift in a judge to be able to deal with the problems of life impersonally and dispassionately; to sit apart and view the game from the sidelines. And this Judge Brown could do. Being but a cog in the judicial machinery for the divine working out of certain governmental questions, as such and not otherwise, he functioned. If, however, all judges held these immutable views, it might be disastrous to a republican form of government and destructive of democracy; and yet it will be a sad day when the tribe of absolute judges becomes extinct. Without them great business enterprises could not continue to operate.

Judge Brown's mind being simple and direct, he approached legal questions practically and intuitively, in this respect resembling Marshall, Ruffin, and Pearson. The metaphysical and philosophical he was content to leave to Dean Pound of Harvard and Carter of Oxford. The philosophers might busy themselves with far-fetched analogies and subtle distinctions; they might go in search of original sources, but not so Judge Brown. Like a skillful musician, intuitively he detected the slightest false note in judicial ratiocination. Oftentimes, as I have looked at the head of this man as he sat on the bench, seen him busy in his ponderous way, paring off the irrelevant

and redundant, eliminating the prelogical and extraneous, eager and intent in the pursuit of truth, unmoved by popular clamor, I have said "there is the biggest brain I ever saw."

But George Brown was not only a man physically and mentally, he was also a man religiously. The dignified and esthetic services of the Episcopal Church, of which he was an occasional communicant, struck a responsive chord in his equally impersonal nature.

One day he and I were discussing the subject of the Hereafter. We had spoken of how inaccountable, how inexplicable everything around about us seemed. What is the origin of matter—the origin of mind? How appalling the immensity of space, the unendingness of time—universality, immortality. I ventured to ask if he believed in a Hereafter and in God. "I certainly do," he replied. Pursuing the subject, I asked him how he reasoned it all out. "I don't reason it out at all," he replied. "I sucked it in with my mother's milk." Up in New York State and at Clifton Springs, where he went sometimes before he died, there was a thorough-going chaplain, a fine old man and one much beloved. Often Judge Brown and he would go alone into the lovely chapel annexed and the good man would repeat some ancient prayer or read a line or two from the Hebrew prophets. So reserved was Judge Brown, he sat so far in the rear of his affections, people generally had little knowledge of the man. His feelings he kept to himself. Yet under a roof in this city where he lived for many years while a Justice of this Court, the youngest child loved him and many a day the two would go off to John Robinson's circus alone. Aye, not alone, your Honors, there was a third one along, Rilly, the old family cook, as faithful as she was black. Are not the deepest streams those that make least noise? What became of Regan's and Gonerill's professions of love for their father when the old man was in need? Was not Cordelia's

love for Lear deeper than theirs? As with Cordelia, so with Brown—charry of professions of affections, but ample in the service of friendship.

*"Unhappy that I am,
I cannot leave my heart in my mouth.
I love your majesty according to my bond,
Nor more nor less."*

There is a loyalty of the lips and another loyalty of the heart, and this latter Judge Brown had. Indeed, those who know him best know that he reached the height of loyalty, loyalty to loyalty.

With these sterling virtues Justice Brown would not have been human did he not likewise possess faults, but his faults were the habits and ways of the generation of men to which he belonged; they touched himself only, not his fellow-man. In the discharge of duty he kept himself in splendid form, and no man served the people more faithfully or more efficiently. The faults he had he never concealed, and he enjoined it upon his biographers that they should describe him as he was, that they should paint him true to life—warts and all.

The main facts of Judge Brown's life are few and simple. Though he was quite a politician in early life, serving as chairman of the county executive committee of Beaufort, at one time running for the nomination for Congress, and in 1884 a delegate to the National Convention that nominated Grover Cleveland, he soon tired of this sort of life. When he once became a judge, he was ever afterwards a judge. He was born and died in Washington, North Carolina, the date of his birth being May 3, 1850, and the date of his death March 16, 1926. His father was Sylvester T. Brown, lineally descended from Revolutionary ancestors of whom Justice Brown was

justly proud. Among these were Captain George Hubbard and General Thomas Holliday. On his mother's side one discovers James Bonner, maternal grandfather, founder of the town of Washington, and Richard Bonner, maternal great-grandfather, the wealthiest citizen of Beaufort County. From him Justice Brown inherited those rare financial gifts by the cultivation of which he became perhaps the best authority in the State, except among the bankers, on the subject of stocks and like securities.

After two years at school, and at the age of eighteen, he secured a position in New York City as a telegraphic operator. Here in a brief time he learned the art of telegraphy, his quickness of mind making him an expert. It is interesting to note that Thomas A. Edison occupied a desk adjoining young Brown in the telegraph office. After remaining in New York some two or three years, the young fellow returned to Wilson, North Carolina, where his parents were then residing; but in a short while removed with his parents to his birthplace in Washington. He now began the study of law under the direction of Chief Justice James E. Shepherd, and in 1872 was duly licensed by this Court in his chosen profession. Shortly thereafter he formed a copartnership with Fenner B. Satterthwaite. This partnership lasted until the death of the senior member, about 1882. At the Washington bar at that time were such eminent lawyers as David Miller Carter, Edward Warren, William B. Rodman, Thomas Sparrow, George Sparrow, James E. Shepherd, and Charles F. Warren. Among these notable men George H. Brown stood deservedly high. His arguments to the jury were expressed in simple words, but clearly and forcefully, the usual tricks of the speaker and the orator he disdained. As a trial lawyer his strength lay "in a retentive memory, a quick mind which immediately detected error in the adversary, in a familiarity with the basic rules of

evidence, and in the diligence with which he prepared his cases. He stated his case with precision and based it upon some fundamental proposition of law, citing few authorities." After the death of Mr. Satterthwaite, Judge Brown offered a copartnership to John H. Small, afterwards Congressman for many years from the First District. The partnership of Brown & Small continued until the year 1889, when Judge Brown was elevated to the Superior Court by Governor Scales. Judge Brown was then thirty-nine years of age, and after a service of fifteen years on the Superior Court bench, was elected in 1904 an Associate Justice of this Court. Here he served for sixteen years, retiring on account of ill health in 1920. An acute attack of influenza in 1918 having impaired his vitality, he was not content to serve longer, except upon the assurance that his strength would permit the continuance of the same high type of service. After retiring from the bench, he lived quietly at home in Washington, occasionally holding a special term by appointment of the Governor. During his late days, in fact, during his entire life, he was an omnivorous reader, reading rapidly. After the duties of the day were ended, he would retire to his chamber and read current literature until late at night. He was a man that dared to be alone, and who spent much of his time in his library. Among his diversions it may be also mentioned that he was fond of a good horse, and in his earlier days always kept a fine pair of horses for his stables. He was likewise fond of hunting, and oftentimes on the circuit at the end of the week would go out with some friend and spend the week-end hunting birds.

On December 17, 1874, George H. Brown was married to Laura Ellison Lewis, who was the daughter of Henry A. Ellison and Eliza A. Tripp. Mrs. Brown is of English and French descent, and her ancestors were long associated with the upbuilding and progress of the city of Washington and of

Beaufort County. They were possessed with pride and intelligence, and were influential factors in their community, their fine qualities being inherent in their daughter. The married life of Justice Brown and Mrs. Brown embraced more than half a century. She was a partner in his early struggles and a potent factor in his successes and triumphs. Her courage, wisdom and fidelity lightened the obstacles of his life and pointed the way to progress. It is at her request that I now have the honor of presenting to this Court a portrait of the distinguished judge, whose life and character I have undertaken to portray.

Remarks of Chief Justice Stacy, upon accepting Portrait of former Associate Justice George H. Brown, in the Supreme Court Room, Tuesday Morning, April 12, 1927:

ON the 16th day of March, 1926, at the call of "the evening bell," Judge George H. Brown passed off the stage of action and left, for our keeping, a record of high service to his State and a heritage of great worth to his fellow-man.

For sixteen years, as an Associate Justice of this Court, he labored incessantly, writing just judgments into the "Book of the Law" of a great people. His opinions, invariably concise and to the point, are to be found in forty-four volumes of our published Reports, beginning with the 137th and ending with the 180th.

We concur in the estimate of the speaker that he will take prominent place among the ablest jurists of the Commonwealth. He possessed to a marked degree, not only the gift of words, but also the power of accurate statement. For the profession he served so long and well, his work will stand as his monument. Verily, his clear and forceful expressions have already become beacon lights and guideposts for both Bench and Bar.

The Court is pleased to have this likeness of its former member, whose memory we honor today, and it has heard with gratification the thoughtful and ornate address of Judge Winston. The Marshal will cause the portrait to be hung in its appropriate place on the walls of this Chamber, and these proceedings will be published in the forthcoming volume of our Reports.