

## APPENDIX B

### · PORTRAIT OF JUDGE DANIEL, PRESENTED TO THE SUPREME COURT ON WEDNESDAY, 27 APRIL, 1892

Mr. WILLIAM H. DAY said—

*Mr. Chief Justice:*

I am directed by the children of Judge JOSEPH J. DANIEL to present to this Court the portrait of their illustrious father. In doing this, it is proper I should speak somewhat of him as a man, and also as a judge. He was born on 13 November, 1784; entered the University in 1804; read law under Gen. William R. Davie in the county of Halifax; was a member of the Legislature from 1807 to 1811; was elected a judge of the Superior Court by the Legislature at its session of 1816; was a member of the Convention of 1835; was elected Associate Justice of the Supreme Court by the Legislature at its session of 1832.

On 1 January, 1822, he was married to Maria B. Stith, who was a daughter of Bassett Stith and Polly Long, whose beauty and virtues were such that her neighbors named her "the divine Polly Long." He died in Raleigh on 10 February, 1848, and left surviving him three children—William A. Daniel of Weldon, whose only child bears the name of his grandfather, Joseph J. Daniel, and resides in the county of Halifax; Mary Long Daniel, who married George L. Gordon of Albemarle, Virginia, and from which marriage were born James L. Gordon, of Charlottesville, Va., Mary Long Gordon, now the wife of Dr. R. H. Lewis, of this city, and Armistead C. Gordon, of Staunton, Va., who has enriched our literature with the beautiful idyl of "My Boy Kree"; Lavina Bassett Daniel, who married Turner W. Battle, of the county of Edgecombe, and from which marriage were born Jacob Battle, of Rock Mount; Joseph Daniel Battle, of Alven Texas; Turner W. Battle, Jr., of Norfolk, Va.; Gordon Battle, of New York, and Gaston Battle, of the county of Edgecombe. These, by the gentle qualities of a true manhood and true womanhood, have illustrated the virtues of their noble ancestor.

As a man, his marked characteristic was his gentle, genuine kindness to all. In the county in which I live, and where he was born and had his home, the traditions of his life, at this distant day into legends grown, follow after him, and are yet instinct with the life of what is good. His personality was antique in its simple grandeur. The first Alexander of Russia, after June, 1815, discussing the settlement of Europe with the French envoy, who was importunate for a written charter, said: "My people have no charter." Talleyrand replied: "Yes, sire, they have your personal character; that is their charter." So Judge DANIEL'S personal character was the patent which stamped him nature's nobleman. In his sympathies he was as broad as humanity itself. In his life's creeds he was more catholic than the Roman Catholic who benched by his side. The poor—his poor—looked for his coming from his duties at court as the return of a good angel. To him they came for material aid and for counsel. His purse opened to their demands; his supreme knowledge, almost universal in its scope, he gave for their guidance.

The poverty of our State's history comes from our ignorance of the lives of our dead men. With curious neglect we are willing such priceless ex-

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amples should be forgotten. Give to us a man whose life is a mission of misery, whose days are spent in the desolation of homes by the red hand of war, we hail him conquerer and we immortalize his *infamy* in story and in song. We never salute the thoughtful man who kneels. These we forget, and yet their life's story would make for us rich history. Outside of our profession, and the traditions of a locality, how few are the North Carolinians who know that this great man has lived and passed from among us. It is woe to that people who consent that their dead men shall die. The Hebrew prophet cries, "Thy dead men shall live!"

Judge DANIEL was a brave man mentally, morally, physically. In him was nothing of the tyrant. In his family, on his farm, on the Bench, he was the affectionate father, the kindly master, the merciful judge. These characteristics gave to his younger years associations that grew stronger with the flight of his days. To his old age they gave "honors, love, affection, troops of friends," and the blessings of his neighbors. No heart ached for any spoken word of his; in no bosom rankled the stings of remembered wrongs. Children loved him. This to his gray hairs was a crown, nobler than those opinions that have changed the judicial currents of his native State.

In my section of the State many anecdotes of him, illustrative of his character and charity, still live. They are all commemorative of kindness said or done to neighbors or friends. He was one of the "simple great ones gone forever and forever by," but the good that he did lives after him. This man was also a philosopher. Wisdom broadened him into loving. He studied flowers, not that he loved botany, but because the beautiful in nature added to his happiness. He loved his fellowman, because he recognized the broad brotherhood of humanity. This man contemplated. He is worthy of our contemplation. He was an omnivorous reader. He absorbed knowledge. As a lawyer, he was accurate. Greatness followed. His opinions are clear, direct, at times limpid. In this judge is nothing of obscurity, because in the truthfulness of him he had convictions.

His was the first voice in this State to denounce the brutal barbarism of the common law. His dissenting opinion in *Madison Johnson's case* was a protest against a past without pity. From Draco and Moses he recoiled. From the Sermon on the Mount he drew his inspiration. No matter with what crime the criminal was charged, when the law spake through the judge we recognize this beautiful fact, that the man was dealing with *his brother*. He could say a thing, *and be done speaking*. Instance his opinions. His will covered eight lines of the old foolscap paper. In it he disposed of a large estate, gave his blessing to his children and his soul to his God in whose ordinances he walked. His wisdom was not greater than the wisdom of the law; this fact he never forgot. The judge never lessened into an arbitrator. His eye was single, his vision was undimmed by error, and in the light of his reason we felt the presence of truth. When he stood up to declare the law, sometimes dissenting from those who, like himself, were its chosen interpreters, his pure accents drew us to his side, and ere long they and we alike heard him gladly and followed.

He loved the voice of the people, and yet, so true was he in his great office, their changeful passions disturbed no tone of his clear utterances. His sympathies flowed full and strong. His opinions, based upon the unflinching principles of truth, find no colorings from the passing fashions of the hour. Among the judges past of this Court, to my mind, Mr. Ashe nearest measured

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to his high standard. Both came from the same kindred stock. Both had in common the highest attributes of noble manhood. Both were our grandest North Carolinians.

In receiving the portrait

CHIEF JUSTICE MERRIMON said:

The late Judge DANIEL was of a former generation, but we know from tradition, history, and the reports of the decisions of this Court that he was a man of surpassing ability and excellence, possessed of extensive general information, a learned lawyer and a very able and upright judge. He was continuously a judge for about thirty-two years, and half that time was an influential and distinguished member of this Court. By his talents, his great learning, his industry, his high integrity and dignity of character, he contributed largely to its great usefulness, influence, and fame.

His judicial opinions are singularly strong, clear, logical, and practical. While they afford evidence of the learning of their author, they are remarkable for their intelligence and brevity. They briefly and yet fully embody the law applicable to the cases to which they belong. They are models of point, strength, and conclusiveness. They are entirely free from ostentatious display. They are not encumbered and confused by multiplied citations of authorities, and yet they cite with sufficient fullness such cases as add to their strength. Many of his opinions, by reason of their qualities of strength and justice, are of themselves authority.

It must be readily allowed that he ranks among the ablest of the judges who have been members of this Court. One of his great associates said of him that "He had a love of learning, an inquiring mind and a memory uncommonly tenacious, and he acquired and retained a stock of varied and extensive knowledge, and especially became well versed in the history and principles of the law. He was without arrogance or ostentation, even of his learning; had the most unaffected and charming simplicity and mildness of manners, and no other purpose in office than to execute justice and maintain truth, and, therefore, he was patient in hearing argument, laborious and calm in investigation, candid and instructive in consultation, and impartial and firm in decision."

We accept, and have much satisfaction in accepting, the portrait of him just now tendered to the Court by his descendants. They have thus done a dutiful and good service. It will be fixed at an appropriate place on the walls of this chamber, where it will ever remain to remind us and those who shall come after us, and all who shall come here, of one who was eminently fit and worthy to be remembered for the unsullied purity of his personal character, his learning, and long and useful official labors.

The Clerk will note on the record the presentation and acceptance of this portrait, and the Marshal will see that it is set in a proper place on the walls of this chamber.