

## APPENDIX

### PORTRAIT OF JUDGE WILLIAM GASTON

PRESENTED TO THE SUPREME COURT ON 14 DECEMBER, 1893

Mr. FABIVS H. BUSBEE, addressing the Court, said:

To every loyal North Carolinian, layman or lawyer, it is a cause for sincere congratulation that the walls of its Supreme Court room are being rapidly filled with the portraits of the learned and sagacious men who laid deep the foundations, and wisely built the superstructure of our jurisprudence.

North Carolina owes an incalculable debt to its judiciary. Beguiled by pardonable State pride, we are sometimes prone to overestimate the relative importance of our State in the roll of American Commonwealths. But we can make no mistake in asserting the great value of her contribution to the complex system of American law. In spite of the fact that the State has never had a large town, that her commerce, trade and manufactures have been of comparatively small importance, and that, in consequence, her litigation, for the most part, has been based upon controversies concerning land or involving small amounts, yet the influence of her earlier judges is strongly marked in the general current of American decisions. With the enormous increase in the population, wealth, trade and industries of the newer States, almost magical in rapidity of their growth, many of them blessed with learned and industrious appellate tribunals, it is impossible for the older States to maintain their *comparative* influence, although the learning and character of their judges show no abatement. When we seek the fountain-head of the principles now firmly established as the system of

American law, to trace the earlier application of the doctrines (738) of the English common law to the strange conditions and peculiar environments of a new republic, or rather new system of republics, based upon written constitutions, along with New Hampshire and Massachusetts, New York and Pennsylvania, we find everywhere marks of the current of North Carolina decisions. There were no legal pioneers more fearless and conservative than our older judges in blazing the pathways through the virgin forests or breaking the untrodden snow in the new fields of judicial inquiry.

At a time when the Supreme Court of North Carolina reached perhaps its highest point of influence and usefulness, the honored name of *William Gaston* shines bright upon the pages which record its work. Unlike the large majority of the judges who constituted the Court he had

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no preliminary training as a judge in the *nisi prius* courts, yet in the extent and variety of his labors as a lawyer he excelled them all. For thirty-five years he was in the constant practice of his profession. He attended the courts of a large circuit; he was familiar with the inner lives of the people, and studied human nature as faithfully and successfully as he did the law. From the white heat of conflict at the bar, in the acme of his powers, he was called to the serener atmosphere of the Bench. The zealous and successful advocate was merged into the impartial judge.

The recent publication in a contemporary legal magazine of an admirable sketch of *Judge Gaston*, written by a learned Justice of this Court,\* renders it unnecessary for me to dwell upon the details of his life. We recall with moistened eye the striking tragedy of his infant days, when his father, the skilled English surgeon, who had warmly espoused the cause of the struggling colonies, in the frail, rocking canoe fell mortally wounded at the feet of his heroic wife, the victim of the craven bullet of a Tory neighbor which baptized with the red libation of his martyr blood the head of the prattling child. His boyhood gave evidence of great promise. He worshipped his mother and his marked success at school was largely caused by his desire to gratify her. (739) He was the first student to enter at the Catholic College of Georgetown, and one of the most notable buildings of that renowned institution bears his name. He graduated from the College of New Jersey at Princeton, and, after studying law in New Bern with Francis Xavier Martin, the eminent jurist, soon entered upon the practice. His success in the fields, both of law and politics, was immediate and pronounced. Of noble and engaging presence, most attractively modest in his demeanor, frank and cordial, of accurate and elegant diction, he soon won his way to every heart. By nature, he was born to persuade and to convince.

"Some there are  
Who, on the tip of their persuasive tongue,  
Carry all arguments and questions deep,  
And replication prompt and reason strong,  
To make the weeper smile, the laugher weep.  
They have the dialect and different skill,  
Catching all passions in their craft of will,  
That in the general bosom they do reign,  
Of young and old, and either sex enchain."

He was soon sent to the General Assembly as a member of the State Senate, and afterwards as a representative of the borough town of New Bern. At a subsequent session he became Speaker of the House of Commons, which office he held with great acceptability for several terms.

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\*Justice Walter Clark, in *The Green Bag*.

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In 1813 he was a member of Congress from the New Bern District, and in 1815 was reelected for a second term. The impression made upon his contemporaries during his service in that body yet remains, and his published speeches show how well deserved was his reputation. He became the life-long friend of Webster and Clay, and both were his warm admirers. The House of Representatives had not at that time lost its character as a deliberative body, and its membership was not so unwieldy as to make length of service a prerequisite to success. In one respect his experience in Washington was in marked contrast to (740) the present conditions surrounding official life. In his argument before the Convention of 1835, upon the subject of biennial sessions of the Legislature, *Judge Gaston* wittily said:

“When he looked around him, and noticed the zeal and meanness with which the Federal offices of every kind were courted and solicited, and recollected the stern integrity which used to prevail in this respect, he was humbled and alarmed—humbled at the change of manners in his honest State, and alarmed at the subserviency to power which it must generate. In old times, application for office from North Carolina was an extraordinary occurrence. During the four years which he spent in Congress but one application was made to him on the subject, and that came from perhaps the most despicable of his constituents. The letter ran somewhat in this fashion: ‘I and my friends have constantly supported you. The times are hard and I want a post. I don’t much care what post it is, so that it has a good salary attached to it.’ It is needless (said *Mr. Gaston*) to state my answer, but I was strongly tempted to inform him that there was but one post for which I could recommend him—and that was the whipping-post.”

From the day he left Congress, in 1817, until he entered upon his duties as Judge of the Supreme Court, in 1833, he maintained his position as the leader of the bar in the State, challenged, perhaps, as the years passed on, by the almost invincible *Badger*.

An examination of the reports of that epoch shows how singularly small was the number of lawyers whose names appear in the records of the Supreme Court. In 12 N. C., although in an unusually large number of cases there was no representation by counsel, *Mr. Gaston* appeared in forty-five cases, and *Mr. Badger* in perhaps as many. The other leading counsel whose names appear frequently in that volume are *Nash*, *Hogg*, *Wilson* and *Devereux*. In 1833 he was elected by the General Assembly a Judge of the Supreme Court to succeed (741) *Chief Justice Henderson*, and he continued a member of the Court until his sudden death 20 January, 1844. His first opinion appears in 15 N. C., and his last opinion, clear and conclusive, is *Morrissey v. Love*, 26 N. C.; 38. It would hardly be deemed appropriate in this connection to enter into a critical comparative review of the opin-

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ions of *Judge Gaston* as found in the Reports. Coming directly to the Bench from active practice, we can sometimes see the traces of the warm language of the advocate, controlled by the impartial justice of the judge. His classical training and his familiarity with the best models of English literature lend a singular grace to his opinions. His facility of phrasing sometimes tempts him into longer discussions than was usual among his contemporaries. As a Chancellor his desire always seems to be to strike at the real merits and justice of the case, and noticeably, and ever and always, he is the upholder of the weak against the strong. In this there is no trace of any effort to "catch the ear of the groundlings," there is no seeking after popularity, but there is the unmistakable evidence of a man in whose heart there always abides the tenderest compassion for any human being in weakness or distress.

It is difficult for the present generations fully to appreciate the merits and the courage of the opinion in *S. v. Will*, 18 N. C., 121. We must fully realize in our minds the condition of a slave-holding people. The fear of negro insurrection always vaguely apprehended, and ever and anon becoming an imminent danger or a dread reality, the necessity upon the part of those who administered the law to relax no proper rule of restraint, and at the same time the equal necessity of imposing some check upon the brutality of cruel masters or reckless overseers, the sensitiveness of the public mind upon the subject in its political as well as in its legal and social aspects, combined to render the task of laying down the law in this case one of extreme delicacy. The inherent evils of slavery, which it were worse than folly to deny, were fully (742) understood by this humane slave-holder, and it was his high mission and earnest desire to mitigate every remediable hardship. This great opinion of *Judge Gaston*, in its clear analysis of the respective legal rights and duties of master and slave, its condemnation of the brutality too often shown towards the helpless, its sublime compassion for the hunted and terrified slave, sounded the keynote that never ceased to ring in North Carolina jurisprudence. A single quotation may be pardoned:

"An attempt to take a slave's life is then an attempt to commit a grievous crime and may rightly be resisted. But what emotions of terror, of resentment, may without the imputation of fiendlike malignity be excited in a poor slave by cruelty from his master that does not immediately menace death, that case neither determines nor professes to determine. In the absence then of all precedents directly in point or strikingly analogous, the question recurs, if the passions of the slave be excited into unlawful violence by the inhumanity of his master or temporary owner, or one clothed with the master's authority, is it a conclusion of law that such passions must spring from malice? Unless I see my way clear as a sunbeam, I cannot believe that this is the law of a

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civilized people and of a Christian land. I will not presume an arbitrary and inflexible rule so sanguinary in its character and so repugnant to the spirit of those holy statutes which 'rejoice the heart, enlighten the eyes, and are true and righteous altogether.' "

If time permitted, it would be a pleasant duty to gather from the well-laden branches samples of the fruits of his labors in this Court, but I am speaking to those whose lives are spent in daily communion with the emanations of his genius, and to whom I can suggest nothing that is novel. While a member of this Court he was tendered the office of *United States Senator*, which, without hesitation, he declined as being inferior in dignity and usefulness to the office he then filled.

In 1835 he was a member of the Constitutional Convention, and (743) to him, more than any other man, is due the credit for the reforms instituted by that body. In the struggle of the western counties for equal representation in the halls of legislation, he listened not to the dictates of sectional interests, but advocated a just consideration of the claims of the West. He was the impassioned defender of civil and religious liberty, and his great argument in behalf of religious toleration will always remain a North Carolina classic. In that speech, with simple pathos, he declares his faith:

"It will be enough for me to say, that trained from infancy to worship God according to the usages, and carefully instructed in the creed of the most ancient and numerous society of Christians in the world, after arrival at mature age I deliberately embraced, from conviction, the faith which had been early instilled into my mind by maternal piety. Without, as I trust, offensive ostentation, I have felt myself bound outwardly to profess what I inwardly believe, and am therefore an avowed, though unworthy member of the Roman Catholic Church."

I trust I may be pardoned for quoting from the same source his sublime advocacy of religious toleration:

"Religion is exclusively an affair between man and his God. If there be any subject upon which the interference of human power is more forbidden than all others, it is on religion. Born of Faith, nurtured by Hope, invigorated by Charity—looking for its rewards in the world beyond the grave—it is of Heaven, heavenly. The evidence upon which it is founded, and the sanctions by which it is upheld, are addressed solely to the understanding and the purified affections. Even He, from whom cometh every pure and perfect gift, and to whom religion is directed as its author, its end and its exceedingly great reward, imposes no coercion on His children. They believe, or doubt, or reject according to the impressions which the testimony of revealed truth makes upon their minds. He causes His sun to shine alike on the believer and the unbeliever, and His dews to fertilize equally the soil of the orthodox and the heretic." (744)

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In the sacred privacy of his family he was singularly attractive, and deeply beloved by all who came within the sphere of his influence. His buoyant and almost boyish cheerfulness rendered him the life of the home circle, the unfailing delight of children, the kindly mentor of youth, the comrade and friend of older years. My grandmother from her earliest childhood, was an inmate of the family and an adopted daughter of *Chief Justice Taylor*, his brother-in-law. Much of *Judge Gaston's* time was spent at her fireside, and his last summons came to him at her house. My own boyhood was passed in the daily hearing of his name, his sayings and familiar anecdotes concerning him. To those who loved him it was not as the incorruptible statesman, the learned jurist, the honored patriot that he was chiefly remembered, but as the loving "Uncle" and faithful friend.

The name of *Gaston* is no longer borne by any lineal descendant. His only son, Alexander, who was, with him, a member of the Convention of 1835, representing Hyde County, afterwards removed to Yancey County and lived there up to the time of his death. The sons of Alexander, the last males to bear that honored name, both fell in battle, each destined by a sad coincidence to die in his first engagement. William, a graduate of West Point of unusual promise, fell in Colonel Step-toe's ill-starred Oregon campaign against the Indians in 1858. Hugh, though physically unfitted for the field, could not remain inactive in the days when North Carolina called her sons to arms, and was mortally wounded at Sharpsburg (Antietam). The daughters of *Judge Gaston* were Susan, the wife of Robert Donaldson, of New York; Eliza, the wife of Mr. Graham, of Maryland; Hannah, who married *Judge Manly*, of the Supreme Court of N. C.; and Kate, who died unmarried.

It is my pleasant mission, representing the granddaughters of the distinguished jurist, *Miss Eliza Donaldson* and her sister, *Mrs. Bronson*, to ask the Court to receive this portrait of their revered grandfather. It is a copy of Brown's painting, made by an artist who (745) was reared upon the premises where *Gaston* died.

When North Carolina, awakened at last to a sense of her duty unperformed, shall place in the National Valhalla, the Statuary Hall at Washington, the statues of her two most illustrious dead, it requires no prophet to foretell that one will bear the lofty brow and classic face of her beloved son, the patriot, the statesman, the scholar and the jurist, *William Gaston*.

*Chief Justice Shepherd*, responding for the Court, said:

We have listened with much pleasure to the eloquent remarks of Mr. Busbee on the life and character of one who is so justly and universally esteemed as a great and good man. The name of *Judge Gaston* excites the admiration and pride of every North Carolinian, and he is con-

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stantly held up to our youth as an exemplar of all that is pure as a private citizen, able and patriotic as a statesman, and elevated and learned as a jurist. He occupies such a prominent place in the political and judicial history of this State, that it would be a work of supererogation to attempt to add anything to what has already been said. While his political services to the country were great, it is but natural that we should regard his opinions while a member of this Court as constituting his most enduring memorial. Elegant in diction, replete with learning, and characterized by great accuracy of statement and strong logical expression, they never fail to interest and instruct, as well as to inspire us, we trust, with a proper sense of the responsibility and dignity of the legal profession and of high judicial position.

We are gratified to receive the portrait of this distinguished jurist, and cheerfully direct that it be hung in an appropriate place on the walls of this chamber.