

## APPENDIX B

### PORTRAIT OF CHIEF JUSTICE MERRIMON

PRESENTED TO THE SUPREME COURT ON 27 MARCH, 1894

Mr. Armistead Jones, addressing the Court, said:

The family of the late lamented Chief Justice Merrimon have honored me by requesting that I should present to the Supreme Court of North Carolina this lifelike portrait of that distinguished jurist. It is with melancholy pleasure that I enter upon the task assigned me. When a great and wise man dies, the void should be filled by a constant recurrence to his virtues. Though his body has returned to the dust whence it came, he should ever live in our minds and hearts, and we should feel his inspiring impress in the walks of life. This thought emboldens me to endeavor to delineate summarily the life and character of this great man.

As an educator of public thought, Chief Justice Merrimon was the peer of any man in his State. He was original, and bold in his originality. He led in the paths of truth, and wherever he led it was always safe to follow. Whether at the bar or on the hustings, he was ever the same dignified gentleman, possessing the courage of his convictions and urging them with an intensity that eliminated truth from error as the gold is separated from the dross. It was one of his distinctive characteristics to master thoroughly anything he undertook, and hence his utterances were always pleasant and instructive. With his pure and undefiled character, mingled with a stern sense of justice to his fellowman, he wielded an influence of good to his country that posterity will cherish and sacredly remember.

Augustus Summerfield Merrimon was born in that part of Buncombe County now constituting the county of Transylvania, on 15 September, 1830, and was at the time of his death sixty-two years of age. His father was the late Branch H. Merrimon, a devout minister of the Methodist Episcopal Church, South, and his mother was Mary Paxton, a lineal descendant of the McDowells of Revolutionary fame. Soon after the marriage of his parents they moved to Henderson County, and there his father devoted himself in great measure to agricultural pursuits, and upon the farm, with all the natural advantages a rural life could afford, the son began to acquire those noble traits that adorned his life. The limited means of his father admitted of but few advantages of a scholastic education, and while following his daily avocations the first light of learning dawned upon him. One of the proudest recollections of his life was to recall the fact that he acquired the rudiments of an education while following the plow, and he often would point with pride to a worn copy of Town's Analysis in his library as if it was his Alma Mater. Recognizing the deep interest manifested by him in trying to educate himself, his father finally sent him to the school of Mr. James Norwood, a teacher of merit at Asheville, and there by studious endeavors he soon became one of the foremost in that school. His efforts were mainly directed towards mastering the English branches, and so well did he succeed that in a short time he felt that he was prepared to enter the University, but had not the means to defray his expenses. Desiring to enter the legal profession, he began the study of the law, and for this purpose devoted himself untiringly, and at the same time

## APPENDIX

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gave much attention to historical study. In about a year he applied for and obtained license to practice in the county courts of the State, and by diligent labor and zeal in another year he was admitted to practice in the Superior and Supreme Courts. It was, indeed, entertaining and instructive to hear him detail his early experiences at the bar. He was so exact and punctilious in his conduct, and so frank and open in his dealings, that in a short period of time he began to attract the attention of men of affairs, and, as he grew in experience, his practice at the bar increased also. Here in his native county he laid that broad foundation upon which he so proudly stood through life.

The first position held by him was that of County Attorney for Buncombe, and to this he brought a mind quick to grasp the questions involved in the duties of his office. It was at once apparent that he possessed the elements necessary for a prosecuting officer, and the vigor with which he conducted the State's cases, and the fairness exhibited by him in all his intercourse with the court, the bar and the jury, soon marked him as a man of no ordinary ability. In a little while the people of his county began to regard him as a leader, which naturally induced him to devote some attention to political matters. In 1860 he was elected to the House of Commons, where he served with great credit to himself, making a reputation in that body, composed of some of the ablest men of the State, which soon made him one of the foremost leaders of the political party to which he belonged. He strongly opposed secession, but when it became inevitable, recognizing the sovereignty of the State, he was one of the first to volunteer in its defense. He received the appointment of commissary, with the rank as captain, in the Confederate Army, and served in that capacity until his appointment as Solicitor for the Mountain District. At this time the war was well under way, and owing to the rugged, mountainous section of the west it was infested with bands of wrong-doers, men who sought to take advantage of the turbulent times, many of them being deserters from both the Confederate and Federal armies. Crimes were committed against the public peace, and the high-handed conduct of offenders was appalling. It was at times dangerous to attempt to bring these ruffians to justice, and in order to protect the law-abiding, nerve and boldness were required. These essential prerequisites were not found wanting in the prosecutor for the State. His love of law and order was the incentive to duty, which was performed in such a fearless manner as to bring to justice many of those bad men, and to strike down the efforts of others to demoralize and destroy the community. Such was his success in restoring the supremacy of law that the first Legislature after the war elected him Judge of the Superior Court for that judicial district—a deserved recognition of duty well performed. His course while presiding as judge of the Superior Court forms an interesting part of the history of this State. The war had closed, leaving civil government wrecked and society demoralized. Many of the best men of the State were under the ban. Marauders infested the west, and were a terror to society. In some of the counties they had full sway. The courts must be opened and civil supremacy restored. Judge Merrimon mastered the difficulties. Courts were reorganized and held in those counties and society redeemed. His quickness of perception was one of his most striking characteristics; this, coupled with a sound knowledge of the law, enabled him to preside with ease and dignity. Exact as he was, his main care was for the logic of the question, to an understanding of which all of his energies were bent.

When the military authority in the days of reconstruction came in conflict with the civil, and the Congress of the United States assumed to dictate the conditions upon which the States should return to the Union, and the order of the military commander became the rule of action, Judge Merrimon, appre-

## APPENDIX

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ciating the helplessness of stataal power, refused to bend to arbitrary orders, and tendered his resignation, which the Governor declined to accept until the trial by him of one of the most celebrated cases in the annals of our State, the Johnston Will Case, involving the settlement of intricate questions upon which depended the disposition of vast property. The ablest counsel of that time appeared in this case, and the trial extended over a period of six weeks. Many exceptions were taken in the course of the trial, but none were sustained in the Supreme Court upon appeal.

Returning to the practice of his profession, he soon found a wider field for action by taking up his residence in the city of Raleigh. Here he formed a copartnership with the Hon. Samuel F. Phillips, which continued until some time in 1873. During that period the firm of Phillips & Merrimon appeared of counsel in the most important litigation in the various courts, and at a time when legislation was prescribing new forms of procedure under a constitution that effected radical changes in rights and remedies. In many instances, with no guide save that of reasoning from first principles, Judge Merrimon by the force of logic opened the way in which others have since followed, by establishing the precedent of the court. As a speaker, there was little flourish or flower in his discourse, and well-rounded rhetoric gave way to the essence of the point at issue. Notwithstanding his large practice at the bar, he spared the time to advise and counsel with his people upon public affairs. His voice was constantly raised in defense of civil liberty, and his energies directed towards checking the usurpations of the political party then in control of the State and Federal governments, when it became a part of the policy of that party to foist upon the South the reconstruction amendments to the Constitution, which placed under disability many of the best class, and extended to the ignorant and incapable the power of control, and when, in order to successfully execute that policy, the writ of *habeas corpus* was suspended and martial law declared in certain counties of the State, and men were arrested and imprisoned by a *quasi*-military authority, one of the first to come to the rescue was Judge Merrimon. His talents were devoted towards sustaining the law of his fathers and upholding the principles of civil liberty that were so near to his heart. He was one of the first to apply for writs of *habeas corpus*, and to appeal to the judiciary; and, finally, he was largely instrumental in procuring the release of the persecuted by order of Judge Brooks. However the power of that judge may be questioned, his order cut the Gordian knot and the people were freed. In the campaign of 1870, Judge Merrimon canvassed for the Democratic party, and after the overthrow of the party in power at the election of that year, the Governor of the State was impeached for high crimes and misdemeanors, and Judge Merrimon was engaged by the State as one of the counsel for the managers appointed by the House of Representatives. History records the result of that impeachment and the important part taken by him in its management.

In 1872, Judge Merrimon was nominated by the Democratic party for the office of Governor of the State, and, though the whole power of the Federal Government was brought to bear to compass his defeat, he came within a few hundred votes of being elected. Though defeated by influences beyond the power of human energy to control, he so wounded and crippled his adversaries as to produce their defeat at the next election.

The Legislature of 1872-73 elected him to the United States Senate, where he served for one term. In the same year his law partner, Mr. Phillips, became the Solicitor-General of the United States, and hence the law firm was dissolved. In the following year he became the partner of Colonel T. C. Fuller, now a judge of one of the Federal courts, and Capt. S. A. Ashe, under

## APPENDIX

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the firm name of Merrimon, Fuller & Ashe. This continued until Captain Ashe retired to enter other pursuits, and thereafter the firm of Merrimon & Fuller continued until near the time when Judge Merrimon was appointed by the Governor in 1883 to fill a vacancy upon the Supreme Court bench. In the Senate of the United States he at once showed that he was a ready debater, well equipped to cope with the great men of that day, and soon acquired a reputation in that body that was an honor to himself and his State. He participated in many of the great debates, and exhibited a familiarity with the questions involved to a remarkable degree. He saw that the currency of the country should be expanded to meet its business needs, and greatly aided in carrying through Congress a bill to increase its volume and make it more flexible, which was vetoed by the President.

Upon the death of Chief Justice Smith, the Governor appointed Judge Merrimon to fill the vacancy as Chief Justice of the State, and at the next election he was indorsed by a large majority at the polls. While upon the Supreme Court bench much of his attention was given to settling the practice under The Code, and he was specially fitted for this work. He cleared away the uncertainty that enveloped points of practice, construing the statute in a plain and concise way, so as to have it express its true meaning. His opinions, beginning with the 89th volume of our Reports and extending through the 109th volume, abound with such force and learning as will ever mark him as one of the greatest and purest judges of modern times. He was broad, and at the same time possessed a power of concentration that enabled him to discern the true principle and deal with it at ease.

He was a bold, just judge, fearless of consequences, when he believed he was right. He at no time stooped to popular prejudice or opinion, and sustained through life a spotless name. While upon the bench he scorned the idea of being influenced by outside popular feeling, and had the courage and manhood to give his opinion of the law as he in conscience understood it.

In 1852, Judge Merrimon married Margaret J. Baird, daughter of Israel Baird, of Buncombe, a member of a large and influential family, and she with seven children, all well conditioned in life, survive him.

He was a great lover of home and all its domestic surroundings; an affectionate and devoted husband and father. What was more natural than that this man, whose life-work had been spent in following precedents, in establishing highways through the intricacies of legal questions, in the support and maintenance of those principles of human conduct that the experience of the best and wisest of men has determined to be most durable and most worthy, and who illustrated by his own ways that the most exalted plane of highest virtue was his constant aim, should be found at the last with his eyes fixed upon Him who is the fountain and source of all law, of all things which are for the best of mankind?

Yes, the closing scenes of his life gave evidence, trumpet-tongued, that he who loved truth in law here shall stand forever blessed in the presence of Him who is the great lawgiver and maker.

His belief and his mode of living here were in the eternal fatherhood of God and the boundless brotherhood of man. In the world above, where the reign of law is supreme and without infringement, shall this just man live forever.

Chief Justice Shepherd, responding for the Court, said :

Soon after the death of Chief Justice Merrimon, the members of the bar presented appropriate resolutions in commemoration of his life and character, and these were accompanied with addresses by his professional brethren, emphasizing in terms of impressive eloquence his eminent virtues as a man

## APPENDIX

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and as a judge. The Court, in directing the resolutions to be spread upon its records, expressed its hearty concurrence in all that was said touching the lofty character and intellectual power of our lamented friend and brother. It is in the same spirit that we have listened to the remarks of Mr. Jones on the present occasion, and we desire to express our gratification at having on the walls of this chamber the almost lifelike reproduction of the lineaments of one with whom we were so long associated in our judicial labors, and whose loss we so deeply deplore. We shall never look upon his manly features without being reminded of his exalted conceptions of judicial position and of that courageous spirit which, scorning the timidity of the time-server, bade him discharge its sacred duties without "fear or favor" and regardless of all personal consequences. He applied his best energies to every task that lay before him, and from the very commencement of the study of the law to the end of his days he sought the support and guidance of that Power which can only emanate from the Divine Author of all things. These two great principles formed the basis upon which his noble character and great success were founded, and this is strikingly manifested by the following language of his diary, written on 5 December, 1850, which is extracted for the benefit of the youth of our land, who are just assuming the responsible duties of life: "Today I commenced the study that I presume will be ended only with my life. I have just entered upon the study of the law. Whether I shall succeed or not, none but God knows, and in Him I put all my trust, for it is from Him that all things come. One thing, however, is certain: no labor nor pains shall be wanting on my part to make myself both useful and respectable."

It is not often that we find the resolutions of youth so ardently pursued and so richly rewarded, nor do we often meet with a life so beautifully rounded as to afford such an inspiring example of all that is good in the private citizen or in the public official.

Chief Justice Merrimon was a wise, conservative, and fearless judge, and an upright and patriotic statesman, and as such we revere his memory.