

NATHANIEL BOYDEN

ADDRESS OF DR. ARCHIBALD HENDERSON, OF THE UNIVERSITY FACULTY, IN PRESENTING, ON BEHALF OF THE FAMILY, TO THE SUPREME COURT,
A PORTRAIT OF THE LATE JUDGE NATHANIEL BOYDEN,
AT ONE TIME A MEMBER OF THAT BODY.

May it please your Honors:

One bright morning in the autumn of 1822 two adventurous young men from remote New England, the one from Massachusetts, the other from Connecticut, alighted from the stage coach and tarried to take breakfast at the home of Hezekiah Saunders, near King's Cross Roads, in Guilford County. So impressed were these young fellows by the attractions of the locality that, before the stage was ready to depart, they had resolved to end their wanderings and to make a hazard of new fortunes in the Old North State. One of these young men was the agent of a clock company; the other was a fledgling attorney, with less than \$50 in his pocket. The former bore the name of Sidney Porter; the latter, the name of Nathaniel Boyden. Is it too fanciful to say that had these two young men gone on, as they intended, to Greenville, S. C., or Monticello, Ga., and not found North Carolina fair to look upon that clear autumn morning, after a bountiful repast, it would not have been my singular destiny to present to the State of North Carolina three years ago a memorial to the grandson of the former, the world-famous "O. Henry," and to present to the Supreme Court to-day a portrait of the latter, distinguished as lawyer, member of Congress, and Justice of the Supreme Court, Nathaniel Boyden? What a debt the State of North Carolina owes to the gratifying blandishments of Hezekiah Saunders, of Guilford, and his hospitable hostelry of a hundred years ago!

I.

Nathaniel Boyden derived from forbears of worth and distinction, and inherited qualities which in due time elevated him to position and esteem wholly commensurate with ancestral promise. Thomas Boyden, the ancestor of all the earlier members of the family who bore this name in America, embarked for New England in the good ship *Francis*, from Ipswich, Suffolk County, England, in April, 1634, having taken the oath of allegiance before his Majesty's officers, according to the order of the Lords of the Privy Council. The family was long established in England, the surname being frequently found in English records during the past three centuries; and at the village of Boyden, in Suffolk, are located estates enumerated in the will of an English nobleman. The father (818) of Nathaniel Boyden, John by name, the first male child

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born (29 January, 1764) of European parents in Conway Township, Massachusetts, died on 2 October, 1857, at the great age of 93 years. As a soldier in the Revolution he stood on guard at one end of the cable stretched across the Hudson River to prevent the passing of the sloop-of-war, *Vulture*, when Benedict Arnold was plotting to betray West Point, and he often reverentially spoke of seeing Washington when he made his unexpected visit to West Point after André's capture and Arnold's flight.

Nathaniel Boyden's mother, Eunice Hayden, was the daughter of Dr. Moses Hayden, a learned and eminent physician, of Conway, Mass., and his uncle was the Hon. Moses Hayden, a member of Congress from New York. The pioneer of the family was William Hayden, who came to this country in the *Mary and John* in 1630; and for many earlier generations the Haydens, whose estates were located in the neighborhood of Norwich, England, were distinguished for bravery as soldiers and for commendable virtues as citizens. It is probable that Nathaniel Boyden derived his brilliant talents as a lawyer from the Haydens, who for long held legal appointments in England from the king. It is noteworthy that the wife of one of his Hayden ancestors was the aunt of the ill-starred Anne Boleyn.

We feel no surprise, then, on learning that the young Nathaniel, who was born in Conway, Mass., on 16 August, 1796, displayed the martial spirit of his ancestors by enlisting in the war of 1812 at the age of 15, and that for his services he received the reward of a land warrant for 160 acres of land. His education was of the best. He was prepared for college at Deerfield Academy, and attended in succession Williams College and Union College, Schenectady, N. Y., where he was graduated in July, 1821. He began the study of the law while still in college. Before coming to North Carolina he served a brief apprenticeship under the New York attorney, Judah Yearby, whose office was just off Wall Street, and under his uncle, the Hon. Moses Hayden, with whom he read law.

At King's Cross Roads, in Guilford County, he taught school, the while acquainting himself with the North Carolina legal code and procedure; and somewhat later he taught school in Madison, Rockingham County, where he met Ruth, great-niece of Governor Alexander Martin, and was married to her on 20 January, 1825. In December, 1823, he received license to practice law in the courts of this State, and settled near Germanton, Stokes County, where he resided until his removal to Surry, in 1832. In 1842 he removed to Salisbury, where he resided until the time of his death, on 20 November, 1873. After the death of his first wife he was married to Mrs. Jane C. Mitchell, widow of Dr. Lueco Mitchell, and niece of Chief Justice Leonard Henderson. I rejoice in the presence

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here this morning of a gracious resident of Raleigh, Mrs. T. (819) K. Bruner, granddaughter of Nathaniel Boyden and Ruth Martin, and in the presence of the son of Nathaniel Boyden and Jane, his second wife, the Hon. A. H. Boyden, the most popular and debonair of North Carolina gentlemen.

The conspicuous facts of Nathaniel Boyden's public life may be recited in brief compass. The deeper springs of his action and character, and the larger meaning of his life, might well inspire an extended biography. In 1830 and again in 1880 he represented Surry County in the House of Commons, and in 1844 he represented Rowan County in the State Senate. In 1847 he was elected a member of the Thirtieth Congress, and at the expiration of the term declined a reelection. Twenty-one years later he was elected a member of the Fortieth Congress, and in 1871, as successor to the Hon. Thomas Settle, he was appointed Associate Justice of this Court, which elevated post he held at the time of his death.

II.

Upon one occasion the Hon. William H. Bailey, in his day one of North Carolina's ablest and wittiest lawyers, was asked why he did not publish his reminiscences of the lawyers of North Carolina, which he was known to have written. "My dear friend," he replied, "it is posthumous work. If I were to publish that book during my lifetime I should be indicted for criminal libel in every county in the State." Of his law partner, Nathaniel Boyden, he could have said nothing to provoke a libel suit, for he knew him to be unsurpassed by his contemporaries in knowledge of the law, in dialectic ingenuity, and in resolute force of character. With one of those encyclopædic minds which remind one of the indicial omniscience of a card catalogue, he retained, ready for immediate use, not only the law bearing upon the case, but all the testimony, however voluminous, without feeling the need for recording it. Thrown into competition, at the outset of his legal career, with men of the stamp of Ruffin, Murphy, Nash, Settle, Yancey, and the Moreheads, he met every emergency through the extraordinary gifts with which nature and study had endowed him — vigorous intellect, perception quick as light, and an agility in mental reason well-nigh phenomenal. A later contemporary thus characterizes him: "He delighted in the practice of the noble profession which he so much adorned and in which he reached so high an eminence. The fine intellectual conflicts to which it gave rise possessed for him indescribable charms. They were meat and drink to his nature. His self-reliance never forsook him for a moment. His moral courage was sublime.

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He never shrank from the performance of any duty nor hesitated to take any responsibility. His fidelity to his chiefs was never (820) doubted. With all these high qualities, being well grounded in the law, and thoroughly understanding its great cardinal principles, success was inevitable."

From the time of his first retirement from Congress until his elevation to the bench, at the age of 74, he was actively engaged in the practice of his profession, having a circuit of twelve counties. For more than thirty years he regularly attended the sessions of the Supreme Court of the State. Endowed with an eminently practical mind and extraordinary industry, he attained to great repute and achieved a handsome competency. Traditions of North Carolina's greatness clustered about his footsteps; for in his own yard in Salisbury was situated the tiny law office of Judge Spruce Mackay, the legal preceptor of William R. Davie and Andrew Jackson. In some reminiscences the late Charles Price, brilliant and able attorney, characterized Nathaniel Boyden as perhaps the greatest *nisi prius* practitioner who ever lived in North Carolina. "I have seen Mr. Boyden," he said; "indeed, heard him at the bar. As a lawyer he was the equal of anybody on the circuit. I heard Mr. J. M. Clement, himself one of the greatest lawyers of the State, say that Mr. Boyden had appeared in more jury trials than any other of our lawyers. He was thoroughly familiar with the English law, with all questions of practice and the rules of evidence, and saw always the point in the case at once. Mr. Boyden was an orator, too — a great wrangler — and, no matter how or when tripped, invariably lighted on his feet.

"I remember once, at Yadkin Court, when it was suggested that unless the jury agreed it would be necessary to haul them to Surry the next week. Mr. Boyden, in a moment, said there was no authority for such a course. The court (Judge Buxton) said it had been done in North Carolina, and asked Mr. Boyden, 'Why not in this case?' Mr. Boyden said the rule here was different from the English rule. There, the records were made up at Westminster and followed the judge around the circuit; here, every county had its own records, and the jury could not be separated from the record. This was so evidently correct, the jury was dismissed."

As Associate Justice of this Court, during the two and a half years of his incumbency Judge Boyden delivered opinions which, for practical wisdom, broad knowledge, and cogency in reasoning, may uniformly be cited with profit. These opinions will be found in five volumes — 65 to 69 North Carolina Reports, inclusive. The present distinguished head of this Court has written of Judge Boyden: "While on the bench he was said to have been especially

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useful on questions of practice. He possessed a strong and cultivated mind, and was endowed with an extraordinary memory. A fair specimen of his style and his practical turn of mind will be found in *Horton v. Green*, 66 N.C. 596, an action for deceit and false warranty."

III.

In all the political changes, through periods of great stress (821) and ferment, in State and nation, Judge Boyden was allied with more than one political party. But as an "old-line Whig" he stood consistently for the doctrines in which he had early learned to believe. In the earlier years of his life he was a Madisonian Republican, and when the old Republican party dissolved he joined the National Republicans and supported John Quincy Adams for the presidency in 1825 and 1829. Upon its formation he became a member of the Whig party and stood steadfastly by its fortunes to the last. And when that party ceased to exist he continued to cling to the fundamental doctrines which it had taught. "Calm thought and mature reflection," said one of his contemporaries in 1873, "had led him to the firm conviction that the theory of the Constitution taught by Washington, Marshall, Webster, and Clay was the true one, and the only one, on which the Government could be maintained and the Union preserved. And he was prepared to follow out these doctrines to their legitimate consequences. With him a love of the Union predominated largely over every other political feeling. He saw no hope for the preservation of constitutional liberty in this country but in the preservation of the Union, and no hope for the preservation of the Union but in the national principles which he held. And he always had an abiding faith that they would triumph at last, and believed that a long and glorious future awaited the great American Republic."

From the very beginning of the War Between the States he never expected any other result than the final surrender of the Confederate forces to the Federal army. Yet, notwithstanding what he regarded as their great political errors, he manifested the profoundest sympathy with the Southern people, lamented the stern penalties of war, and lent his aid to the citizens of his adopted State. I was deeply impressed some time ago in reading some unpublished reminiscences of the late Rev. A. W. Mangum, professor at the University of North Carolina, in which he described the arrival at Salisbury, where he was then living, of the first news of the opening of the great conflict. "The news of the bombardment of Fort Sumter, as it flashed over the wires," he relates, "created a novel, strange and painful excitement. True, there was rejoicing when it was

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known that the Stars and Stripes were lowered and South Carolinians were in possession of the stronghold; but there was an indescribable dread and foreboding that mingled with that rejoicing in the minds of all the thoughtful and sagacious. Entering *The Watchman* office on the morning the thrilling intelligence was received, I observed Hon. Mr. Boyden as he read the telegram. Dropping the paper, he exclaimed, with an emphasis I can never forget, 'We are ruined — ruined — ruined!'

Judge Boyden was identified with the South by family (822) ties, by interest, and by all the memories of his palmy days; and he was not, at heart, untrue to the South in opposing that which his sagacious mind considered baneful to her welfare, prosperity, and peace. He looked upon secession as disastrous to the South. But, once the die was cast, he went with the State. One may read to-day in *The Carolina Watchman* of 24 August, 1861, the list of subscriptions to the Confederate Loan — a list headed by the name of Nathaniel Boyden in the sum of \$1,500, accompanied by the statement that his tobacco, as well, would be freely subscribed. He bore the sternest test of all — he gave his beloved youngest son, Archibald Henderson, to fight for the cause of the Confederacy.

One who knew him intimately has written that "No man was more opposed to the plan of Congressional reconstruction than Judge Boyden, and none labored harder to prevent it." But at the same time none realized more clearly than he the exigency, as well as the intrinsic justice, of making some sort of concession in the form of political privileges to the negro race. Along with Bedford Brown, P. H. Winston, J. M. Leach, and Lewis Hanes, Nathaniel Boyden was appointed by Governor Worth in 1866 on a commission, the main function of which was to investigate the condition of affairs and mature a rational and humane policy. With the greatest earnestness he devoted himself to these duties, and by conference with Governor Orr of South Carolina, ex-Governor Parsons of Alabama, Governor Marvin of Florida, Judge Sharkey of Mississippi, and Judge J. T. James of Arkansas, sought in Washington to effect a compromise and settlement of the vexing questions growing out of the results of the war. The plan proposed, known as the "North Carolina Plan," in the formulation of which Judge Boyden had a large share, and for its basis impartial suffrage and universal amnesty. No man who had ever voted was to be disfranchised, but thereafter all others who could read and write, or who owned \$200 worth of taxable property, without distinction of race or previous condition, were to be enfranchised. In return for this concession, full and complete amnesty by Congress was to be granted, as well as the recognition of the governments then existing in the Southern

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States, and the speedy admission of the senators and representatives of those States, elected in 1865, to their seats in the National Legislature. In all probability, the North Carolina plan would have been accepted by the State Legislature but for the conviction that it would be only the prelude to the imposition of deeper humiliations. Foreseeing the direful consequences to North Carolina in case of its failure, Mr. Boyden had its success deeply at heart. Upon learning of the failure of the plan, after all his arduous and sincerely patriotic efforts, the anguished man vented his deep grief in bitter tears.

At this day, in the clear light of truth, and in this room, the hall or supreme justice, it is indeed well that men should (823) consider, freely and impartially, the facts of history. At the close of the war Nathaniel Boyden was desirous for an immediate restoration of the Southern States to their former places in the Union. He was opposed to the Howard Amendment, because of its large proscriptions, which he deemed unwise and unjust, and favored a much more comprehensive amnesty than that granted by President Johnson's proclamation in 1865. When it was proposed in 1868 to furnish Southern Governors with arms, Mr. Boyden denounced the plan in the strongest terms, saying on the floor of the House of Congress: "Great God! We cannot afford to fight each other. I warn the House that if arms are sent there, we will be ruined; we cannot live there. If we need anything in the way of arms, in God's name send an army of the United States there, but do not arm neighbor against neighbor." North Carolina might well have been spared many of the horrors of the orgy of reconstruction had Lincoln lived. And this in a way and for a reason that may not be known to many in my hearing. It was related in writing by the late John A. Boyden, and is believed to be an historic fact, though never hitherto given to the public, that President Lincoln had selected Nathaniel Boyden for the post of Provisional Governor of North Carolina. The proclamation had been prepared by President Lincoln, who was assassinated on the night before it was to be published.

Three incidents in Mr. Boyden's career are deserving of more than the passing mention to which I must, perforce, limit myself here. In the Convention of 1865 he played one of the leading roles and introduced the ordinance which declared that the ordinance of 20 May, 1861, "is now, and hath been at all times, null and void." In the impeachment trial of Governor Holden he was one of the brilliant array of legal talent composing the Governor's counsel, including besides himself R. C. Badger, J. M. McCorkle, William N. H. Smith, and Edward Conigland; and his speech on 17 March, 1871, with its imposing marshalling of legal authorities, is mem-

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orable as an argument on the impossibility of holding the Governor responsible for his execution of an unconstitutional law. Some verses by an unknown hand, penned during the progress of Governor Holden's trial, have been handed down for the amusement of posterity:

Graham's expounding
 The law — his voice sounding
 Away through the dome —
 On the great writ of right
 He makes a grand fight,
 And surely thinks he's some.

(824)

But Boyden, the pliant,
 Who will follow, defiant,
 All minor themes scorns
 If all else would fail him,
 Why, then, he'll impale him
 On horns, horns, horns.

Lastly, Mr. Boyden was consistent with his own principles, long tenaciously maintained, in transferring his allegiance, in 1868, to the Republican party. Had the Convention accepted in good faith the situation in the South as it was, and nominated Chief Justice Chase for the presidency on that platform in 1868, Mr. Boyden would have become an active opponent of General Grant for the presidency in that year. It was sincere alarm for the safety of the country, occasioned by the nomination of Seymour and Blair by the New York Convention, and the publication by the latter of his celebrated "Brodhead letter," which drove Mr. Boyden into his support of General Grant. Apart from the policy of the Republican party in reference to reconstruction, he had always held to some of its great cardinal principles.

May it please your Honors, I beg leave to present to the Supreme Court of North Carolina, to be placed upon your walls, the portrait of Nathaniel Boyden. In presenting this portrait of one who achieved honorably and filled worthily a seat upon this bench, I shall make end with some words written at the time of Judge Boyden's death by my own father:

"In all his intercourse with his fellow-men Judge Boyden was straightforward, honest, direct. He was a pattern of perfect sincerity in all that he said or did. He was manly in everything. Flattery he detested. The arts of the demagogue he despised. No man ever lived who was farther away from corruption. His integrity was never doubted by any man who came near him. His manly and straightforward course, accompanied by a certain brusqueness of manner, may have led some to suppose that he was deficient in

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some of the qualities of the heart. If so, it was a great mistake. With as much of true manhood as belongs to the greatest and most powerful characters, he yet possessed all the tenderness that characterizes the gentlest of the gentler sex. None who knew him well can deny that his was a character that deserves to be held long in remembrance, especially as a bright example to the young men of the country. Let them take courage from that remarkable example, and emulate his many virtues and noble qualities, and success in whatever they undertake is within their reach."

I thank your Honors.

ACCEPTANCE OF PORTRAIT OF NATHANIEL BOYDEN.

(825)

ACCEPTANCE BY CHIEF JUSTICE CLARK OF PORTRAIT
OF JUDGE NATHANIEL BOYDEN, 20 NOVEMBER, 1917.

The Court has heard with great interest the instructive address of Professor Henderson.

Judge Boyden was born in Massachusetts in 1796. He was a soldier in the War of 1812, and the son of a soldier of the Revolution, and his son served the South with distinction in the War of 1861-'65. He came to this State in 1822 and was several times a member of the Legislature. In 1847 he was a member of Congress, and again in 1868. He was appointed to the Supreme Court in May, 1871, and served two and a half years, till his death, in November, 1873.

Admitted to the Bar in 1823, he served in his profession with great distinction for nearly half a century. During that time it was his custom to attend forty-eight courts each year, and he practiced regularly in twelve counties. Such labor as this will put to shame the most strenuous members of the Bar of these days, most of whom do not go out of their own counties.

When appointed to the Supreme Court bench, Judge Boyden was in his 75th year, being the oldest man ever appointed to this bench. Chief Justice Smith and Judge Ashe were also in their 75th year when re-elected, when there were only three judges on this bench, but Judge Smith had already been ten years on the bench and Judge Ashe eight years. These figures seem moderate, however, compared with Chief Justice Marshall's service, till he was 80, and Chief Justice Taney's, who wrote the celebrated Dred Scott decision when he was 80, and continued in service on the bench till he was 87. Still more remarkable was the appointment of John Campbell (the illustrious author of Lives of the Chief Justices and Lord Chancellors) as Lord Chancellor, for the first time, when over 80, and the career of Lord Chancellor Lyndhurst of England, who was born at Boston three years before the battle of Bunker Hill, survived till after the battle of Gettysburg, and died still in judicial service at the age of 91.

The youngest judge to ascend this bench was Judge Settle, at the age of 37. Judge Boyden was more than double that age when appointed—these being the extremes. Judge Boyden brought to this Court the accumulated learning and experience of nearly fifty years at the Bar and the intensity of energy and love of labor which had gained him success and fortune in that forum, and commanded for him a well-earned reputation here.