

APPENDIX "B"

PORTRAIT OF CHIEF JUSTICE SMITH.

PRESENTED TO THE SUPREME COURT ON WEDNESDAY, 25 FEBRUARY, 1891.

Mr. George H. Snow said:

May it please the Court, it is my pleasant duty to present to this Honorable Court this portrait of its late *Chief Justice*, the Honorable *William N. H. Smith*.

The gift is from his family to this high Court, and through it to the young men of the State; and in being the tongue of the occasion and hour, I shall best please myself if the thoughts presented shall fill the imagination of those who hear, that they have no remembrance of the words.

William N. H. Smith was born in North Carolina on 24 September, 1812, and died on 14 November, 1889. He graduated at Yale College in 1834, and from its law school afterwards. From 1840 to 1849 he served in the General Assembly of this State. From 1849 to 1857 he was the Solicitor of the First Judicial District.

In 1859 he was elected to the Congress of the United States, and upon entering that body was made the Whig candidate for speaker, his opponent being the Honorable John Sherman, now the Senator from Ohio.

When the vote was taken *Mr. Smith* had a majority of one, but before the result was announced the clerk of the House notified two members who had not voted of how the vote stood. They immediately went to *Mr. Smith* and offered not to vote, which would elect him, or vote and certainly elect him, if he would form the Ways and Means Committee in the interest of a high tariff. This *Mr. Smith* would have done if let alone, but when coupled with that condition he declined to make any promise, saying that if elected he must be unfettered. The two members voted against him, and the much coveted honor went to another.

He served during the entire war in the Confederate Congress. After the war had closed he returned to the practice of his profession, and continued in the enjoyment of a large and lucrative practice until 1878, when he was appointed, by Governor Vance, *Chief Justice* of this Court, which office he held until he passed out of the sunlight and starlight into the shadows. He lived among us for nearly eighty years, and the lessons of his life are impressive ones.

He was a typical North Carolinian, unostentatious in his manners, simple in his tastes, of positive opinions and strong convictions, never shrinking from their avowal, always ready to maintain them by argument, considerate of the opinions of others, his mind a storehouse of

APPENDIX B

knowledge, an honest man and a Christian gentleman; but the most striking feature in his character was his active, earnest and unfaltering fealty to duty, and this was so exacting that, though he possessed literary tastes and was an accomplished classical scholar, they were subordinated to the active, controlling and absorbing principle of his life duty, and to this was added a high sense of honor which kept his conscience keenly alive to the many obligations imposed by his public and private relations.

He was prepared for the battle of life by a very thorough education, both mental and physical, and immediately attracted attention by his wisdom in the legislative halls, to be more forcibly emphasized as the brilliant solicitor of a district which was then renowned for the learning and culture of its bar and people.

His motto seemed to be, "Too low they build, who build beneath the stars." Upward and onward he pressed until he stood beneath the dome of the nation's capitol, to be there tempted as few men have been and maintained their integrity. His fame had preceded him. We behold the unparalleled spectacle of a young man, at the threshold of his entrance to the Congress of the United States, offered the speakership upon his complying with a condition which today would be too readily accepted; but his delicate sense of honor, formed by inheritance, education and association, enabled him to put aside this dazzling and glittering crown for one which the angels give.

Let us pause while the rich incense of this noble act diffuses itself into the hearts and minds of his people. I know of no public man, nor have I read of one, who has more honored his people at so great a sacrifice to ambition; and, for one, I solemnly declare that I had rather wear the laurel which his victory gave than a monarch's crown.

'Tis said that "the falling drop makes its sepulcher in the sand, not a footstep in the snow or along the ground but prints in characters more or less lasting a map of its march, and every act of a man inscribes itself in the memories of its fellows."

I would that I could write upon the wind, the storm and the lightning's flash the simple story of how this great North Carolinian preserved his integrity and thereby honored his people, that we and those who come after us may imitate him, and while we live

"To know no bliss but that which virtue gives,
And when we die to leave our name
A light, a landmark on the cliffs of fame."

This act was not the result of accident. Like the forces of nature, which are forged in the laboratories of the Almighty and set in motion—traveling myriads of miles and years, acquiring strength as they speed their rapid flight—meet together at the same time and place and form

APPENDIX B

those grand constellations in the heavens, which are "the wonder He showeth unto the children of men," so in man's nature those great moral and intellectual forces, which are forged in a mother's heart and set in motion by her teachings, gain strength and character as they are nurtured and fostered by labor, love and honor—culminating in those great moral and intellectual constellations which make men almost godlike.

In the twilight of his life he was the *Chief Justice* of this Court, and his knowledge of the law, coupled with his ripened experience, has enriched the judicial literature of this Commonwealth and broadened the channels of the law.

He was a conspicuous figure when he stood alone, and always grew by contrast. He was never commonplace in anything. He was a firm believer in God and the Christian religion, and he so lived that he was gathered unto his fathers, "having the testimony of a good conscience; in the confidence of a certain faith; in the comfort of a reasonable, religious and holy hope; in favor with God and in perfect charity with the world." "That man lives twice that lives the first life well." His life is worthy of imitation by the old as well as the young, and the student of great men will turn with profit to a history of his life work.

These are not words of mere eulogy which an enlightened civilization invokes for the dead, but the sweet perfume which the memory of a noble and stainless life emits when touched by the softness of retrospection.

This portrait presents his lineaments in a wonderfully realistic manner; and in this quiet room, singularly free from turmoil and strife, dedicated to the science of the law, and in which he presided for so many years as the *Chief Justice* of this Court with such marked ability, it is fitting that it should be placed by the side of his illustrious predecessors who, like him, "went down with the sun and left even upon the mountain top of death a light that made it lovely."

Vita enim mortuorum in memoriam vivorum est posita.

ACCEPTANCE BY CHIEF JUSTICE MERRIMON.

The Court accepts with much satisfaction the very excellent portrait of the late *Chief Justice Smith*, donated by his family. It is a fit memorial of him, and will serve to remind us, and all who shall visit this chamber in the future, of his sturdy virtues, his great ability and learning, and the useful and distinguished services rendered by him as the head of the Supreme Court through a period of many years. The clerk will note on the records the presentation of this gift, and our acceptance of it.

INDEX

ABATEMENT:

Of *habeas corpus* proceedings, 204.

ADMINISTRATION:

1. An administrator cannot purchase property at his own sale, although he pays a fair price and acts in good faith. *Tayloe v. Tayloe*, 69.
2. While an administrator is not an insurer, he will be held to that degree of diligence and care which prudent men under like circumstances would exercise, and the fact that he acted in good faith and with an honest purpose to protect his trust will not excuse him from liability for a failure to use such diligence and care. *Ib.*
3. It is the duty of an administrator to pay all the debts against his intestate before he distributes any portion of the estate to the next of kin, provided such debts are presented to him for payment within twelve months next after publication of notice to creditors, as required by The Code, sec. 1421; but as against claims presented after that period he will not be chargeable with any distribution he may have made in good faith to the next of kin. *Mallard v. Patterson*, 255.
4. In a proceeding to sell land to make assets, a judgment previously obtained against the executor is conclusive against the heirs and devisees, unless fraud and collusion is alleged and shown, and the heirs or devisees cannot plead the statute of limitations or other defense which might have been set up in the original action. *Long v. Oxford*, 280.
5. In such proceedings the realty is liable for costs as well as for the balance of the judgment, unless the court which rendered the judgment taxed the cost against the executor (or administrator) personally, or against the plaintiff. *Ib.*
6. In an action against one surety on an administration bond, it is not error in the court to refuse to make an order to join the other sureties. *Brown v. McKee*, 387.
7. A judgment by default against an administrator appointed prior to July, 1869, rendered in an action begun in 1882, conclusively fixes him with assets, notwithstanding the complaint upon which the judgment was based failed to allege that he was possessed of assets. *Ib.*
8. The objection that an action upon an administrator's bond was not brought in the name of the State must be made in apt time. *Ib.*
9. The next of kin of a deceased person has a right to administer upon his estate within six months after his death, or, in lieu thereof, within that time to have appointed such person as he may select, if in other respects qualified. *Williams v. Neville*, 559.
10. The Code requires that, before any person other than the next of kin can be appointed administrator within six months from the decedent's death, a written renunciation of such next of kin must be filed with