APPENDIX

ALFRED MOORE AND JAMES IREDELL

REVOLUTIONARY PATRIOTS, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

AN ADDRESS DELIVERED IN PRESENTING THEIR PORTRAITS TO THE SUPREME COURT OF NORTH CAROLINA ON BEHALF OF THE NORTH CAROLINA SOCIETY OF THE SONS OF THE REVOLUTION, 29 APRIL, 1899

BY JUNIUS DAVIS, ESQ.
A MEMBER OF THE SOCIETY

At the annual meeting of the North Carolina Society of the Sons of the Revolution, held in the city of Raleigh on 15 November, 1898, the following preamble and resolutions were adopted:

"WHEREAS, Alfred Moore and James Iredell, of North Carolina, were prominent patriots during the War of the Revolution—Moore in military, and Iredell in civil stations; and

"WHEREAS, after the return of peace, the talents and patriotism of these distinguished jurists were recognized by appointment to the bench of the Supreme Court of the United States, in which high tribunal they did honor to North Carolina and the country at large:

"*Therefore, be it resolved by the North Carolina Society of the Sons of the Revolution,* That oil portraits of the said Moore and Iredell be painted, at the expense of this society, for presentation to the Supreme Court of North Carolina.

"*Be it further resolved,* That Junius Davis, Esq., of this society, be invited to formally present the said portraits to the North Carolina Supreme Court on behalf of the society at such time as the committee hereafter named shall designate.

"*And be it further resolved,* That the board of managers of this society shall forthwith appoint a committee to carry into effect these resolutions, the said committee having full power to act for the society."

IN THE SUPREME COURT

29 APRIL, 1899

The speaker was introduced by MR. THOMAS S. KENAN, vice-president of the society.

May it please you, the Chief Justice and Justices of the Supreme Court: At the request of the North Carolina Society of the Sons of the Revolution, of which I am a member, I have the pleasure and honor of presenting to you portraits of two of the ablest and most distinguished jurists of North Carolina—

Alfred Moore and James Iredell. It is a brilliant and goodly assembly which has gathered here, and into which they are introduced: Ruffin, the great expounder of the law, whether common, commercial, equity, or constitutional; the illustrious and talented Gaston; the scholarly Murphey; Taylor, Daniel, Hall; Pearson, preëminent in the common law; and others—all great lawyers; but even into such company may they enter as peers, with proud front, with lofty dignity, and a serene confidence in their own splendid abilities. As we recall the names and fame of the mighty giants of the law whose shadows now look down upon us from these walls, an involuntary feeling of wonder is excited in us that no one of them whose words have reached throughout this broad land, and, echoing across the wide ocean in the courts of England, have commanded respect there, should have been called to sit in that august tribunal which administers the laws of this great republic. And yet so it is, that only at the birth of that Court, a century ago, has a son of North Carolina been honored with a seat upon the Supreme Bench of the United States. Looking back over that one hundred years, what a retrospect is before us! In every department of art, science and industry, in the art of war and in the arts of peace, what vast progress, what rapid strides have been made! And in no science has there been greater or broader progress than in the science of the law. When Moore and Iredell came to the bar the law was in its infancy—a vast unexplored field, with but few well-known landmarks to guide the toiling student on his way. Now that field is covered with a multitude of roads, ever branching out and crossing and intersecting and bisecting and overlapping each other, until the whole is one tangled maze, through which the brethren wander with dizzy brain and uncertain step. Whether the benefit to the world at large has been equal to the progress, is a question some cynics have asked, but which I will not attempt to answer. In that day a copy of Coke, Bacon, Hawkins, a few stray volumes of reports, perhaps the ancient Plowden, or Dyer, or Coke, a strong, luminous intellect, hard, common sense, and what my Lord Kenyon called "the reason of the thing," were all the weapons of the well-equipped lawyer. There were no encyclopedias, no codes, no State reports, but precious little home-made statute law, and no "case lawyers." Only strong men could succeed, and as a rule only strong men came to the bar. The lawyers of that day were not only laborious students, zealous and diligent in the pursuit of knowledge, but they were also the leaders of the people. More than all others, they moulded and directed public sentiment into that current which finally swept on to the creation of these United States. The prominent part which they were to take in the Revolution was foreseen by Burke, who, in a speech before Parliament in 1775, referring to the colonies, declared: "In no country perhaps in the world is law so general a study. The greater number of the deputies sent to the Congress were lawyers. . . . I have been told by an eminent bookseller that in no branch of his business, after tracts of public devotion, were so many books as those on the law exported to the colonies. . . . I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England. . . . This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources." However, there were some things in which the judges and lawyers of that day in no wise differed from those of the present time, notably in that antagonism which always prevails when opinions differ. For, in 1783, we find Iredell writing to his wife in regard to one of his cases: "I think the proceedings are irregular and may be set aside, but there is no risking the plainest things with our judges."

But before Moore and Iredell, even as they came to the bar, was already looming up the black shadow of the coming Revolution. In the dark and weary days of gloom, of trouble, misery and woe, through which our people

passed in their first struggle for liberty and independence, they did their duty well as men and patriots, the one in the field and the other in the halls of council.

It is impossible for us of this generation to realize to the full the conditions which confronted our ancestors. They had been taught to look up to England as a child to its mother, to love and reverence, to fear and obey her. She was the most powerful nation in the world, with a strong army, a mighty navy, and vast resources. The colonies were without money, without arms, without soldiers, without ships, and without friends. There was no quarter of the globe to which they could look with any hope for aid or assistance. But there was no looking backward, no shrinking from the edge of peril, no fear or hesitation to "awake the sleeping sword of war" with the men of that day, but a stern, high, steady resolve to achieve that independence to which they had pledged "their lives, their fortunes, and their sacred honor." And, among those who carried themselves as true men in that great conflict, history tells us that Alfred Moore and James Iredell were prominent.

ALFRED MOORE

Alfred Moore was born in the county of Brunswick on 21 May, 1775. He was the son of Judge Maurice Moore, whose wife was Annie Grange. He came from a line of men who had written their names upon the history of the Old World and of the New. He was a lineal descendant of that Roger Moore who was one of the leaders of the Irish rebellion of 1641, and who, Hume says, "first formed the project of expelling the English and asserting the independence of his native country." James Moore, by some accounts the son and by others the grandson of Roger Moore, had emigrated to the Barbadoes prior to the accession of Charles II. to the throne, and from there he came to South Carolina with Sir John Yeamans, whose daughter he married, and settled near Charleston, in the famous Goose Creek settlement in Berkeley Precinct.

It was a singular destiny which brought about this alliance and mingled in its offspring the blood of the Irish rebel with that of the English cavalier. Sir John Yeamans was the son of Robert Yeamans, who was high sheriff of Bristol in 1643, when that city was besieged by the army of the Parliament under Lord Fairfax. So devoted to the cause of Charles was Robert Yeamans, and so sturdily and bravely did he bear himself in the defense of that city, that upon its capture, Fairfax, in his wrath, hanged him offhand in the street, opposite his dwelling.

The Barbadoes had been an asylum for both Cavaliers and Roundheads, who, wearied of the strife and persecution of the Civil War, sought peace and rest in a distant land, and here came John Yeamans. He was one of the thirteen gentlemen of that colony who were knighted by Charles, when he came to his own again, for their sufferings and sacrifices in the Royal cause. He was also, in January, 1665, made Governor by the Lords Proprietors of the "County of Clarendon," afterwards the Province of South Carolina, stretching west from the Atlantic to those unknown waters called the Southern Seas, and south to the Spanish possessions in Florida, and was also a lieutenant-general. In May, 1671, he was created a landgrave and given 12,000 acres of land, and in the same year, for a second time, was made Governor. He carried with him to the Ashley his negro slaves, and, according to Bancroft, was the first to introduce negro slavery into the colonies.

James Moore was a bold, adventurous man, of high spirit, unflinching courage and strong mind, and he soon became a leader of men. He was Governor of South Carolina in 1700, and when succeeded in that office by Sir Nathaniel Johnson, in 1703, he was appointed Attorney-General of the Province. His

eldest son, James Moore, was also Governor of South Carolina in 1720. He was one of the ablest soldiers of the province, and had greatly distinguished himself in the wars with the Spanish and Indians. When the Tuscaroras, having recovered from their defeat by Barnwell, were again carrying the torch and tomahawk through the unprotected settlements of North Carolina, in 1712, and Governor Pollock called upon South Carolina for aid, James Moore, the second, was selected to lead the men from South Carolina. With him, as an officer, went his younger brother, Maurice, to whom we owe the first permanent settlement of the Cape Fear country. Traversing this region on his toilsome march to the Neuse, and seeing the beauty of the land, the fertility of the soil, and the commercial advantages of the river and harbor, it is reasonable to presume that he then and there conceived the project which he afterwards successfully carried out. Lingering in North Carolina, a few years after the return of his brother to Charleston, long enough to marry one of her fair daughters, he returned to Charleston, and gathering about him the families of all of his brothers and sisters (except his elder brother, James) and many of his friends, about the year 1723, for history leaves the exact time uncertain, he again struck into the wilderness, and settled them at and around Old Brunswick, on the west side of the Cape Fear River, about 13 miles below Wilmington. And this was the first permanent settlement of the Cape Fear region.

His two sons, Maurice and James, were eminent and distinguished men and ardent patriots. Maurice was one of the three judges of the province at the breaking-out of the Revolution, and was "a learned jurist, an astute advocate, and a keen-sighted statesman." James was a soldier and "considered the first military genius of the province." He was colonel of the First North Carolina Continental Regiment in September, 1775, and brigadier general in March, 1776. Upon the departure of Lee for the North, in the summer of 1776, he was appointed by Congress Commander-in-Chief of the Southern Department. But, a few months after, however, his health failed, and he died in Wilmington on 15 January, 1777; and, on the same day, in the same house, died his brother Maurice, both "in the prime of life and in the meridian of their fame and usefulness."

In 1764, while yet a youth, Alfred Moore was sent to Boston to complete his education. Judge Taylor says that, "On the arrival of the British troops there, in 1768, he attracted the notice of a Captain Fordyce, a man of fine taste and acquirements, who became much attached to the youth, and offered to procure him an ensigncy in the army. This he declined, but, under the instructions of his friend, he learned the elements of military science, and furnished himself with a variety of knowledge, which highly qualified him for that stormy period in which he was destined to live."

On 1 September, 1775, while not yet of age, he was appointed a captain in the First North Carolina Regiment, commanded by his uncle, James Moore. After participating in the short but brilliant campaign which resulted in the total defeat and destruction of McDonald's Royalist Highlanders at Moore's Creek, in February, 1776, his regiment, then commanded by his brother-in-law, Col. Francis Nash (Col. James Moore having been appointed brigadier general in the Continental line), was ordered to Charleston to assist in the defense of that city against the threatened attack of the British under Sir Henry Clinton and Lord Cornwallis. With his company he bore his part in that memorable attack on Fort Moultrie in June, 1776, when the North Carolinians behaved with such gallantry as to draw from Charles Lee the eulogium: "I know not which corps I have the greatest reason to be pleased with, Muhlenburg's Virginians or the North Carolina troops—they are both equally alert, zealous, and spirited." And what higher testimony to the valor of the

North Carolinians could we have than this, when a Virginian reckons them as equal to the best regiment Virginia had sent to the field! After the repulse of the British at Charleston, Moore's regiment was camped at Wilmington, where it was put through a rigid system of drill and discipline, which gave it the efficiency that distinguished it in the later northern campaigns.

In March, 1777, the regiment was ordered north to join Washington, who was then retreating through New Jersey and in great straits. Captain Moore did not accompany his regiment, for he had been compelled by the misfortunes and necessities of his family to resign his commission on 8 March, 1777. His brother Maurice, a lieutenant in his regiment, had but recently been killed, his father had died, and the utterly disordered and defenseless condition of the country around Wilmington commanded his presence at home. But, though no longer in the Continental line, he still kept the field, and, enrolling himself in the militia, became an active and zealous partisan. With a few raw but restless spirits he made himself such a thorn in the side of the British at Wilmington that Major Craig, in command there, sent a detachment to his plantation, which plundered his house, burned all the buildings on the place, carried away all his stock, and left him utterly penniless and destitute. But his lofty courage and ardent patriotism were unshaken by these trials, and he continued to lose no opportunity to harass his enemy whenever an opportunity afforded. Judge Taylor tells us that Major Craig made every effort to kill or capture him, and, failing in both, sent him an offer to restore his property and give him amnesty if he would only return to his plantation and take no further active part in war. But this offer was spurned by him, and his efforts in the cause of freedom and independence were never relaxed until the final triumph.

The close of the war found him ruined in fortune and estate. His plantation was a waste, his slaves scattered and stolen, he himself without resources or money, his family almost destitute of food and clothing. His condition was, indeed, deplorable. He had, prior to the breaking-out of the war, studied law under his illustrious father. I have seen it stated that he was appointed Attorney-General of the State before he had obtained a license to practice law, but this is a mistake, for in the minutes of the County Court of New Hanover, April Term, 1775, I have seen the record of his producing a license to practice law in the inferior courts of the State and taking the usual oath required. It is certain, however, that if he had any practice at the bar it was but very limited and of very short duration.

At the June Term, 1782, of the Court for the Hillsboro District, in the absence of the Attorney-General, "The court," to use the words of Judge Williams, "got the favor of Col. Alfred Moore to officiate as attorney for the State, and without whose assistance, which the court experienced in a very essential manner, they could not have carried on the business of the court." There were many important criminal cases at this term, and seven capital convictions, for burglary, high treason, etc.

In 1782, the General Assembly of North Carolina, in grateful remembrance of his distinguished services, and in some part to compensate him for his losses and unselfish patriotism, recognizing his eminent abilities, appointed him Attorney-General of the State to succeed Iredell, who had just resigned. We are told that the salary of the first two years of his office was paid in homespun and provisions. Think upon it a moment, your Honors—what would be the consternation, the utter misery of the present Attorney-General if such legal tender were proffered to him for his salary! To a weak man, the high position to which Alfred Moore had been called at the very outset of his career as a lawyer would have been but a quicksand and a pitfall. But he was anything but weak. Judge Taylor tells us that he had a mind of uncom-

mon strength and a quickness of intellectual digestion that enabled him to master any science he strove to acquire. He was small in stature, scarce 5 feet 4 inches in height, neat in dress, graceful in manner, but frail in body. He had a dark, singularly piercing eye, a clear, sonorous voice, and those rare gifts of oratory that are born with a man and not acquired. Swift was his model, and his language was always plain, concise and pointed. A keen sense of humor, a brilliant wit, a biting tongue, a masterful logic, made him an adversary at the bar to be feared. Judge Murphey, in his address before the societies of the University, says: "Two individuals who received their education during the war were destined to keep alive the remnant of our literature and prepare the public mind for the establishment of this University. They were William R. Davie and Alfred Moore. Each of them had endeared himself to his country by taking an active part in the latter scenes of the war; and when public order was restored and the courts of justice were opened, they appeared at the bar, where they quickly rose to eminence, and for many years shone like meteors in North Carolina. . . . Davie took Bolingbroke for his model; and Moore, Dean Swift. . . . Public opinion was divided upon the question as to whether Moore or Davie excelled at the bar. . . . Davie is certainly to be ranked among the first orators, and his rival, Moore, among the first advocates which the American nation has produced."

In 1790, indignant at what he considered an unconstitutional infringement upon his rights by the creation of the office of solicitor-general, and being worn and exhausted by the constant and arduous toil and labor entailed upon him by a large practice, he resigned his office, and, virtually abandoning his practice, retired to his plantation. He was a Federalist in politics, and in 1795 was defeated for the Senate of the United States by one vote. In 1798 he was elected one of the judges of the State and took his seat upon the bench. In delivering the opinion in *S. v. Barna Jernigan*, 7 N. C., 12, Chief Justice Taylor pays high tribute to his character and ability: "The very question, however, before us, has been decided in the case of *S. v. Hall*, in 1799, by a judge whose opinions on every subject, but particularly on this, merit the highest respect. Judge Moore was appointed Attorney-General a very short time after this act of Assembly was passed, and discharged for a series of years the arduous duties of that office in a manner which commanded the admiration and gratitude of his contemporaries. . . . His profound knowledge of the criminal law was kept in continual exercise by a most varied and extensive practice at a period when the passions of men had not yet subsided from the ferment of a civil war, and every grade of crime incident to an unsettled society made continual demands upon his acuteness. No one ever doubted his learning and penetration, or that, while he enforced the law with an enlightened vigilance and untiring zeal, his energy was seasoned with humanity, leaving the innocent nothing to fear and the guilty but little to hope. The opinion of such a man, delivered on an occasion the most solemn on which a judge could act—when doubt in him would have been life to the prisoner—assumes the authority of a cotemporary exposition of the statute, and cannot but confirm me in the sentiments I have expressed."

In this connection I am reminded of a tradition that I heard from some of the seniors of the bar when I was first admitted to it. About the year 1816 there was a band of robbers and outlaws operating chiefly in Duplin, Sampson, Wayne and the nearby territory, whose chief purpose was enticing slaves from their masters, under the promise of freedom, and spiriting them away to the far Southern States and selling them. Chief among these were the Jernigans, and chief among them was the Barna Jernigan above mentioned. He had been indicted and convicted for enticing away the slave of one John Coor Pender, then sheriff of Wayne County. The story runs, that as Coor Pender

was on his way to court to give evidence against Barna Jernigan he was waylaid, shot and killed by one of the band. His eldest son, then a lad of 19 years of age, vowed to devote his life to the pursuit and punishment of the murderer of his father. Alone he tracked him through North Carolina into South Carolina, through South Carolina into Georgia, through Georgia into Florida, where at last he found him—secure, as his coward's heart believed—refuged among the Seminole Indians. Nothing daunted, young Coor Pender boldly made his way into the Seminole country and, addressing their chief, demanded the assassin with that plea so sacred and dear to the heart of the Indian, that blood alone can atone for blood. Bowing to the justice of the demand, the Seminoles surrendered the man, whose name, I think, was also Jernigan, to young Coor Pender. Binding his prisoner, unaided he brought him back through the long and wild journey and delivered him into the hands of justice in Wayne, where he was soon afterwards tried, convicted and hanged.

No brilliant feat of the days of chivalry can, to my mind, surpass this courageous and devoted act of this plain and simple young North Carolinian.

In December, 1799, Mr. Moore was called to the seat upon the Supreme Bench of the United States made vacant by the death of James Iredell. He first sat at the August Term, 1800, when, in *Bas v. Tingy*, 4 Dallas, 37, on the admiralty side of the docket, he delivered the only opinion emanating from him during the four years of his judicial life on that bench. This seems strange, and forces us to inquire the reason for this singular silence of so able a lawyer. The answer is found in the pages of Dallas and Cranch, and is given by Mr. Carson in his "History of the Supreme Court of the United States," who tells us that it was owing to the practice which obtained after Marshall came upon the bench, of making the Chief Justice the organ of the Court. So strictly was this rule adhered to, that during Justice Moore's term of office the opinion of the Court was always delivered through the Chief Justice, except in one or two instances, when he expressly declined to do so, and then that duty fell upon the senior Justice. We must remember that the Court was then but an infant, its docket exceedingly light, and it was no great labor for one judge to write all the opinions. There can be no doubt, however, that in the solemn deliberations of the conference chamber Moore's opinion upon every question under discussion was given in clear, concise and logical argument, was listened to with deference, and carried the weight of his great talents with it. He remained upon the bench about six years, when his failing health compelled his retirement and he resigned in 1804. He died 15 October, 1810, in the fifty-fifth year of his age, "a loyal, just and upright gentleman," carrying with him to the grave the blessed comfort of a well-spent life, the affection of his friends, the sincere respect and reverence of all men, and the grateful appreciation of his native State.

JAMES IREDELL

James Iredell was born in the quaint and historic old town of Lewes, Sussex County, England, on 5 October, 1751. He was the oldest child of Francis Iredell, a merchant, of Bristol, who had married Margaret McCulloh. Through his mother he was nearly related to Henry McCulloh and his son, Henry Eustace McCulloh, who owned immense bodies of land in North Carolina in the last century, and this relationship was destined to have an important influence upon his after-life. When he was about 16 years of age, his father, through misfortune and ill health, became so reduced in estate that his relatives came with loving care to his aid. It was but natural that they should seek to advance the elder son and secure for him a position in which, in time,

he could be a help and prop to his parents in their declining years. Through the influence of his relative, Sir George McCartney, on 29 February, 1768, Iredell was appointed comptroller of the customs at Edenton, to which place he came in the latter part of 1768. And, as an incidental duty, the McCullohs put upon his shoulders the supervision of their interests in Carolina, without any suggestion or thought on their part of recompense to him for the labor.

It seems that in the effort to secure this appointment for him, his youth was studiously concealed in the very reasonable fear that knowledge of it would be death to the hope. The very suggestion of a lad of 16 to be comptroller of his Majesty's customs would have seemed ridiculous even to the careless Charles. But how shall we speak our admiration of the high spirit, the stout heart, the self-reliant courage of this boy, who, tenderly reared and carefully nurtured, in obedience to the call of duty, leaving all that were near and dear to him, crossed 3,500 miles and more of ocean to assume the unknown duties of a responsible office in a wild and new country, where the red man yet boasted himself the master, and the white man barely clung to the shore by the tips of his fingers! But it was duty that called him, and duty and filial love that impelled him to promise to send to his parents all the salary he should receive from his office. And it is pleasing to know that this promise was religiously kept and that he faithfully remitted all his salary to England, only reserving the scanty fees of the office for his maintenance. And so was the boy the father to the man.

Edenton was then but a village of a few hundred inhabitants, but in and around it dwelt many gentlemen of means, of culture and of learning, who were among the first in the province and destined to be leaders in the coming movement which lost Great Britain her great plantations. Here he met Harvey, Hewes, Jones, Charlton, Dawson, the Johnstons and others, and soon became their friend and constant companion. Among them was Samuel Johnston, of the family of "the gentle Johnstones of Annandale," whose sister, Hannah, Iredell afterwards married, and whose example and influence, more than all else, shaped his future career.

Soon after he had become familiar with the duties of his office, Iredell commenced the study of law under Samuel Johnston. Alternating his devotions between his law books and his lady love, and equally diligent in his application to both, in two years after his arrival, and while in his nineteenth year, on 14 December, 1770, he received a license from Governor Tryon, with the approbation and recommendation of Chief Justice Howard—that "eminent vagrant," as Jones styles him—to practice law in the inferior courts of the State.

On 26 November, 1771, he obtained a license from Governor Martin to practice in the superior courts, and became a full-fledged lawyer. McRee tells us that when he first appeared at the bar "he had a difficulty to encounter which but few experience and fewer surmount as he did. He had a natural impediment in his speech which would have abashed and discouraged weaker minds if possessed of but half of his delicate sensibility." But even this impediment was conquered by the stout courage of his heart, and he soon stood among his seniors as their equal.

In 1771, the restless tide of discontent, stimulated by the arbitrary measures of the crown, and swelling with the news of the Boston massacre, was steadily rolling and spreading as it went through the colonies, and nowhere with more resistless force than in North Carolina.

Iredell, though scarcely aware of it himself, was already in the current and drifting toward the day when he was to stand boldly forth for the cause of liberty.

APPENDIX

In 1773, the dispute in this State over the Court Acts, which had been rife for some time, culminated. The Assembly insisted upon the right of attachment against foreign nonresidents, and the crown was equally insistent against granting it. The terms of the judges and the life of the courts had expired by limitation. The Assembly passed new laws for the creation and organization of the courts and tacked the attachment law to it. The Governor refused his assent and dissolved the Assembly, leaving the province without courts and without laws. For some time there were only five provincial laws in force, and the only courts were those held by single justices of the peace. In fact, the courts and the supreme majesty of the law were not fully reëstablished in North Carolina until November, 1777. Crime went unpunished, wrongs were unredressed, and person and property alike were without the security and protection of law. This condition of affairs was but the forerunner of the coming storm whose mutterings were already growing near and clearer, presaging "the lean famine, quartering steel and climbing fire," that were so soon to desolate the land. On 18 July, 1773, Iredell married Hannah Johnston. Their union was a most happy one in every respect. She was a loving wife, a prudent and faithful administrator of the domestic economies of their household, and a wise and able friend and counsellor, to whom he ever brought the full story of his joys and triumphs, his sorrows and reverses. The charming letters which passed between them are the highest evidence of their loving devotion to each other, their mutual trust, confidence and respect.

In 1774, the Revolution was well on in North Carolina. Harvey, Johnston, Harnett, Hooper and others were in active correspondence, zealously engaged in preparing and shaping public sentiment to meet with ready courage the approaching crisis. Iredell was an active but silent participator and adviser in all their counsels. Although scarce 23 years of age, he was already in full maturity of mind, of judgment, and of action. Springing at a bound from youth into the full panoply of manhood, he stood and moved among the foremost men of his time as their peer, and his advice and opinions on all questions of public moment were eagerly sought and referred to by them. William Hooper, then some 32 years of age, was easily one of the ablest and most prominent men in North Carolina, as a scholar, a lawyer, a statesman, and a patriot. On 26 April, 1774, we find him writing to Iredell: "I am happy, my dear sir, that my conduct in public life has met your approbation. It is a suffrage which makes me vain, as it flows from a man who has wisdom to distinguish and too much virtue to flatter. . . . *Whilst I was active in contest you forged the weapons which were to give success to the cause I supported.* . . . With you I anticipate the important share which the colonies must soon have in regulating the political balance. *They are striding fast to independence*, and ere long will build an empire on the ruins of Great Britain,"

In this short extract we are forcibly impressed with three things: Hooper's deferential appreciation of the approbation of Iredell, his graceful recognition of the great assistance which Iredell was even then rendering to the patriotic cause, and his bold and early declaration for the independence of the colonies. And yet Hooper was the man whom that great apostle of the people, Thomas Jefferson, a few years later, in the bitterness of envy and jealousy, declared to have been the greatest Tory in Congress. The falsity of this accusation is plainly apparent to any person who has ever followed Hooper's course during these troubled times. Fortunately for him, and fortunately for his State, his unwavering devotion and loyalty to the cause of freedom, and his unfaltering determination to achieve independence at any and every cost, has been faithfully recorded by the brilliant and erratic Jones in his celebrated "Defense of North Carolina." It is evident that Hooper was alluding in this letter to

the project of a Provincial Congress, the first of which met in New Bern on 25 August, 1774, with John Harvey as moderator. John Harvey, William Hooper, Samuel Johnston, James Iredell, and Willie Jones were the five men who projected and, more than all others, accomplished this assembly of the people.

The second Provincial Congress in North Carolina assembled at New Bern on 3 April, 1775, and, although he was not a member, so fully was he in sympathy with the movement that Iredell went there to assist with his counsel and advice, so welcome to all.

The events that followed are matters of common knowledge: Martin's frothy proclamation, the grim defiance of Congress, his flight to Wilmington and final refuge on the sloop-of-war, *Cruiser*. In November, 1776, Iredell was appointed by the Congress one of the commissioners to revise the laws of the State, and it is said that the celebrated Court Law of 1777 was the work of his pen. In November, 1777, the law courts were reëstablished; and on 20 December, Samuel Ashe, Samuel Spencer, and James Iredell were elected the first judges of the free and independent State of North Carolina. Iredell was then barely 26 years of age. He had been warmly urged by his friends for the office of Attorney-General, which, it seems, he would have preferred, but was defeated in that by Waightstill Avery, whom he was soon to succeed. In June, 1778, he tendered his resignation to Governor Caswell, who received it with great reluctance, saying he well knew the place could not be supplied "by a gentleman of equal abilities and inclination to serve the State in the important duties of that office."

In January, 1779, when the Assembly was about to appoint delegates to Congress, it expressed through the speaker to Iredell, who happened to be present, its desire to appoint him, but what he called his poverty compelled him to decline with reluctance.

On 8 July, 1779, Iredell was appointed, by Governor Caswell, Attorney-General in place of Avery, who had resigned. We have all reflected with sympathetic pity upon the weary and toilsome life of that poor and patient servant of the Lord whom the irreverent were accustomed to call the "circuit rider," and yet his travels were but a summer day's journey compared to those of the leading lawyers of Iredell's time. When the courts opened, they followed the judges, from Edenton to Hillsboro, from Hillsboro to Halifax, from Halifax to Salisbury, from Salisbury to Wilmington, and from Wilmington to New Bern. Their way lay through the wilderness, over swollen rivers, through pestilential swamps, through rain and snow, hailstorm and sunshine, their usual conveyance a one-seated gig, and their lodging place as chance and the fortunes of the road might determine. The duties of his office entailed upon Iredell so much arduous labor and brought with it such small compensation that, in 1782, when peace was assured by the surrender of Cornwallis, he resigned to become again what he called "a private lawyer." Cases and clients came to him rapidly, and in July, 1783, he writes his brother that he had a share of practice "very near equal to any lawyer in the country."

In 1786, following the passage of the Confiscation Acts, the question of the power of the court to declare void an act of the Legislature because in conflict with the Constitution, was raised in this State by some of the bar and vigorously supported by Iredell in an exceedingly strong and able pamphlet. In this pamphlet, which was published in the New Bern paper of 17 August, 1786, Iredell says: "It will not be denied, I suppose, that the Constitution is a *law of the State*, as well as an act of the Assembly, with this difference only, that it is the fundamental law and unalterable by the Legislature, which

derives all its power from it. . . . An act of Assembly inconsistent with the Constitution is void and cannot be obeyed without disobeying the superior law, to which we were previously and irrevocably bound."

In the celebrated case of *Bayard v. Singleton,* 1 N. C., 5, at May Term, 1787, in which Iredell, Johnston, and Davie were counsel for plaintiff, and Moore and Nash for defendant, that question was first discussed and decided in the courts of this State. In reading the report of this case, one is struck with the great and proper reluctance of the judges to approach the decision of the point so novel and strange. They suggested to the litigants first one and then another method of compromise and settlement, but, driven to it at last, they faced the issue as true men. Mr. Haywood, in his argument in *Moore v. Bradley,* 3 N. C., 140, attributes the merit of that opinion to Judge Ashe, and says that he illustrated his opinion by this forcible language: "As God said to the waters, 'So far shall ye go, and no farther,' so said the people to the Legislature." Afterwards, when upon the Supreme Bench of the United States, in *Calder v. Bull,* 3 Dallas, 386, and again in *Chisholm v. Georgia,* Iredell took occasion to declare in emphatic language his opinion to be, "If any act of Congress or of the Legislature of a State violates those constitutional provisions, it is unquestionably void; though I admit that as the authority to declare it void is of a delicate and awful nature, the Court will never resort to that authority but in a clear and urgent case." This doctrine, so clearly and admirably stated in these few and concise words, is now the law in every State of this Union, and is universally taken to have been so settled by the opinion of Marshall in *Marbury v. Madison,* 1 Cranch, 137. I cannot but think it singular that, in his opinion in this case, Marshall makes no reference whatever to either of the three cases above mentioned or to the earlier cases in Rhode Island and Virginia. The language of Iredell, in *Calder v. Bull,* is so clear-cut and logical that it could not have escaped the notice of the Chief Justice. In our busy life we seldom pause to reflect upon the far-reaching results, the inestimable blessings of these decisions. How often in our history has Congress and Legislature, in the mad lust of power and the wild riot of party hate, striving to accomplish unholy and unwholesome legislation, been halted by the stern mandate, "So far shall ye go, and no farther." England's greatest statesman once said, "The poorest man may in his cottage bid defiance to all the force of the crown; it may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England may not enter; all his forces dare not cross the threshold of the ruined tenement." But this vaunted liberty of the British subject can bear no comparison to that of the American citizen, who, dwelling under the shadow of the mighty Constitution, is secured by it in the fullest enjoyment of his life, his property, and his liberty.

In the famous State trials at Warrenton, in January, 1787, Alfred Moore prosecuted for the State, and Iredell and Davie defended.

In November, 1787, Mr. Iredell was appointed by the General Assembly a member of the council and sole commissioner to revise and compile the acts of the General Assemblies of the late province and present State of North Carolina. This task was faithfully and ably executed by him, and the work, printed in 1789, afterwards became widely known and celebrated as "Iredell's Revisal."

In 1787, the question of the adoption of the new Federal Constitution was agitating the people. Iredell was one of its ablest and most energetic advocates, and by his labor and eloquence, more than any one else, contributed to its final ratification and adoption in November, 1789. In January, 1788, he published a long and most admirable pamphlet in its support, in reply to the objections of George Mason. He was a member of the convention which met

at Hillsboro on 21 July, 1788, to consider its adoption. Alfred Moore and William Hooper were both candidates for this convention. In instance of the strong ties of friendship which bound these two men together we read that Moore, certain of his election in Brunswick, and fearing Iredell's defeat in Chowan, urged Iredell to become a candidate from Brunswick. Preferring to represent his own people, however, he fortunately declined and was elected, while Moore and Hooper were both defeated. In this convention Iredell was the leader of the Federalists, and the burden of the argument for his party was thrown upon his shoulders. McRee tells us: "He defended, he removed objection, he persuaded, he appealed to interest, and awakened into life the spark of national pride. His vigor, and the extent and variety of his attainments excited the admiration of his adversaries. His words were neither too few nor too many, but such as were in common use; and conveyed his ideas clearly and distinctly to the simplest understanding; his style was terse and condensed; his arguments, direct and solid, struck the mark with the force of cannon balls."

Though not successful, he was not defeated, for the convention would neither reject nor adopt. His fame had now reached far beyond the limits of his State, and Washington, led to a conviction of his great abilities by his debates in the convention, and his answer to Mason's objections, appointed him to the Supreme Bench of the United States in place of R. H. Harrison, who had declined.

On 10 February, 1790, Pierce Butler, of the Senate, writes him: "You have this day been nominated by the President, and *unanimously* appointed by the Senate, to the Supreme Federal Bench. I congratulate the States on the appointment, and you on this mark of their well-merited opinion of you." That he had won the respect and confidence of Washington is well known to us. In a letter of 1 February, 1790, his distinguished brother-in-law, Samuel Johnston, then a member of the lower house of Congress, tells him: "I have just returned from dining at the President's with a very respectable company. . . . The President inquired particularly after you, and spoke of you in a manner that gave me great pleasure." His commission was dated 10 February, 1790, and his first services were on the circuit, where, with Rutledge, he rode the Southern Circuit, then composed of South Carolina and Georgia, North Carolina not having adopted the Constitution when the Judiciary Act of 1789 was passed. He first took his seat on the Supreme Bench at the August Term, 1790, when, after the reading of his commission and the admission of a few counsel, the Court adjourned from the lack of business.

Let us pause here for a brief moment and think upon the work which was carved out for the members of that Court. The questions that were to arise before them were in the highest degree grave and important. An entirely new field of jurisprudence was opened out, in which they were to find no precedents. The unique questions of the amenability of the States to the process of the Court, their relations to the Federal Government, the limitations and definitions of the powers of the Federal courts, the interpretation of the Constitution, the independence of the Federal judiciary as a coördinate branch of government, the obligations of the Treaty of Peace, the extent of the power of Congress to levy taxes and duties, questions of prize, the Confiscation Acts, patent rights, violations of the embargo, land laws, ownership of slaves, citizenship, and many others of like importance and first impression were to be raised, argued, and decided. And when we reflect upon the magnitude of their task and of their successful elucidation of the intricate judicial problems brought before them, we cannot withhold our wonder, our admiration and our reverent respect for the first judges of the Federal Supreme Court. Speaking of its first meeting, Mr. Carson has eloquently said: "Not one of the specta-

tors of that hour, though gifted with the eagle eye of prophecy, could have foreseen that out of that modest assembly of gentlemen, unheard of and unthought of among the tribunals of the earth, a Court without a docket, without a record, without a writ, of unknown and untried powers, and of undetermined jurisdiction, there would be developed in the space of a single century a Court of which the ancient world could present no model and the modern boast no parallel—a Court whose decrees, woven like threads of gold into the priceless and imperishable fabric of our constitutional jurisprudence, would bind in the bonds of love, liberty and law the members of our great republic."

At the February Term, 1793, the celebrated case of *Chisholm v. Georgia*, an action of *assumpsit*, came up before the Court. This case was instituted at the August Term, 1792, of the Supreme Court, which, under the Judiciary Act, had original jurisdiction in such cases, in virtue of Article III., section 2, of the Federal Constitution. At that term the Attorney-General moved that notice issue to the State of Georgia to enter an appearance, or show cause why judgment should not be entered and a writ of inquiry awarded. The Court, "in order to give the State time for deliberation" and, I apprehend, themselves opportunity for study and careful thought, postponed the consideration of the motion to the next term, when it was argued by Randolph, the Attorney-General, alone, counsel for Georgia filing a written protest against the jurisdiction and declining to argue the question.

The point in the case was, whether a State was amenable to the jurisdiction of the Court at the suit of a citizen of another State. The first case, I believe, in which one of the States was sued in the courts of another State by a citizen was instituted at the September Term, 1781, of the Court of Common Pleas at Philadelphia, by one Nathan against the State of Virginia, and in it an attachment was issued and levied on a lot of clothing belonging to the State. The Virginia delegates in Congress, indignant at this affront, and protesting it to be *a violation of the law of nations*, appealed to the Supreme Executive Council of Pennsylvania, which arbitrarily ordered the sheriff to release the goods.

In *Chisholm's case*, the Court upheld the jurisdiction; Jay, Blair, Wilson, and Cushing delivering opinions. Iredell dissented in quite a long argument, in which, voicing the sentiment of the Federalists, and true not only to the tenets of that party, but to the profound convictions of his mind, he denied the jurisdiction. His opinion is a memorable one, and, in my humble judgment, for clear and lucid reasoning, cold logic, strong argument, and high statesmanship, was far superior to that of any of his colleagues. In it he virtually enunciated the doctrine that later on became so famous and prominent in the disputes and differences between the North and South under the name of "States Rights," or the "Sovereignty of the States." Marshall, the great expounder of the Constitution and the greatest jurist America ever produced, had boldly declared it in the Virginia Convention of June, 1788. The decision of the Court created a storm of excitement and discussion throughout the States. Two days after it was promulgated, the Eleventh Amendment to the Constitution, which declared that the jurisdiction of the Supreme Court should not extend to suits against a State by citizens of another State or subjects of a foreign State, was proposed in Congress, and afterwards passed by it, and adopted and ratified by all the States.

It was the custom at that time for all of the judges to deliver opinions in the important cases, and we find the volumes of Dallas enriched by the profound and exhaustive arguments of Iredell, notably in *Calder v. Bull*, *Penhallow v. Doane*, *Hylton v. United States*, *Ware v. Hylton*, and *Talbot v. Johnson*.

Always independent in thought and action, he never failed to dissent when the reasonings of his mind led him to differ with the majority of his brothers

on the bench, or to express his views when agreeing with them upon the general result, he arrived at the same conclusions by a different road. But in all cases, so strong, clear and logical were his opinions that they always compelled attention and respect, even when they failed to persuade. Unquestionably, he was the ablest constitutional lawyer upon that bench until the advent of Marshall, and in all other respects the equal of Justice Wilson. While his labors upon the Supreme Bench were but light, those of the circuit were arduous and exhausting, his circuit at one time compelling him to travel 1,800 miles. He was a laborious and indefatigable student and writer, and while upon the Supreme Bench occupied his leisure moments in writing treatises, the publication of which were probably prevented by his untimely death. Among his manuscripts were found "A Treatise on Evidence," an "Essay on Pleading," and a paper on "The Doctrine of the Laws of England Concerning Real Property in Use or in Force in North Carolina," the two latter of which were unfinished.

I cannot pass on without some slight mention of the correspondence of Iredell and the vast wealth of history bequeathed to us by it. To us the great wonder is, how the chief men of that day found the time to devote to social correspondence; but men then, like men now, were always eager and striving for the news; and, in the lack of newspapers, it was disseminated and carried from one to another, and passed on and on through the colonies by means of letters. The man of that day who was no letter writer lived outside of the history of the times and heard no news. Iredell's letters were models, and numbering, as he did, among his correspondents the chiefest men of the day, hand down to us living pictures of the leading characters and stirring events of his life.

In the summer of 1799, his honorable life was nearly spent. The severe labors of the circuit, and the climatic influences of the sickly region in which he lived and traveled, had undermined his constitution, and his health gave way. He was unable to attend August Term of the Court, and, slowly failing, at last died at Edenton on 20 October, 1799, in the noon of life and the zenith of his glory.

The daily walk and life of Iredell, from the boy of 17 to the statesman and jurist of 48, so vividly pictured to us by McRee, reads like an epic poem. The immature lad of 17, torn by stress of fortune from a gentle home and transplanted in a strange and wild land, springing in a day into the maturity of manhood, rising abruptly into the full radiance of public life, called in rapid succession from one high office to another, until he had exhausted all, and filling all with equal roundness until at the last, weary and worn, he sinks into rest, followed by the love and respect of all.

In reviewing his life, I am at a loss which most to admire—his gentle dignity, his amiable disposition, his independence of thought and action, his sturdy self-reliance, his equipoise of mind, his high character, or his splendid abilities. Throughout the whole period of the Revolution, when North Carolina was in her most perilous strait, there is scarce a page of her history upon which the name of Iredell is not written.

I cannot close this sketch without acknowledging in some slight way my obligation for all there may be of interest in it to the biographer of Iredell. I knew Mr. McRee well when I was a youth, and when I came to the bar enjoyed the privilege of his friendship—a landmark upon my way in life upon which I shall ever look back with pleasant recollections. He brought to his work the loving devotion and reverence of a kinsman, a brilliant and discriminating intellect, an untiring zeal and interest and the facile pen of a polished scholar. Disdaining the arts of rhetoric, his style is clear and concise, ever striving for facts and preserving truth at the expense of sentiment

and popular opinion. Happy was Iredell in his biographer, and fortunate the State of North Carolina in such a son. His book is the greatest and most valuable contribution to the social history of the State that has been or ever will be written, and also to its political history, unless we except the recent Colonial and State Records. By his work let him be remembered, and his name handed down from one generation to another as one who did his State great service. No more enduring monument, no more glorious epitaph could he have than the grateful and affectionate remembrance of his countrymen, which he deserves in the most eminent degree.

There is a close and striking parallel between the lives of Moore and Iredell. Their way through life was ever upward. Together they trod with equal step the lofty paths of fame, and, attaining the highest offices in the State, in the line of their profession, at last reached the most exalted station which the aspiring lawyer can hope to touch. Both were judges and attorney-generals of the State, and both were Justices of the Supreme Court of the United States.

When Iredell resigned the office of Attorney-General, Moore succeeded him, and later on was appointed to the seat upon the Supreme Bench of the United States made vacant by his death. North Carolina, in grateful and affectionate remembrance of her two sons, named one of her counties Moore and another Iredell. Federalists in politics and alike in thought upon the great issues of the day, attracted to each other by the same high and noble traits of mind and character which both possessed in an eminent degree, they became warm friends early in their acquaintance, and so remained during life. At the bar they ever disdained the small arts of the pettifogger, and upon the bench, blindfolded, they ever held the scales of justice with an even hand, treating with equal impartiality the rich and the poor, the guilty and the innocent.

May the example of their useful lives, their spotless integrity, and their distinguished services inspire coming generations to emulate them and follow in the lofty paths they walked through life.

"And History shall cherish them
Among those choicest spirits who, holding their
consciences unmixed with blame,
Have been in all conjectures true to themselves,
Their Country, and their God."

ACCEPTANCE BY CHIEF JUSTICE FAIRCLOTH

Replying on behalf of the Court, CHIEF JUSTICE FAIRCLOTH said: "This Court accepts the portraits of Judges Iredell and Moore, and tenders its thanks to the donors. Their lives and characters have been so well portrayed by Mr. Davis that the Court will not attempt to add anything thereto. They not only rendered service to their own State, but their services are recorded in the records of the Supreme Court of the United States, and will remain a monument to their credit through the coming ages.

"We appreciate and commend the laudable work of the Society of Sons of the Revolution, which has presented these portraits. We receive them with pleasure, and the Clerk of this Court will cause them to be suspended in an appropriate place in this hall."