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EARLY DAYS OF THE LAW SCHOOL— REMINISCENCES 1900-1910

THOMAS RUFFIN*

Law teaching in the University seems to have had its beginnings in 1845 upon the appointment of Judge William Horne Battle to the professorship of law then established, a chair which Judge Battle filled from 1845 to 1868, and resumed anew in 1877 and occupied until his resignation about two months before his death in 1879, when its duties were "temporarily" assumed and carried on until 1881 by his son, Dr. Kemp Plummer Battle, who in those days was the President of the University. In 1907 ex-President Battle, as author, states, "On October 3, 1845, the Department of Law was established with William Horn Battle as Professor."¹ The doors of the University were closed from 1868 to 1875, this interval accounting for all but two years of the break in the Law School's continuity as revealed in my above cited dates.

During all of the first twenty-three year period of his professorship, Judge Battle was a State judge, either of the Superior or Supreme Court; yet I find no official record of any assistance in his teaching, except in the years 1854 to 1859, when Mr. Samuel Field Phillips, an academic graduate of 1841, then practicing law in Chapel Hill and having his office in the two-room building now to be seen on the southwest corner of Mrs. Kluttz's lot on East Franklin Street, was an Assistant Professor of Law. This Assistant Professor, "Judge Sam Phillips," as he came to be called, in addition to many other high honors, later enjoyed the unrivaled distinction of having occupied under four presidents—Grant, Hayes, Garfield and Arthur—the office of Solicitor General of the United States, to me the most attractive post in the whole range of our government. I, as a law student, knew Judge Phillips long after his retirement from office, when he was back in the private practice of law, this time in Washington, D. C., about the end of the last century.

In view of the many enforced absences from Chapel Hill of Judge Battle, necessitated by his judicial duties, I suspect that Mr. Phillips, who studied law under Judge Battle in 1844 and who lived and practiced in Chapel Hill, may have been assisting with the latter's law classes some years before he, in 1854, formally was made an Assistant Professor of Law. Without mentioning dates and speaking generally of the

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² Kemp Plummer Battle, *History of the University of North Carolina*, I, 549.

Law School under his father, Dr. Kemp Battle tells us that "he was assisted by Samuel F. Phillips, a young lawyer of great promise,"² and that "while at his Court Judge Battle had as his assistant in the Law School Samuel F. Phillips."³ But I have concluded we would not be far wrong in deducing that, during practically all of Judge Battle's incumbency, the teaching force of the School consisted of only one man—Mr. Phillips' main duties being to take the place of Judge Battle on the occasions of the latter's absence, which must have been frequent and often protracted. Possibly this was true in the five-year period of Mr. Phillips' assistant professorship, as well as before and after that period.⁴

In all of the time of Judge Battle's professorship, the Law School was evidently on quite a different footing from that of the other schools or departments of the University. This is seen particularly in the fact that those of his students who devoted themselves exclusively to the study of law were not subject to the regular University discipline, and in the fact that Judge Battle received no salary from the University, his emoluments being derived from the tuition fees paid by law students, I suppose without any part of such fees going into the University treasury. These incidents, I should say, resulted from the fact that Judge Battle had operated a law school of his own in Chapel Hill for the two years preceding his election as Professor of Law and that the arrangement of 1845, which included the establishment of the professorship and his election thereto, was primarily an incorporation of his private school into the University.

There developed two distinct classes of students: (1) the Independent class, made up of those taking law courses exclusively, from whom Judge Battle was authorized to exact tuition fees of not more than \$100 a year, their prescribed work leading to the degree of Bachelor of Law normally after two years of study, and (2) the College class, composed of such students in collegiate courses as the Faculty permitted also to take law, from whom Judge Battle was authorized to exact tuition fees of not more than \$50 a year, their prescribed work leading to the same degree requiring two and a half years for completion. So definite was the distinction between these two classes of students and so separate was the status of the Law School from ordinary University routine, that the names of the Independent class for several years did not appear in the University catalogues.

Nearly all of the factual statements so far here made I have taken from that monumental work, the *History of the University*.⁵ No one

² *Ibid.*, I, 496.

³ *Ibid.*, I, 550.

⁴ *Ibid.*, I, 664.

⁵ Battle, *supra*, I, 495-96, 549-50, 664-65, 824, 832-36; II, 126, 167-70, 178, 238-40, 278, 505, 562, 673.

other than its author, Dr. Kemp P. Battle, could have written so familiarly and so devotedly and in such intimate detail regarding all phases of the institution's life, and most particularly is this true when he came to record or comment upon anything pertaining to the Law School. I knew Dr. Battle well, while I was in college and while I was attached to the Law School, and one of my regrets is that I did not take advantage of my golden opportunity to get almost at their source the happenings I am here clumsily trying to set down and partially to assay; for there was nothing Dr. Battle, a great raconteur, pleasing and accurate, liked better than to talk about the University, a subject in its whole panorama well marshalled in his memory and a subject that I think held position in his mind next to that of his God.

It was in 1881, more than two years after the death of Judge Battle, during which interval President Kemp P. Battle had conducted the law classes, that the professorship of law was assumed by Dr. John Manning; and what is to me a new era began—one of which I begin to have personal knowledge. I first knew Dr. Manning in the early years of the following decade when I was a collegiate student, and later, in 1898, I took part of his Summer Law School work, as I prepared for my North Carolina bar examination.

Under Dr. Manning, the work of the Law School was developed and broadened in its scope; and he made his imprint upon the minds and in the hearts of grateful young lawyers throughout the State. He founded the Law Library, which now bears his name, and he left it the possessor of some 2,000 law books. First under him were instituted the summer sessions of the School, which came to be a pleasing feature of Chapel Hill life, valuable to students who could not attend lectures at other times. In 1892 he associated with himself in his summer work Judge James E. Shepherd, then Chief Justice of the Supreme Court of North Carolina, who continued in that connection until 1897 or 1898.

If love of the law and love of teaching were ever superlatively combined in one man, I think that man was Judge Shepherd. He was a graduate of 1867 from Judge Battle's School, and from that day to the day of his death in 1910 he never flagged in his pursuance of legal lore, and in the days I knew him that was a matter of both night and day. An indication of his learning in the abstruse doctrines of real property law, which was a specialty with him, may be seen in his opinion on contingent remainders in the case of *Starnes v. Hill*.⁶ In 1899, the Trustees of the University elected Judge Shepherd to the professorship of law, as successor to Dr. Manning, who had died early that year, but he found he could not leave Raleigh to accept the position; and I think the fact that he could not go back to teaching remained with him as a

⁶ *Starnes v. Hill*, 112 N. C. 1, 16 S. E. 1011, 22 L. R. A. 598 (1893).

constant regret. I was never a student of Judge Shepherd, but I have stayed in his house and he always called me one of "his boys," and when he died I was summoned to his funeral as an honorary pall bearer.

During Dr. Manning's tenure of the professorship, there were to be seen in the Law School at least some vestigial remains of the incidents I have noted as being present in Judge Battle's time. For instance, it appears that Dr. Manning for some years at least received no regular stipend from the University, but looked to the tuition fees paid by law students for his compensation. This is evident from a recommendation made by the University Visiting Committee of 1884, with the purpose of changing that condition.⁷ What or when action was taken on the recommendation I am not informed. Again, as a pointer back to the old days, I remember that in my collegiate days there was a feeling pervading the law students that they were responsible for their conduct only to Dr. Manning. So strong was this feeling that when they got into trouble and were haled before the University Faculty for disciplining, his students understood that the appearance and demand for them of Dr. Manning was about equivalent to a *habeas corpus*.

With the exception of the five or six summers when Judge Shepherd was his associate, I know of no assistance for Dr. Manning in his teaching during all of the eighteen years he occupied the Chair of Law (1881 to 1899) until 1898, when an associate professorship of law was established and Mr. James Crawford Biggs elected thereto. Mr. Biggs, who was an honor graduate of 1893 and who later studied law under Dr. Manning, was two years ahead of me in college, and after two years of teaching in the Law School he returned to his private practice and I succeeded him in the associate professorship. I wished I could continue to follow in his footsteps when early in the Roosevelt administration I saw him as Solicitor General of the United States. His record in that office, in college, in the Law School, in his practice in Durham and Raleigh, and in his tenure of a Superior Court judgeship, marks him as a man of many high talents.

In 1899 Dr. Manning died and was succeeded as Professor of Law by Judge James Cameron MacRae. Judge MacRae brought to his teaching a wealth of practical experience from his law practice and from long service on the Superior Court bench and in the Supreme Court. He immediately endeared himself to his students and always retained their affection. He was a man of rare charm, with a fund of anecdote and humor for every appropriate occasion. A striking characteristic was his hospitality, and I remember how hard it was for me to go to his house and get away without staying for a meal. His 'possum suppers tendered to his law students—"possum, taters and simmon beer,"

⁷ Battle, *supra*, II, 278.

to say nothing of a further generous menu—became annual events, and many will recall his introductions of the students to his daughters as his prospective sons-in-law.

Under Judge MacRae and during the ten or twelve year period ending with his sudden death in 1909, the Law School began to burst its swaddling clothes. - With the slight exceptions we have noted in the service of Judge Phillips and Judge Shepherd, the School had remained throughout its history essentially a one-man institution, so far as its teaching staff was concerned, until the advent of Mr. Biggs. It was in 1898 that Mr. Biggs came in to share Dr. Manning's work and to enlarge the curriculum. He remained as a teacher for only one year after Judge MacRae succeeded Dr. Manning. In 1900, I succeeded Mr. Biggs as Associate Professor of Law and carried on in that position until 1903 when I was raised to a full professorship. This latter position I held only until 1904, when I resigned to go into practice and was succeeded by Mr. Lucius Polk McGehee. Also in 1904 there came in temporarily as an Instructor in Law Mr. James C. MacRae, Jr., a graduate with the degree of Bachelor of Law of 1900 and a graduate student of 1901-2, who was then in practice in Chapel Hill and who from 1900 to 1902 was Mayor of the town. Then, in 1907, with Mr. McGehee continuing in the professorship I had vacated three years earlier, a new professorship of law was established and to this I was recalled. I occupied the new chair until 1910, when I resigned to go into practice in Washington, D. C.

From the chronology so far submitted, it can be gathered that from 1845 to 1898 the teaching staff of the School consisted of one professor; from 1898 to 1903 of one professor and one associate professor; from 1903 to 1907 of two professors; and from 1907 to 1910 of three professors. So we see a tripling in the number of the staff within a period of nine years, in a school whose history runs back for fifty-three years before the beginning of that nine-year period! And, of this staff, including all of its members already mentioned and all of those to be mentioned in the next paragraph and covering the years from 1845 to 1910 (this latter date can probably be extended to 1923), the surprising thing to myself is that I can say I knew every one of them personally, with the single exception of the founder of the School, Judge Battle.

From 1907, with the three Professors, Judge MacRae, Mr. McGehee and myself, Judge MacRae being the Dean, the School continued until 1909, when Mr. McGehee resigned and was succeeded by Mr. Patrick Henry Winston, a 1905 graduate of the United States Military Academy, who had studied law in this School soon after winning his lieutenantcy in the Army. Mr. Winston remained an important member of the Law Faculty for many years. Later in 1909 Judge MacRae died. Soon

thereafter Mr. Walter Hanrahan Grimes, an academic student in 1886 and 1887 and a law student of 1907 and 1908, was temporarily appointed an Instructor in Law. Then, in 1910, Mr. McGehee was recalled by being elected the successor to Judge MacRae as Professor and Dean. Mr. McGehee was an academic graduate of 1887, *maxima cum laude*, who had taken law with Dr. Manning in 1890-91. He was a law writer and editor of note, accurately and broadly learned in the law and in the history of law. He continued in his teaching and in the deanship until his death in 1923. Also in 1910, Mr. Atwell Campbell McIntosh, Davidson College, A.B., 1881; A.M., 1887, a legal author of ability and a former Professor of Law at Trinity College, was elected to the professorship I had resigned. For many years Mr. McIntosh was a strong member of the teaching staff.

My service in the School covered the whole decade 1900 to 1910, except that in 1905-7 I was engaged only in the Summer Law School. For about a year after 1900, the quarters of the School were confined to one room in the Old West Building that possibly would seat fifty students, this being the same room that was used for his classes for many years by Dr. Manning. Then we moved to a considerably larger room on the south side of the South Building. About three years later, we were given the whole of the ivy covered Smith Building, the old seat of the University Library, to the east of the South Building, and, with an expanding student membership and an expanding number of law books, we thought we were on our way up in the world. But hardly did we dream, up to the time I left the School, of a commodious Law Building of our own, a project that soon thereafter began to take shape and later materialized.

The main courses of which I had charge in the School were in Equity and the law of Real Property and the law of Contracts. Had personal preference been the sole factor in determining my subjects, they would have been these three. As to which was my favorite, there is some doubt: I thought it was Equity; my victims thought it was Real Property; and the probabilities are that I taught Contracts better (meaning less worse) than either of the others. At any rate, they were all stimulating to me, and, whether or not my students did so, I learned some law.

An episode springs to mind as I conjure up that past. One summer morning, about 1904, a gentleman appeared at my door and introduced himself as George H. Brown, and then added, "I have been nominated for the Supreme Court and expect to be elected and take my seat next session. I don't know any law, and would like to learn some. May I come on your classes?" Judge Brown had long been known to me by reputation as one of the ablest and keenest of the State's Superior Court

judges; so it was not without some secret misgivings that I hastened to assure my visitor that he would be welcomed by the boys as well as by myself. Thereafter he was in his seat on my class every day until the end of summer. That summer my class and I discussed and dissected everything from ships to sealing wax; and I made a point of throwing problems into the class and having them batted around with varying opinions and of then tossing them into Judge Brown's lap for decision; but often I wound up with myself taking issue with him, sometimes I being supported by the class and sometimes Judge Brown getting their support. Altogether, we had the time of our lives—by "we" meaning Judge Brown, the class and myself, the class being the court of final appeal or acting as a sort of Witenagemot.

A short time before that summer, the *Faircloth Will* case⁸ had been before the Supreme Court. There the Court had upheld as a binding contract against Judge Faircloth's executors the testator's subscription promise to pay a certain amount into a fund then being raised to liquidate an indebtedness of Baptist Female University, the Court placing the decision upon the ground that there was consideration for the promise in the fact that, with the testator's knowledge, other individuals later subscribed to the same fund knowing of his subscription, and in the fact that on the faith of his subscription the University employed persons to solicit other subscriptions and incurred liability to such persons for their services in such soliciting. My class, having had the case put before them, developed differences of opinion as to whether there was a consideration for the promise. I then asked for Judge Brown's views. His reply was typical and to the point: "I think the court's religion got the better of its law in that case."

Regarding the Faircloth case, sometime later the writer of the Court's opinion, Judge Henry Groves Connor, asked me how I liked the decision. Upon my telling him I did not like it, he told me of a very unusual circumstance. He said the Court was divided, three to two, on the question whether there was consideration, he voting with two other justices and making a majority holding there was no consideration, and thereupon he was given the case to write the opinion of the Court to that effect. But, he said, in the course of his study in preparing such opinion, he became convinced that there was a consideration for the promise, and nothing was left for him to do but to reverse himself. The other members of the Court being divided, two to two, and his vote determining the decision, Judge Connor simply preceded to present the Court with a decision and an opinion *on the other side!*

An incident that amused one of my classes occurred a year or so earlier. The morning after one of the University dances, which always

⁸ Baptist Female University v. Borden, 132 N. C. 476, 44 S. E. 47 (1903).

drew to Chapel Hill the State's most attractive young women, two of my favorite students, Charles G. Rose (of exceedingly fine intellect, later becoming President of the North Carolina Bar Association) and Stephen A. Douglass (who died before reaching maturity as a lawyer), appeared in class, each with a very lovely young lady on his arm. Not long after our legal discussion started, I popped a question to Charlie Rose, who proceeded to exhibit almost every color of the spectrum, but quite correctly answered the question. Before I could get further, Steve Douglass grabbed his hat, left his girl, and amid cheers made a whirlwind exit beyond my jurisdiction. From that day forth, I never had the honor of feminine attendants in my lectures.

Sometime later, Frank P. Graham, as a law student, served unwittingly one day to enliven class proceedings. In touching upon some effects of consanguinity and affinity, he was asked whether in North Carolina a man could marry his widow's sister. His prompt and assured reply was that a man could legally do so. A tenacity to ideas that has always distinguished Mr. Graham kept him from cushioning himself upon a mild doubt that I interjected; and I could not stop him as he insisted he had known of several instances of the kind. Nor was his assurance greatly shaken by an intimation that such a marriage could hardly be sanctioned by the law of God or man. It seemed to take something like a suggestion that in Heaven there was no marriage or giving in marriage to make his misconception begin to dawn upon him. And his final perplexity gave way to the humor of the situation only upon a hilarious burst of amusement from the rest of the class—they not having had to commit themselves until they had had time to root out the "joker" lurking in the repeated question. Taken altogether, as I look back on those days, I have little to recall of drudgery.

My experience in law teaching was not without its satisfactions. The classes that attended my lectures were made up for the most part of the finest set of young men that, I think, a teacher ever had to work with, in their capacity, their earnestness, their will to work and in their avidity for such mental pabulum as might be offered for their consumption. They were the material to give abundant return for an instructor's efforts; and they gave it. Among them sometimes came men with little "speculation in their eyes," and it was a delight to watch their gradual mental awakening. I have seen men of this type push forward and win a place for themselves with their more talented associates, so that they with the others would rise to new and difficult problems presented in class almost as a fish would rise to a fly. And, when an instructor can analyse a student's examination paper, as I have done, and distinguish and point out the matter the student had gotten from a law text, the matter he had gotten from cited cases, the matter he had

gotten from lectures and the matter he had gotten from a digestive process in his own brain, the whole must add up to a matter of congratulation in the mind of the instructor, who can but feel that his student has gone far toward acquiring "the mental attitude of a lawyer."

Satisfaction also comes to an instructor from the success in later life of his students. Many of those whom I took part in teaching have written their names in high places. On that roll I find Governors of the State; Supreme and Superior Court judges; General County and City judges; a Chief Justice of the State, moderator between national Labor and Capital; a senior United States Circuit Court of Appeals judge, once a nominee to the Supreme Court of the United States, who sat as a judge on the Nuremberg world court trying German war criminals, and to whom perhaps more than to any other dozen men is due the recent great advance in American law procedure; a war-time Judge Advocate General of the United States Army; members of the State Legislature and its presiding officers; members of the United States House of Representatives and one of the Senate; a Controller General of the United States; a President of the University; an Undersecretary of the United States Treasury; and scores of other officials, important, if less spectacular. But, above all, I am conscious of those who have held to the quieter byways of life, making themselves heard only in behalf of their clients, men who as sound lawyers have taken high standing in their communities and states and become leaders of opinion. And I am not unconscious of their record for the twenty years beginning with 1920 in giving twelve of its annual Presidents to the North Carolina Bar Association. These men bring to me pride as well as satisfaction, as they must have done to their other instructors. They are entitled to the tribute I would pay them on this, the great occasion of their and my Centennial and Sesquicentennial, as I send my felicitations to my old Law School and to my maturing *alma mater*.