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NORTH CAROLINA LAW REVIEW

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Volume 3 | Number 1

Article 2

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1925

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## Recommended Citation

Robert W. Winston, *Chief Justice Shepherd and His Times*, 3 N.C. L. REV. 1 (1925).

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The  
North Carolina  
Law Review

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Volume Three

February, 1925

Number One

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CHIEF JUSTICE SHEPHERD AND HIS TIMES\*

ROBERT WATSON WINSTON

In a conversation relating to great American Judges I once heard Dean Pound make this statement: "Of the three, or possibly four, great American state Judges," he said, "North Carolina has contributed one—Ruffin the elder."

Why it is that relatively speaking North Carolina judges have stood higher abroad than North Carolina lawyers would be an interesting study. It may be suggested that this is a rural commonwealth, having neither cities nor a metropolitan press, and that a lawyer is dependent on both of these advantages to broadcast his fame.

Passing by the obvious reply that neither the lack of cities, nor a merely local press, dimmed the fame of such judges as Ruffin, Gaston and Pearson, we might call attention to lawyers of national preëminence who resided in states quite as sparsely populated as North Carolina. But after all must it not be said that the reason this state has had judges of far famed recognition, but no such lawyers is this: Her judges either before or after going on the bench, made due preparation for their life work, her lawyers did not; the former have been willing to undergo a severe mental discipline; the latter have not.

Unless the lawyer burn the midnight oil, striving after a larger vision of life—can he be called a great lawyer? If the sole aim of a lawyer be to raise a laugh with a rustic crowd or to read his triumph in the verdict of the twelve, will not his fame like the borealis race flit ere you can point its place? The stump speaker struts his little day and is forgotten, whereas a Webster, steeped in

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\* This address was delivered on December 2, 1924, on the occasion of the presentation of the portrait of the late James E. Shepherd to the School of Law of the University of North Carolina.

the tragedy of Macbeth, immortalizes the Knapp murder trial and is on every schoolboy's tongue; and a Clarence Darrow, filled with the psychology of Freud and John Watson, sets a continent by the ears and adds a new chapter to criminology. In a rough and tumble fight before the jury I would have staked my last dollar on Cy Watson, Rom Linney or Tom Argo against S. S. Prentiss, Ben Butler or Tom Corwin; but should that forum—the forum of wit, sarcasm and brilliancy—be the goal of a first rate lawyer? Whenever dash and repartee go up against scientific knowledge, is the issue ever in doubt?

Just here it may be well to ask what has been the prevailing thought on the subject of thorough preparation for the Bar among cultivated Carolinians, even among the Trustees of this University. Has it not been to laugh at and ridicule such preparation, to acclaim "hard horse sense," to point to Abe Lincoln and other self-made men who had no "schoolin'" at all? Indeed, is it not too true that public men prophesy smooth things only to the people—oftentimes maintaining themselves in office by appealing to ignorance and prejudice?

In Gerrard Hall, when Dr. Wilmer recently declared that the greatness of this University consists in the fact that her sons seek culture, not for culture's sake but for service, did he imply that culture is hurtful to service? If so, Rousseau was right—the arts and sciences have retarded, not advanced civilization—and civilization is a flat failure. If the best in art and science, in literature and religion is not to be sought after, what is to be the goal?

The sore spot in the history of North Carolina, was it not indifference to the higher things in literature and life? For example, was not the spectacle of a backwoodsman like Phil Alston, with vulgarity and ridicule, chasing the constructive statesman William R. Davie off the stump and out of the state but too characteristic of a rude, an over-heroic past? Fortunately the tide has now set in the opposite direction—away from buffoonery and mediocrity, away from retarding and vulgarizing self-satisfaction, away from cheap claims to priority and superiority in apocryphal or trifling historical incidents. Surely when the Trustees last summer established an accredited three year law school it rejoiced everyone who feels that North Carolina boys and girls are entitled to the best without going elsewhere to get it.

And while I am on this branch of my subject, let me get all that I have to say by way of criticism well out of my system. Per-

haps the lesson which James E. Shepherd's life teaches will then stand forth in brighter colors. This being a day of straw ballots and of rampant pragmatism, I have just now resolved myself into a Literary Digest Bureau and made a tabulation of prominent Carolinians. My purpose among other things, was to find out where the greatest Carolinians got their training, whether at home or abroad, and to ascertain which training, native or foreign, had produced the best results.

To avoid mistakes the subject was approached from several angles; and though the experiment may be of little probative value, it is interesting to say the least. Thus the net result shows that: *A large, a very large proportion of outstanding North Carolinians was educated abroad and not at home.*

Is it an accident for example that the foremost North Carolina judge was educated at Princeton; that the greatest forensic orator and debater graduated at the same institution; that Davie, the founder of the University, and four of her eight presidents were educated out of the state? If this be an accident, then let us enlarge the electorate; increase the straw balloting.

There have been twelve Chief Justices of our Court; four or 33 1/3% received the culture of Yale and Princeton. Of twenty-four U. S. Senators, seven or nearly a third were educated out of the state. So, of the Governors, twelve out of forty-eight had foreign culture. Perhaps this test, mere office-holding, is not a fair one; though it must be remembered that the Trustees of the University and members of the General Assembly are picked men, and that the former have always chosen the University President and the latter, till 1868, chose the Chief Justice. However, let us apply a severer test, that of cultural excellence.

Lewis in his *Great American Lawyer* series, an eight volume collection, selects only three North Carolina lawyers—Ruffin, Gaston and Pearson—all judges, by the way. Of this number, two had the advantage of foreign culture. By way of curiosity, I next turned to an edition of *The South in the Building of the Nation*—twelve handsome leather bound volumes—recounting the achievements and reproducing the work of each Southern state: in art, science, fiction, oratory, politics, and social life. Not a scrap on any of these subjects did I find emanating from or credited to the state of North Carolina. So again in Peele's *Distinguished North Carolinians*—a work purporting to contain great utterances of great Carolinians—sixteen persons are selected, nine of whom, or more than half, were

educated elsewhere. The greatest constructive intellect perhaps in the state's life, Walter H. Page, was trained at Johns Hopkins; a circumstance to which his biographer, rightly or wrongly, ascribes Page's career of usefulness.

Now as I have said, whether this data prove anything or nothing, I can not undertake to say, but it would seem to behoove the man on the watch tower to inquire wherefore this inferiority complex; what was the reason for this disproportion of successful North Carolinians educated out of the state, to those educated within the state. Was it due to thin and scant courses of study; to a prevailing idea, for example, that anyone who chooses can be a lawyer; that intensive training is a detriment to real success at the Bar; that culture is an affectation, a waste of time and money? In my opinion, such was the case. I am unable to conclude otherwise. In the past our young men were rushed into life unprepared. In native talent, in the essentials of true success, man for man, North Carolinians are equal to the best; and, with proper training, will be surpassed by none.

Some time ago a kinsman of mine was complaining of a young friend of ours: "Why," said he, "that young fellow is quite beside himself, he has mortgaged his home to attend the Harvard law school." Two years after this conversation, casually picking up a North Carolina paper I saw that the deluded young man had already made a fair start in life, had been elected to the State Senate.

There was a day when hard times and the duty of remaining in the old home cut short many a youthful career, a day which we fellows, coming on just after the Civil War, do not easily forget. Naturally, *we* early developed a sectional complex, and a sectional complex is deadly to culture. But now that prosperity has supplanted poverty, there is no reason why this state shall not excel in things of an ethical as in things of material value.

Indeed as a faithful straw ballot statistician, it is my duty to report further: *That since about 1900 when North Carolina found herself, the disproportion of successful Carolinians educated abroad to those educated at home has greatly decreased.* Whereas a few years ago North Carolina was the tail end of illiteracy, the Rip Van Winkle of states, today she has as bright a future as any one of the sisterhood. Is it not inconceivable that a state whose former call on fame was the silly remark—"What was it the Governor of North Carolina said to the Governor of South Carolina?"—is the same

state whose University today is President of the Association of American Universities and whose pride and progress are the wonder of a metropolitan press?

It must not be thought that I undervalue the self-made man, I do not, I honor him. But I do decry the former tendency of belittling the necessity of severe mental discipline. I frankly admit that in rare instances broad culture may be self-acquired. Indeed such was the case with the man whose portrait I now have the pleasure and honor of presenting to this law school. And yet I maintain that the life of James E. Shepherd fully illustrates the truth of what I have undertaken to show, that, with or without a college education, severe mental training and high ideals are the cornerstone of genuine success.

Though the mental training which Chief Justice Shepherd underwent was neither in law schools nor college halls, but in the more arduous school of adversity, penury and civil war, it was nonetheless genuine, illustrating, as we shall see, Juvenal's wise saying, "Haud facile emergunt, quorum virtutibus obstat, res angusta domi." Early left an orphan, an only brother killed at Gettysburg, his father's estate dissipated by war, the care of a dependent sister devolving upon him, nevertheless the undaunted lad faced life with a high, a definite purpose. Whether as fifteen year old marker-boy in Lee's army, as telegraph operator, earning a livelihood while he pursued the study of the law, or as attorney, professor of law in this University, and judge of the highest Court, he brought to his daily task a thoroughness, a conscientiousness which is the essence of culture.

When I first came to the Bar, lawyers had the habit of riding the Circuit with the Judge. In the early 80's, it was my privilege to go the old Fifth District with Judge Shepherd; the Judge and I riding behind a span of fine horses over the hills and to the courts of Person, Granville, Vance and Franklin. *Dies borealis*, they were. The flavor of the Old South still lingered—its ease, its dignity. The days of telephone, jazz and bobbed hair had not yet arrived. Fitting into that good day like apples of gold in pictures of silver was the sweet spirited man whom we now honor: in dignity of manner, in strength of character, in accuracy of knowledge worthy to sit in any court.

I fully agree with Governor Aycock, in his address on Judge Shepherd, that as a trial judge, Shepherd has had no superior. Like Mansfield, Judge Shepherd felt that it is the duty of a judge to make

it disagreeable for a lawyer to talk nonsense. In his court business was speedily dispatched, but without haste or brusqueness. To the argument of really important points of law or evidence there was no limit; but if the matter was unimportant or well established, the Judge allowed no time to be wasted. If the examination of a witness were conducted to make a grandstand play or to kill time, the Judge's prompt and decisive: "Proceed—proceed" had the desired effect; the lawyers soon understanding that a real judge was on the bench. Of Judge Shepherd as a Superior Court judge, this must be said, he never hastened home, leaving a congested docket behind for some more conscientious judge to clear. As a Supreme Court judge also, I concur in Aycock's estimate of him, that opinions more carefully considered or better prepared have not been handed down by our Court.

Judge Shepherd was not an ex-tempore or ready man, on the contrary he was a full, a patient, a profound man. If a question was suddenly sprung upon him, he would perhaps venture no opinion until he could investigate and go to the bottom of the matter. It has been said, "Beware of the man of one book." Indeed one great book, thoroughly digested, who can estimate its value! Such book to Judge Shepherd was White and Tudor's *Leading Cases in Equity*—to which must be added Smith's *Leading Cases*.<sup>1</sup> In these storehouses of knowledge, being great opinions of great English and American courts, Judge Shepherd found the taproot of modern jurisprudence; to them he constantly referred as the starting point of an investigation.

The success of such a man was no accident, it was based on merit, on work faithfully performed. Labor itself being a pleasure, to him the study of law was more inviting than society, clubs, games or other forms of amusement. Indeed it must be said of Judge Shepherd that, like most accurate thinkers, he was a lonesome man.

In the preparation of an opinion he would study the record with care, digest the facts, re-writing the salient points in his own words; he would next scan the briefs, read and array the authorities, making notes as he went along. Then, laying aside records, briefs, notes and authorities, he would think the matter through—for days, weeks, finally incorporating it into a well fixed system. At this point the task of most judges would have ended, but not so with Judge

<sup>1</sup> White and Tudor's *Leading Cases in Equity* and Smith's *Leading Cases* (fully annotated and edited) were the precursors of the modern "case system" and were a *vade mecum* in their day.

Shepherd, he was now but beginning his labors. Seeking out a brother lawyer or judge, these two, on their tramps through the silent forest, would in Bacon's phrase toss the thought to and fro in the air, even as the husbandman tosseth the hay to dry and sweeten it. And how delightful were such occasions. What a wealth of learning the Chief Justice had, without pedantry, dogmatism or self-assertiveness. And so modest and simple withal, so truly great.

One such occasion had an amusing ending. The case of *Barbee v. Barbee*<sup>2</sup> was before the Supreme Court. The point was this, can the recital in a deed of the payment of a certain consideration be contradicted by parol—that is to say, is such recital contractual or merely evidential. It so happened that during a term of Wake Superior Court over which I presided, Judge Shepherd was writing the opinion in the case and the Judge and I had many a conference over *Barbee v. Barbee*. Now it also chanced that at that time the Chief Justice of a certain Canadian Province, a venerable white-haired man, was likewise in Raleigh on a visit. So one evening Judge Shepherd knocked at my door and suggested that we call and pay our respects to our distinguished Canadian brother. I knew in a flash what was up, Judge Shepherd was going to try out *Barbee v. Barbee* on that innocent Canadian. And sure enough he did. We had hardly seated ourselves when the Judge began: "We are much perplexed, your Lordship, about a new doctrine of equity," said Judge Shepherd, proceeding to elaborate the point. As we held our breath awaiting the reply, this was the dear old gentleman's contribution, couched in velvet words: "If there be doubt about the question, why not submit it to the Supreme Court of the United States?"

I have referred to Judge Shepherd's work as a system of equity, a doctrine of law. And such it was. A system, not a detached fragment; a doctrine, not a mere dictum. In this way and in no other could his analytical mind operate. To him law was more than a set of rules. Law was unity—it implied totality. In nature this unity, this totality, exists and is called the law of nature. Why does not the same principle hold good in human affairs? Municipal law is not therefore to be thought of as something superimposed, something from without, but as something within. The unity of all

<sup>2</sup> *Barbee v. Barbee* (1891) 108 N. C. 581, 13 S. E. 215 (affirmed 109 N. C. 299, 13 S. E. 792).

differences in things of the same class, this is what is meant by law. In a word, law is not a mechanism but an organism; it grows, and develops, but is always true to type, true to species.

Because Judge Shepherd's mind worked in this way, from within a subject out, and not from without in, he could not abide individual cases—mere photographic views of life. For example, he was never interested in the law of torts with its uncertainties and variations, or in rules of practice and procedure, or indeed in any subject incapable of categorization. Little "pints" of law, discretionary rulings on the sufficiency of code pleadings, equally with trumpet-blowing, experimental decisions to catch the populace, these were for others, not for him. Code pleading, which someone likened to one old woman scolding another old woman, made its appearance the year Judge Shepherd came to the Bar. Displacing the certitude of common law pleading and practice, it was especially distasteful to the old lawyer.

I could never tell exactly how Judge Shepherd relished the change from common law to code pleading, but from the zest with which he used to tell a story on Chief Justice Smith and my father, I concluded that he was in sympathy with them. In a case in Martin County about 1870, a defective complaint had been filed and the two above named lawyers wished to file a demurrer, not "going to the case," but to a matter of form. Now they thoroughly understood the old common law demurrer with well-defined meaning and consequences, but the new code demurrer, resting so largely in the judge's discretion and with direful results if he was against you, why that was quite another matter. "So," said Judge Shepherd, "Smith and Winston, in a great quandary, put their heads together, finally coming into court and cautiously announcing: 'Your Honor please, we desire to file this paper: a plea in the nature of a demurrer.'"

When Shepherd was transferred by election from the Superior to the Supreme Bench, the spirit of conservatism which had characterized North Carolina courts from the beginning was dominant. In 1889 the old order was in full swing. W. N. H. Smith was Chief Justice, Gen. Scales was Governor, Vance and Ransom Senators, and nearly all congressional seats were filled by Confederate soldiers. In this goodly company Shepherd was at home. More diligent, more painstaking, and with a larger concept of the law than his fellows—except the learned Chief Justice Smith—Shepherd was a high priest in the conservative temple. Indeed of him it must

he said, he belonged to what Prof. Stephenson calls the historical, analytical school of judges, who agree with Bacon that the province of the judge is *dicere* not *dare*.

Such men find it difficult to concede a spark of honesty to judges of the opposite school, who contend that courts have no power to set aside an act of the Legislature. The pet contention of the "tough-minded" judge, that courts should have no will of their own, but should ascertain and follow the will of the people, what is called the *mores*; such a doctrine, to the "tender-minded" judge, is downright treason to first principles.

Taking Ruffin as his model, Shepherd's task was to continue the comprehensive system of equity and the well-established law of real property, contracts and negotiable instruments, for which North Carolina had been so justly famous. To Ruffin, hard cases had not been quicksands of the law; in the golden era of our judicial life, individual cases had yielded to the greater whole; so in his day Shepherd determined to hold the rudder true, regardless of consequences. No sooner had he taken a seat on our highest bench than he sounded the keynote of his judicial career, adherence to fixed principles, stability and certitude in the utterances of courts. Said he, in the *Moffitt case*:<sup>3</sup> "We have gone far enough in admitting word of mouth evidence to contradict a written contract; wise rules which are intended for the protection of the provident should not be refined away for the relief of the negligent."

Judge Shepherd seldom dissented from his brethren, but when he did dissent, as in *Farthing v. Dark*<sup>4</sup> and in the *LeRoque case*,<sup>5</sup> the profession felt that the dissenting opinion would some day become law. It will be remembered that a nice principle of equity was involved in the latter case: If an insolvent husband uses his own funds to erect a dwelling on his wife's land, can the creditors follow the money in the said land, that is, can the creditors attach a trust to the estate of the wife and hold her to account, as a trustee *ex-male-ficio*. Differing with the majority of the court, Judge Shepherd saw no reason to the contrary, and the court finally adopted his dissent.

In cases like *Starnes v. Hill*<sup>6</sup>—which stands out like a beacon light—his analytical mind displayed its best qualities. Here he dis-

<sup>3</sup> *Moffitt v. Maness* (1839) 102 N. C. 457, 9 S. E. 399.

<sup>4</sup> *Farthing v. Dark* (1891) 109 N. C. 292, 13 S. E. 918 (reversed 111 N. C. 243, 16 S. E. 337).

<sup>5</sup> *Thurber v. LaRoque* (1890) 105 N. C. 301, 11 S. E. 460.

<sup>6</sup> *Starnes v. Hill* (1893) 112 N. C. 1, 16 S. E. 1011.

tinguished between a vested and a contingent remainder, applying the abstruse but well defined *Rule in Shelly's case*. Running through all his opinions indeed, from first to last word, one recognizes that which the musician calls the motif. This, I understand to be golf vernacular for "Keep your eye on the ball"; it is also the lesson taught by my old schoolmaster James H. Horner; "If you are in pursuit of a fox," he would tell the boys, "never stop to chase a rabbit."

How well Judge Shepherd succeeded in maintaining a system of jurisprudence suitable to the needs of the times, depends upon the point of view. The conservative recognizes in Judge Shepherd's concept of law the only security of liberty and property—the enduring foundation of the Republic; the radical, on the other hand, calls him a reactionary and hails the coming of a better day when the people will not only make but interpret the laws. But neither conservative nor radical will deny that the principles which Judge Shepherd stood for, were those of Henderson, Ruffin and Smith, under which order was maintained and justice administered.

In 1894, when Chief Justice Shepherd was defeated by a combination of Populists and Republicans, the old order was passing away to give place to the new. The day of the idealistic judge who concurred with Hooker that law is the perfection of reason, her seat the bosom of God, was soon to end; the time for testing and trying out all things was come. As science had been changed from mere ratiocination to experimentation, so law, cut loose from precedent, should adjust itself to human needs from day to day. Whatever is, is wrong, became the slogan of the radical members of the Supreme Court, now divided 2-2 on disputed social and political issues, putting it up to a fifth judge to break the tie. Consciously or unconsciously, the doctrine of William James: "Try it out and see if it will work"—the "Monte Carlo doctrine"—was supplanting idealistic philosophy. Because of the conflict involved in this change, in 1902 when the position of Chief Justice was again to be filled by popular election, Shepherd, though urged by friends to do so, refused to enter the race.

Of this "bread and butter" philosophy, of this thing that James calls pragmatism, it must be said that it came with a crash upon "tender-minded" judges like Shepherd, who had been taught to regard the judicial office as a sacred affair. A political judge! What could be worse! The first of the new order, the first of those "tough

minded" individuals who had occupied the Supreme Bench was Shepherd's predecessor, Chief Justice Merrimon. Merrimon's dissent in the *Barksdale case*<sup>7</sup> may be said to mark the dividing line between the old and the new in our juristic thought. Previous to that dissent, education had been considered a luxury, a privilege of the rich; thereafter, it was to be considered a necessity; the common heritage of poor and rich alike.

"Public education is a public necessity, more necessary indeed than jails, roads, electric lights or waterworks; no election is necessary to validate a bond issue for schools or schoolhouses; the children of North Carolina must be educated, no matter what the Constitution implies to the contrary." Such in substance was Merrimon's dissent. This utterance placed the welfare of the child above the letter of the law; it breathed the breath of life into the Constitution. Indeed so impressed was I, then a rash young Superior Court Judge, that I rushed into the fray,—in the *Bladen County case*—threw my judicial cap in air, and overruled the entire Supreme Court; getting myself highly praised—and thoroughly spanked—by the Court on appeal!<sup>8</sup> Twenty years later, as is well known, in the *Collie case*,<sup>9</sup> *Barksdale*<sup>10</sup> itself was overruled.

If Shepherd could not follow Merrimon in blazing new trails, he was quite unable to comprehend the views of that sociological, politico-pragmatist, Chief Justice Walter Clark—who counted that day lost when he did not prepare some bill enacting a dissent of his into law or write an opinion overruling some hoary precedent. What glory to Clark greater than overruling Ruffin in the *Rockingham will case*; how gleefully he whetted his blade for the sacrifice, as, concurring in Connor's great opinion overruling *Hoke v. Henderson*,<sup>11</sup> he exclaimed: "There is no peculiar sacredness attaching to *Hoke vs. Henderson!*" North Carolina has had but one image smasher.

The contrast indeed between Shepherd and Clark is nowhere more clearly seen than in dealing with precedent. To Shepherd precedent was grateful—to him the Constitution was as sacred as to Marshall or Hamilton; on the other hand, Clark was never hap-

<sup>7</sup> *Barksdale v. Comrs.* (1885) 93 N. C. 472.

<sup>8</sup> *Board of Education v. Comrs. of Bladen County* (1892) 111 N. C. 578, 16 S. E. 621.

<sup>9</sup> *Collie v. Comrs.* (1907) 145 N. C. 170.

<sup>10</sup> *Barksdale v. Comrs.* (1885) 93 N. C. 472.

<sup>11</sup> *Hoke v. Henderson* (1833) 15 N. C. 1; overruled by *Mial v. Ellington* (1903) 134 N. C. 131, 46 S. E. 961.

pier than in destroying precedent: to him the Constitution was anything but a palladium of liberty; it was a device of the rich to enable them to pocket and protect their ill-gotten gains, and the sooner blotted out and a brand new one substituted, the better.

The struggle between the forces of progress and conservatism was slow to develop in North Carolina, but when it came it came in earnest, reversing the do-nothing policy of a century. Every department of state government was shaken to the center; the Supreme Court itself, whenever Chief Justice Clark could dominate, becoming incubator for remedial legislation, adviser of progressive political parties, defender and maintainer of radical propaganda. What cared Clark, the Chief Justice, though his Court were more often overruled than affirmed, by the Supreme Court at Washington;<sup>12</sup> to be overruled in a "progressive" cause was itself an honor.

If Shepherd lost out in this struggle, he went down without sacrifice of principle. A conservative to the last, it was due to him and to other conservative judges that North Carolina escaped the unbaked jurisprudence of certain northwestern states. Let us put ourselves in Shepherd's place and ask: Are the principles of law fixed and certain? Shall we visualize an Ideal and strive to attain it, or shall we each day try out something new? Are there Ultimates? Those who lived before the philosophy of William James, answer there are; those who have come on the stage since, say there are not. As in religion and politics, so in law, the New advances, the Old recedes: the conservative and the radical each alike being necessary to maintain the balance.

In his day, the conservative served his generation faithfully; his quantitative tests did not fail. Even so in the new day, good and wise sociological and ethical judges assure us that the method they propose is the method of the great Chancellors, who, "without sacrificing uniformity and certainty, built up the system of equity with constant appeal to the teachings of righteousness and

<sup>12</sup> "Prior to the sixty-third Reports, no writ of error had gone from this Court (North Carolina Supreme Court) to the Supreme Court at Washington. Since then fifty-nine writs of error have been disposed of by said Court, with the following results:

Dismissed .....	17
Affirmed .....	20
Reversed .....	22

59

Affirmances 47 percent of appeals." See *Centennial Celebration Supreme Court of North Carolina* (1919) 176 N. C. 788.

conscience"; that this is the method by which the common law has renewed itself, at the hands of great masters: the methods of Marshall as well as Holmes, of Shepherd as well as Clark.

I have not undertaken to set down all the events of Judge Shepherd's useful life: Such as his services in the Constitutional Convention of 1875; or on the bench of Beaufort County; nor have I spoken of his honored ancestry, of his kindness to young lawyers, of the love he inspired in a few choice spirits, of the influence of his life upon the state; nor his exalted position at the Raleigh Bar after retiring from the bench, when, without repining at defeat, he gathered together a select clientele, became one of our foremost lawyers, and, eschewing the tricks of shyster and demagogue, held aloft the banner of a noble profession. This pleasant duty has been performed by hands more cunning than mine: in the 158th volume of North Carolina Reports, my then law partner, Charles B. Aycock pays a just tribute to Judge Shepherd as husband and father, as man and Christian.

In 1899, when the inspiring teacher and gentleman, John Manning, died, the Trustees and Faculty of the University were desirous that Judge Shepherd should succeed him as head of the Law School. Indeed Dr. Manning and Judge Shepherd together, a few years before, had conducted the school with marked success. The position of Dean—though it was not then called Dean—was accordingly tendered the Chief Justice, and during several months he took the matter under consideration, hoping to accept. Finally with that consideration for others so characteristic, the Chief Justice declined; his first duty was to continue the practice until his son, Sylvester Brown Shepherd, just come to the Bar, could establish himself. Carrying out this arrangement Judge Shepherd and his son practiced law in the city of Raleigh until the death of the Judge in 1910.

At the age of 64, in the delights of a home, made happy by the love of wife and son, with numerous grandchildren to bless and be blessed by him, in the communion of the Church of his fathers, the Chief Justice peacefully died, leaving to this Commonwealth an example of the only true success—its foundation stone severe mental discipline and lofty ideals.