

THE

# American Law Journal

AND



## MISCELLANEOUS REPERTORY.

CONTAINING

Adjudged Cases in the Supreme Court of the United States,	Essays on Legal Questions,
Adjudged Cases in the District and State Courts of the United States,	Biographical Memoirs,
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OF BALTIMORE.

VOL. III.

Seu linguam causis acuis, seu civica jura  
Respondere paras.

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IL CONSOLATO DEL MARE.

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*The Judicial Order of Proceedings before the Consular  
Court.*

[Continued from vol. II. p. 391.]

CHAPTER XII.

*How Causes are to be proceeded in, before the Judge of  
Appeals.*

THE appellant is bound to produce before the judge and the clerk of the consulate court, the record of the proceedings below, requesting him to revoke and correct the sentence of the consuls; and the judge, after the exhibition of the said record, shall appoint a day to hear sentence on the appeal, and the party appellate is to be cited to appear on that day to hear the same: but if, within ten days, the party condemned shall not have appealed verbally or in writing, the sentence has the force of a final judgment.

CHAPTER XIII.

*That no new Facts are to be alleged and no new Proofs exhibited on the Appeal.*

On such appellate suit, no new fact can be alleged or proved by any of the parties, but the judge is to give his opinion

Vol. III. A

## BIOGRAPHICAL.

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### GEORGE WYTHER, Esq.

**G**EORGE WYTHER, chancellor of *Virginia*, and a distinguished friend of his country, was born in the county of *Elizabeth City* in 1726. His father was a respectable farmer, and his mother was a woman of uncommon knowledge and strength of mind. She taught the *Latin* language, with which she was intimately acquainted, and which she spoke fluently, to her son; but his education was in other respects very much neglected. At school he learned only to read and write, and to apply the five first rules of arithmetic. His parents having died before he attained the age of twenty-one years, like many unthinking youths he commenced a career of dissipation and intemperance, and did not disengage himself from it before he reached the age of thirty. He then bitterly lamented the loss of those nine years of his life, and of the learning which during that period he might have acquired. But never did any man more effectually redeem his time. From the moment when he resolved on reformation he devoted himself most intensely to his studies. Without the assistance of any instructor he acquired an accurate knowledge of the *Greek*, and he read the best authors in that as well as in the *Latin* language. He made himself also a profound lawyer, becoming perfectly versed in the civil and common law, and in the statutes of *Great Britain* and *Virginia*. He was also a skilful mathematician, and was well acquainted with moral and natural philosophy. The wild and thoughtless youth was now converted into a sedate and prudent man, delighting entirely in literary pursuits. At this period he acquired that attachment to the

christian religion, which, though his faith was afterwards shaken by the difficulties suggested by sceptical writers, never altogether forsook him, and towards the close of his life was renovated and firmly established. Though he never connected himself with any sect of christians, yet for many years he constantly attended church, and the bible was his favourite book.

Having obtained a license to practice law, he took his station at the bar of the old general court with many other great men, whose merit has been the boast of *Virginia*. Among them he was conspicuous not for his eloquence or ingenuity in maintaining a bad cause, but for his sound sense and learning, and rigid attachment to justice. He never undertook the support of a cause which he knew to be bad, or which did not appear to be just and honourable. He was even known, when he doubted the statement of his client, to insist upon his making an affidavit to its truth; and in every instance where it was in his power he examined the witnesses as to the facts intended to be proved before he brought the suit or agreed to defend it.

When the time arrived which heaven had destined for the separation of the wide, confederated republic of *America* from the dominion of *Great Britain*, Mr. *Wythe* was one of the instruments in the hand of providence for accomplishing that great work. He took a decided part in the very first movements of opposition. Not content merely to fall in with the wishes of his fellow citizens, he assisted in persuading them not to submit to *British* tyranny. With a prophetic mind he looked forward to the event of an approaching war, and resolutely prepared to encounter all its evils rather than to resign his attachment to liberty. With his pupil and friend, *Thomas Jefferson*, he roused the people to resistance. As the controversy grew warm, his zeal became proportionally fervent. He joined a corps of volunteers, accustomed himself to military discipline, and was ready to march at the call of his country. But that country, to whose interests he was so sincerely attached, had other duties of more importance for him to perform. It was his destiny to obtain distinction as a statesman,

legislator, and judge, and not as a warrior. Before the war commenced he was elected a member of the *Virginia* assembly. After having been for some time speaker of the house of burgesses he was sent by the members of that body as one of their delegates to the congress which assembled *May 18, 1775*, and did not separate until it had declared the independence of *America*. In that most enlightened and patriotic assembly he possessed no small share of influence. He was one of those who signed the memorable declaration by which the heroic legislators of this country pledged "their lives, their fortunes, and their sacred honour" to maintain and defend its violated rights. But the voice of his native state soon called him from the busy scene where his talents had been so nobly exerted. By a resolution of the general assembly of *Virginia*, dated *November 5, 1776*, *Thomas Jefferson*, *Edmund Pendleton*, *George Wythe*, *George Mason*, and *Thomas Ludwell Lee* were appointed a committee to revise the laws of the commonwealth. This was a work of very great labour and difficulty. The committee of revisors did not disappoint the expectations of their country. In the commencement of their labours they were deprived of the assistance which might have been received from the abilities of Messrs. *Mason* and *Lee*, by the death of one and the resignation of the other. The remaining three prosecuted their task with indefatigable activity and zeal, and *June 18, 1779*, made a report of one hundred and twenty-six bills which they had prepared. This report shewed an intimate knowledge of the great principles of legislation, and reflected the highest honour upon those who formed it. The people of *Virginia* are indebted to it for almost all the best parts of their present code of laws. Among the changes then made in the monarchical system of jurisprudence which had been previously in force, the most important were effected by the act abolishing the right of primogeniture and directing the real estate of persons dying intestate to be equally divided among their children or other nearest relations; by the act for regulating conveyances, which converted all estates in tail into fee-simple, and thus destroyed one of the supports of the proud and overbearing distinctions of particular families;

and finally by the act for the establishment of religious freedom. Had all the proposed bills been adopted by the legislature, other changes of great importance would have taken place. A wise and universal system of education would have been established, giving to the children of the poorest citizen the opportunity of attaining science, and thus of rising to honour and extensive usefulness. The proportion between crimes and punishments would have been better adjusted, and malefactors would have been made to promote the interests of the commonwealth by their labour. But the public spirit of the assembly could not keep pace with the liberal views of *Wythe*.

After finishing the task of new modelling the laws, he was employed to carry them into effect according to their true intent and spirit, by being placed in the difficult office of judge of a court of equity. He was appointed one of the three judges of the high court of chancery, and afterwards sole chancellor of *Virginia*, in which station he continued until the day of his death, during a period of more than twenty years. His extraordinary disinterestedness and patriotism were now most conspicuously displayed. Although the salary allowed him by the commonwealth was extremely scanty, yet he contentedly lived upon it even in the expensive city of *Richmond*, and devoted his whole time to the service of his country. With that contempt of wealth which so remarkably distinguished him from other men, he made a present of one half of his land in *Elizabeth* city to his nephew, and the purchase money of the remainder, which was sold, was not paid him for many years. While he resided in *Williamsburg* he accepted the professorship of law in the college of *William and Mary*, but resigned it when his duties as chancellor required his removal to *Richmond*. His resources were therefore small; yet with his liberal and charitable disposition he continued, by means of that little, to do much good, and always to preserve his independence. This he accomplished by temperance and economy.

He was a member of the *Virginia* convention, which in *June* 1788 considered the proposed constitution of the *United*

*States.* During the debates he acted for the most part as chairman. Being convinced that the confederation was defective in the energy necessary to preserve the union and liberty of *America*, this venerable patriot, then beginning to bow under the weight of years, rose in the convention and exerted his voice, almost too feeble to be heard, in contending for a system on the acceptance of which he conceived the happiness of his country to depend. He was ever attached to the constitution, on account of the principles of freedom and justice which it contained; and in every change of affairs he was steady in supporting the rights of man. His political opinions were always firmly republican. Though in 1798 and 1799 he was opposed to the measures which were adopted in the administration of president *Adams*, and reprobated the alien and sedition laws, and the raising of the army, yet he never yielded a moment to the rancour of party spirit, nor permitted the difference of opinion to interfere with his private friendships. He presided twice successively in the college of electors in *Virginia*, and twice voted for a president whose political principles coincided with his own. After a short but very excruciating sickness he died *June* 8, 1806, in the eighty-first year of his age. It was supposed that he was poisoned, but the person suspected was acquitted by a jury of his countrymen. By his last will and testament he bequeathed his valuable library and philosophical apparatus to his friend Mr. *Jefferson*, and distributed the remainder of his little property among the grandchildren of his sister and the slaves whom he had set free. He thus wished to liberate the blacks not only from slavery, but from the temptations to vice. He even condescended to impart to them instruction; and he personally taught the *Greek* language to a little negro boy, who died a few days before his preceptor.

Chancellor *Wythe* was indeed an extraordinary man. With all his great qualities he possessed a soul replete with benevolence, and his private life is full of anecdotes, which prove that it is seldom that a kinder and warmer heart throbs in the breast of a human being. He was of a social and affectionate disposition. From the time when he was emancipated from

the follies of youth he sustained an unspotted reputation. His integrity was never even suspected. While he practised at the bar, when offers of an extraordinary but well merited compensation were made to him by clients whose causes he had gained, he would say, that the labourer was indeed worthy of his hire, but the lawful fee was all he had a right to demand, and as to presents he did not want and would not accept them from any man. This grandeur of mind he uniformly preserved to the end of his life. His manner of living was plain and abstemious. He found the means of suppressing the desire of wealth by limiting the number of his wants. An ardent desire to promote the happiness of his fellow men by supporting the cause of justice and maintaining and establishing their rights appears to have been his ruling passion.

As a judge he was remarkable for his rigid impartiality and sincere attachment to the principles of equity, for his vast and various learning, and for his strict and unwearied attention to business. Superior to popular prejudice and every corrupting influence, nothing could induce him to swerve from truth and right. In his decisions he seemed to be a pure intelligence, untouched by human passions, and settling the disputes of men according to the dictates of eternal and immutable justice. Other judges have surpassed him in genius, and a certain facility in despatching causes, but while the vigour of his faculties remained unimpaired, he was seldom surpassed in learning, industry and judgment.

From a man entrusted with such high concerns, and whose time was occupied by so many difficult and perplexing avocations, it could scarcely have been expected that he should have employed a part of it in the toilsome and generally unpleasant task of the education of youth. Yet even to this he was prompted by his genuine patriotism and philanthropy, which induced him for many years to take great delight in educating such young persons as shewed an inclination for improvement. Harassed as he was with business, and enveloped with papers belonging to intricate suits in chancery, he yet found time to keep a private school for the instruction of a few scholars, always with very little compensation, and



often demanding none. Several living ornaments of their country received their greatest lights from his sublime example and instruction. Such was the upright and venerable *Wythe*. *American Gleaner and Virginia Magazine*, i. 1—3, 17—19, 33—36; *Massa. Miss. Mag.* v. 10—15; *Debates of Virginia Convention, second edit.* 17, 421.



## CHARACTER OF LORD CHIEF JUSTICE HALES.

[From the Life of Francis North, Baron of Guilford.]

**I**T was the lord keeper *North's* good fortune to enter his practice in the circuits under this judge, whose reputation for his great ability in the law and rigorous justice will be very long lived in *Westminster Hall* and the inns of court and chancery; for there was a conjunction of characters; his and the times conspiring to aggrandize it. After having improved his knowledge as a student by reporting from him when he sat as judge of the *common pleas*, and as a practiser in the northern circuits, it so happened, that in the unaccountable rolling of preferments in the law, it became his lordship's province to judge of, and for cause apparent, to correct the errors of that great man. The truth is, his lordship took early into a course diametrically opposite to that approved by *Hales*: for the principles of the former being demagogical, could not allow much favour to one who rose a monarchist declared. Then, after the latter, by being made chief justice of the common pleas, together with the other judges of that court, and those of the exchequer, had jurisdiction of errors in judgment given by the court of king's bench, the separation was wider; and the old judge, by a certain formal overlooking of him, and refining of arguments against all he appeared for, affected to shew it. And, to say truth, that judge had acquired an authority so transcendent, that his opinions were, by most lawyers and others, thought incontestible; and he was