

DECISIONS OF CASES
IN
VIRGINIA.
BY THE
HIGH COURT OF CHANCERY,
WITH REMARKS UPON DECREES,
BY THE
COURT OF APPEALS,
REVERSING SOME OF THOSE DECISIONS.
BY GEORGE WYTHE,
CHANCELLOR OF SAID COURT.

SECOND AND ONLY COMPLETE EDITION, WITH A MEMOIR OF THE AUTHOR, AN ANALYSIS
OF THE CASES, AND AN INDEX,

By B. B. MINOR, L. B., OF THE RICHMOND BAR.

AND WITH AN APPENDIX, CONTAINING

REFERENCES TO CASES IN PARI MATERIA, AND AN ESSAY ON LAPSES;
JOINT TENANTS AND TENANTS IN COMMON, &c.,

By WILLIAM GREEN, Esq.

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TO THE
HONORABLE JOHN ROBERTSON,

JUDGE OF THE CIRCUIT COURT OF CHANCERY, FOR THE RICHMOND CIRCUIT,

THE PRESENT EDITION OF THESE REPORTS, A FAVORED CHILD
OF THE OLD AGE OF THEIR VENERABLE AUTHOR, IS RESPECT-
FULLY DEDICATED ; NOT ONLY AS A TOKEN OF PERSONAL
ESTEEM AND REGARD, BUT AS AN HUMBLE TRIBUTE
JUSTLY DUE TO THE LAST CHANCELLOR, IN VIR-
GINIA,—HER LAST JUDGE WITH EXCLUSIVE
CHANCERY JURISDICTION,—WHO, OCCU-
PYING, WORTHILY FILLS THE
SEAT OF THE ILLUSTRIOUS
WYTHE,
AND UPON WHOM, WHETHER IN PUBLIC OR PRIVATE, HAS
FALLEN THE MANTLE OF WYTHE'S INTEGRITY.

ADVERTISEMENT.

WYTHE'S REPORTS

OF decisions made by him in the High Court of Chancery, having been long out of print, and commanding, whenever a copy has been exposed to sale, quite a high price, the publisher has undertaken to present to the legal profession and the public this new and only complete edition. He was encouraged to engage in such an enterprise also by the great eminence of the author as a scholar and a jurist, and by his exalted reputation as a citizen and a patriot. At first, it was his intention simply to reprint the work, in octavo form, with an index and abstracts of the cases. But during the publication his plan became enlarged, as stated in the preface. This enlargement will, he trusts, render the edition more valuable, and recommend it to the favor of the legal profession, for whose benefit it has been made. He is able to furnish also

JEFFERSON'S REPORTS,

uniform with those of his illustrious preceptor ; the two bound up together, or in separate volumes. The possession of these works has long been a desideratum with lawyers and other collectors of books ; and together with that of

BARRADALL'S REPORTS,

now in MS., but which the publisher hopes ere long to lay in type before the public, will enable any one to complete the list of Virginia Reporters.

Richmond, January, 1852.

P R E F A C E .

In 1795, Chancellor Wythe published a folio volume entitled, "Decisions of Cases in Virginia, by the High Court of Chancery, with remarks upon decrees by the Court of Appeals, reversing some of those decisions. Richmond : Printed by Thomas Nicolson," pp. 167. In 1796-9, he published seven additional cases, in several octavo pamphlets, by the same printer.

The Editor will not seek to recommend this edition of those Reports to the favor of the public, by an exaggeration of its practical utility to the practising lawyer. At the same time, he does not see how any member of the legal profession, imbued with a proper spirit towards that profession, or towards those who have been exemplars and ornaments in it, can feel indifferent to such a work, or to the reward of that enterprise which has ventured to bring it once more within the reach of every one.

When the present edition was first contemplated, the publisher's plan extended only to a reprint, with an index and analyses of the cases, of the folio work published in 1795 ; to which, of course, he added as soon as he discovered them, the reports of cases subsequently published in pamphlet form. The idea of a more enlarged plan, embracing copious annotations and references to cases *in pari materia*, was suggested to him ; and the Editor was willing to undertake the task ; but the delay in getting out such a work, the increased expense, and the fact that such new modern matter would be mostly sought in works written for the purpose of embodying it, deterred him from adopting the suggestion. The undertaking of the Editor was, therefore, circumscribed by the wishes of the publisher.

But the work before us has its utilities, that are by no means inferior. It is no unimportant link in the history of the Juris-

prudence of our State ; showing how the mind of an upright, acute and fearless Judge worked under a severance from foreign authority, and sought right and justice amidst the conflicts of interest, prejudice and popular excitement. These reports and comments exhibit throughout a manly and vigorous independence of thought ; the most sterling integrity ; the most transparent sincerity of conviction ; the most unwavering steadiness of moral principle ; and a highly enlightened sense of equity, untrammelled by *dicta* and unswerved by prejudice or partiality. From their perusal no one can arise without feeling the corresponding principles within himself encouraged and strengthened, and their opposites, if any, rebuked and cowered. If *their* author could not commit such a memorial to the keeping of posterity with a confident feeling of its being appreciated, who may do so ?

Few members of the bench or bar can hope to occupy such positions, as that their opinions will be of sufficient *practical* utility to commend them to their professional brethren, after they shall have gone from among us. None, indeed, but those of the Judges of the Appellate Courts of last resort, can rest securely upon such a foundation. And yet, shall the stores of wisdom and experience treasured up by the luminaries of the bench, in courts not supremely appellate, be forever lost ; and all that shall remain of them, their genius, their labors and their learning, be but that brief traditional apotheosis which their cotemporaries, or their successors, hand down, at farthest for a generation or two ? This consideration alone should secure from the legal profession a high degree of favor to the work here tendered them. So far as the weight of names can go, few are so fortunate as to have had a Wythe for their author, with a Clay for his amanuensis.

The extent of the original plan of the publisher has already been stated. The editor felt constrained, however, to introduce references to the decisions of the Court of Appeals in the cases reported by the venerable Chancellor, and to volunteer a few notes. He congratulates the public that a more valuable and

important enlargement has been produced by the liberality of Wm. Green, Esq., of Culpeper, whose legal learning is so well known. The editor, conferring with him in reference to this edition, just after it was commenced, discovered that he had meditated editing the work himself, and had collected materials for the purpose ; but other engagements had prevented him from executing it. He at once evinced a deep interest in the enterprise, and to make it the more successful, freely tendered the use of his notes and references. It was deemed best to insert the most material of them as an appendix. But before Mr. Green could find leisure to reduce them to the order he desired, the printing of the text had proceeded so far that references to the appendix could not be inserted in the proper places. This omission, however, is supplied by references made in the list of cases, and in the appendix. We have no doubt the public will feel indebted, as we do, to Mr. Green, for his valuable additions.

In this edition, the cases reported have been arranged, with a few exceptions, chronologically,—according to the date of the decision of them by the High Court of Chancery.

The reasons for retaining the orthography and punctuation of the original, are too obvious to be stated. To have altered them, would have changed and marred the literary portrait which the work presented of the author and his times.

The folio copy used in preparing this edition, was kindly furnished by Hon. P. V. Daniel, of the Supreme Court of the United States ; and the supplementary cases by Mr. Green ;—they having been collected and bound in a volume, formerly owned by Mr. Madison, whose autograph it still bears.

Abstracts of the cases and an index were indispensable, and a memoir of the author seemed highly appropriate to accompany the reports : these must speak entirely for themselves. With these explanatory remarks, the work is committed to the profession and the rest of the public.

Richmond, January 1st, 1852.

MEMOIR OF THE AUTHOR.

Conspicuous personages, who, like Wythe, make the History of their Times, may properly stand forth from the canvass of History, in all their individuality,—their portraiture being only the bolder for being the less minute. Yet Biography differs from History essentially in this ;—that in the former details may be given, and personal traits and features displayed, that would be lost in the generalizations of the latter.

The little, however, that has been recorded of the long and useful life of Mr. Wythe, partakes more of eulogy than biography. The following is believed to contain the most that is now known of his history.

George Wythe was born in the County of Elizabeth City, Virginia, in 1726. His mother was one of five daughters of Mr. Keith, a Quaker gentleman of good fortune and education, and author of a work on mathematical and other subjects, who migrated from Great Britain to the town of Hampton, in 1690 : his father owned a good estate on Back River, and died intestate, survived by his wife and three children. The elder brother being the heir at law, it is said that his mother's moderate circumstances induced her to undertake George's education herself ; an office which, though her natural and acquired qualifications well fitted her for it, was, as is usual in such cases, but imperfectly discharged. She, however, besides English, taught him the rudiments of Latin ; and also aided him in those of Greek ; for though she did not understand it herself, yet having learned the alphabet, she, by a close collation of the English version with the Greek Testament, assisted him in the translation. As she must have had sufficient means from her dower, and the aid of her elder son, to send George to school, it is probable that her parental anxiety, or the want of a conve-

nient school, was the true cause that kept him at home ; and though his literary advantages were thus limited, she no doubt implanted in his character the seeds of that strength and uprightness which are said to have marked her own.

With this limited scholastic education, he was sent to study law with his uncle-in-law, Mr. Dewey, a lawyer of distinction in the County of Prince George. Here not much pains was bestowed upon him ; his time was chiefly devoted to what is termed the drudgery of a lawyer's office. He apparently made very little progress in his legal studies. Yet it might be very fallacious to infer that that drudgery had no connection with or influence upon his future success. The profession of law requires labors and sacrifices of its votaries ; and some who have been, at the outset, drudges, have by the very patience, perseverance, accuracy and closeness of observation which so called drudgery necessarily engenders and inculcates, become its greatest luminaries.

But the labors and toils of the student may be lightened by the attention and judicious encouragement of the preceptor ; and no doubt Mr. Wythe profited by his own experience under Mr. Dewey, when in after years he so zealously devoted himself to the guidance and instruction of candidates for the bar.

After his return home, in about two years, he gave himself assiduously to self-improvement ; and without assistance made considerable progress not only in Law, but in Latin and Greek Literature, and in the liberal sciences.

His mother died before he attained his majority. Her death and that of his brother put him in possession of the means of self-indulgence, and he now gave himself up to a long career of pleasure and dissipation. It can not be supposed, however, that his studies were entirely suspended by his unfortunate habits ; for such thirst of knowledge as he had imbibed could not have been slaked by the intoxicating drafts of pleasure, and must still have been indulged in the intervals of dissipation. He must, too, from his position, connexions and circumstances have enjoyed all the advantages of the society for which

lower Virginia was then, as now, distinguished ; and may even have caught some aspirations after better things from the men with whom he may have met and mingled in the old metropolis of Williamsburg. These suppositions are confirmed by the history of too many of the gifted young sons of Virginia : misguided indeed like Wythe, and whilst moving in the best society, prostituting both genius and learning to dissipation and extravagance ; but unfortunately not endowed with his self-control, nor like him recalled to the paths of usefulness and honor. In Wythe's reckless course of ten years, there does not appear to have been any great depravity of conduct. Having the means to "*live like a gentleman,*" he felt no incentive to exertion. But at the age of thirty, by his own strength of will and better purpose, he broke the chains which evil habits might have bound indissolubly around him, and entirely reformed his whole life. The particular causes of this change are not stated : Whether love, the foreseen exhaustion of his resources, his own penitent reflections, or the influence of interested friends ; or several of them combined. He appears now to have resumed the study of the Law, under a Mr. Lewis, whose daughter he married. Lord Tenderden, we think, has observed that poverty has been the greatest friend of the legal profession. A prospective vision of its approach may have stimulated the exertions of Wythe. Rapid success after his admission to the bar, crowned his learning, industry and eloquence. But he never ceased to deplore the follies and imprudences of which he had been so long guilty ; to regard the time allotted to them as irretrievably lost, and to warn the many young men who came under his influence to profit by his example.

The chancery bench of Virginia furnishes other examples of the strength of moral principle ; not only in the case of Mr. Wirt, whose friends placed him there with the hope of reforming him ; but of another who has since adorned it and in whom years of integrity and morality have borne testimony to the principles that were strengthened by the temptations, which he by his own decision of character resisted in youth.

Moral grandeur is the truest ; and would that our great men not only possessed more of it ; but based it upon the precepts and practice of the Christian faith. Mr. Jefferson speaks of the elevated philosophy of Mr. Wythe ; but, better still, Mr. Munford speaks, as we shall see, of his faith as a christian.

Wythe, then, it would appear, came to the bar in Williamsburg after the year 1756 ;* and the following facts shew the eminence to which he must have arisen in the short space of five years. In 1760, Jefferson entered William & Mary College, as a student ; and in less than two years thereafter, through the influence of Dr. Small, was taken under the instruction of Mr. Wythe. Dr. Small was Professor first of Mathematics, and afterwards of Philosophy and Belles Lettres in William & Mary. How Mr. Jefferson regarded his interposition is shewn by himself. He says, “ He (Dr. S.) returned to Europe in 1762, having previously filled up the measure of his goodness by procuring for me from his most intimate friend, George Wythe, a reception as a student of law under his direction, and introduced me to the acquaintance and familiar table of Gov. Fauquier, the ablest man who had ever filled that office. With him and at his table, Dr. Small and Mr. Wythe, his *amici omnium horarum*, and myself formed a *partie quarree*, and to the habitual conversations on these occasions, I owed much instruction. Mr. Wythe continued to be my faithful and beloved mentor in youth, and my most affectionate friend through life. In 1767, he led me into the practice of the law, at the bar of the General Court, at which I continued till the Revolution shut up the courts of justice.”†

When Mr. Wythe first entered the House of Burgesses is not stated ; but he soon took there an honorable stand among men who were the master spirits of their times. From the commencement of the revolutionary spirit of the Colonies, he warm-

*The biographies of Wythe lead to the impression that he studied with Mr. Lewis, and came to the bar, after his reformation, and about the age of thirty, (i. e. about 1756 ;) but this is by no means certain.

† Memoir, Corres. &c., of Jefferson, Vol. I. p. 2.

ly espoused their cause. Yet his independent course did not lose him the esteem of the royal Governors, for he was intimate with all but Dunmore ; nor of the government party, for he was several times elected to the honorable office of clerk of the house, and also to the speaker's chair, with their support.

In 1764, (aged thirty-eight,) he drew up for a committee of the burgesses, of which he was a member, a remonstrance to the English House of Commons ; but it was too bold for the times, though only expressive of the principles which he was ready to avow and maintain. After some softening, it was adopted by the house. Still he was one of those who opposed as unseasonable and inexpedient the famous resolutions of Patrick Henry, concerning the stamp act, in May 1765. Henry's matchless, yea miraculous, eloquence carried them through ; but the next day, he having gone home, the fifth resolution,* that had been most opposed, and had been carried by only one vote, was expunged. In 1768, however, they had come up fully to Henry's ground. Mr. Wythe was still a prominent member of the House of Burgesses, which now adopted resolutions asserting in determined language their exclusive right to tax the Colonies ; and complaining of the violation of the British Constitution by Parliament and of the oppression of trying in England persons charged with having committed offences here. Governor Botetourt endeavoured in vain to procure a copy of these resolutions from the Clerk, Mr. Wythe, and in hope of preventing the completion of their passage dissolved the assembly ; but they had anticipated him and already spread them upon the records of their body. The next year, (1769,) the people triumphantly sustained their representatives and returned them to the Assembly. Jefferson had then entered the House as a member : and now preceptor and pupil stood side by side in defence of the rights and liberties of the Colonies. Mr. Jefferson pre-

*It was as follows : "That the general assembly of this colony have the sole right and power to lay taxes and impositions upon the inhabitants of this colony ; and that every attempt to vest such power in any person, or persons whatsoever, other than the general assembly aforesaid, has a manifest tendency to destroy British as well as American freedom." *Wirt's Life of Henry*, p. 57.

pared a draft of instructions to be given to the delegates, who should be sent to the Congress he meant to propose ; but it was thought too bold for the existing state of things. It was, however, printed in pamphlet form under the title of “ A summary view of the rights of British America.” In it he took the ground which he regarded as the only tenable and orthodox one, that the relation between these Colonies and Great Britain was exactly the same as that of England and Scotland, after the accession of James and until the Union ; and the same as her present relation with Hanover, having the same executive chief, but no other necessary political connection. In this doctrine he says he could not get any one to agree with him but Mr. Wythe,* who concurred in it from the first dawn of the question, what was the political relation between us and England? Perhaps Mr. Wythe had instilled this doctrine into him. Enough has been stated to shew with what ardor and ability Mr. Wythe must have continued to devote himself to his profession and his country. But little of his acts is recorded until 1775. He then joined one of the earliest corps of volunteers, and evinced his promptness to sustain in the field the cause he had espoused in council. He wore a hunting shirt, carried a musket, and joined in the military parades which took place in Williamsburg during the latter part of Lord Dunmore’s administration. But his friends at length persuaded him that he could be more useful to the state in a civic sphere.†

For that incompetent and corrupt representative of the Crown, Lord Dunmore, whose character and conduct were well calculated to bring the royal authority into contempt, Mr. Wythe had any thing but respect ;—he regarded him as mean and ignorant. One day, in the General Court, over which Governor Dunmore

* Memoir, Corresp. &c. of Mr. Jefferson, Vol. I. p. 6, 7 and 92. As to Mr. Henry, (who might have been expected to concur,) Mr. Jefferson sent him a copy of the MS. and says, “ Whether Mr. Henry approved the ground taken, or was too lazy to read it, (for he was the laziest man in reading I ever knew,) I never learned : but he communicated it (the MS.) to nobody,” p. 7 of Memoir, &c.

† See a communication in the Richmond Enquirer of June 10th, 1806, in relation to Mr. Wythe.

then presided, Mr. Wythe and Mr. Nicholas were engaged on one side of a cause ; Mr. Pendleton and Mr. Mason on the other. The case being called, Mr. Wythe urged the trial of it ; Mr. Pendleton wished it continued, as Mr. Mason was absent, and there were two counsel on the other side. Lord Dunmore had the indelicacy to say to Mr. Pendleton, “ Go on, sir, for you’ll be a match for both of them.” “ *With your Lordship’s assistance,*” retorted Mr. Wythe, sarcastically, but at the same time bowing politely. The spectators enjoyed the rebuke, so keenly and politely administered. Yet Mr. Wythe was a man of kind and benevolent heart. In 1775, he was appointed a delegate to the Continental Congress ; and the next year joined heartily in the debates urging the Congress, in pursuance of the recommendation of Virginia, to declare the colonies free and independent ; and fearlessly signed the immortal Declaration drawn by his own grateful pupil. The same year, 1776, he was appointed, with Mr. Jefferson and others, to revise the entire jurisprudence of the State, and to adapt it to her independent position, and the republican principles embodied in her new Government. The part specially undertaken by Mr. Wythe, was the British Statutes from the 4th year of James I, to the then present period. Mr. Jefferson took the British Statutes prior to the 4th James I ; including the statutes of descents, for religious freedom, and apportioning crimes and punishments ; Mr. Pendleton, the Virginia laws : All, however, revised the work of each. They made their report in 1779, and many new laws, rendered necessary by the new order of affairs, were from time to time adopted ; but the main body of the revision was not acted upon till 1785. The code adopted was then termed the Chancellor’s Revisal. In the two sessions of the assembly in 1777, between his return from Congress and his appointment as Chancellor, Mr. Wythe was Speaker of the House, but took an active and efficient part in whatever was before the committee of the whole. His pure integrity, judgment and reasoning powers, gave him great weight.* Towards the close of the same year, he was appointed

* It was not alone by his labors in Congress and the General Assembly, that he endeavored to serve the cause of his country. There is still extant a copy of an

one of the three Judges of the High Court of Chancery; and on the new organization of that court, in 1788, sole chancellor.

The High Court of Chancery was established in 1777, in the second year of the Commonwealth. It consisted of three judges, chosen by joint ballot of both houses of assembly, commissioned by the Governor, and to hold their office "so long as they demeaned themselves well therein." Their salary was five hundred pounds; but was increased the next year to £800; and the next to £1200. The Court had general jurisdiction in all causes in chancery, whether by original or on appeal; but no original suit could be instituted therein for a less sum than ten pounds, except against a justice of a county or other inferior Court, or the vestry of any parish. It held two terms a year, in the City of Williamsburg.*

The oath required of the Judges shews the spirit in which the administration of justice was regarded by the pure patriots of that day;—a spirit, too, in which Wythe is universally admitted to have executed his office: † "You shall swear that well and truly you will serve this commonwealth in the office of a judge, and that you will do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience, and the laws and usages of Virginia, without respect to persons. You shall not take by yourself, or by any other, any gift, fee or reward of gold, silver, or

address to the Hessians, written by him, to induce them to desert the unjust cause they were defending. Geo. W. Randolph, Esq., informs me that he has seen the address among the papers of Mr. Jefferson, recently purchased by Congress. What use was ever made of it, I am not advised.

*9 Hen. Stat. 389–399, 521.

†The seal of the court, too, was a perpetual memento of the stern and uncorrupt impartiality that should characterise the judicial office. The Chancellor says that he was indebted to the ingenious Benjamin West, the celebrated painter, for the allusion among the devices on that seal to the story of Sisamnes related by Herodotus. For accepting a bribe, Cambyses had Sisamnes killed and flayed, and his skin cut in straps and stretched about the judicial seat. He then appointed Otanes, son of Sisamnes, judge, and told him to remember the seat upon which he sat to administer justice.—*Herod. Lib. V. cap. 25-6.* See following reports, p. 211.

any other thing,* directly or indirectly, of any person or persons, great or small, for any matter done or to be done by virtue of your office, except such fees or salary as shall be by law appointed. You shall not maintain by yourself, or by any other, privily or openly, any plea or quarrel depending in the Courts of this Commonwealth. You shall not delay any person of right, for the request or letters of any person, nor for any other cause ; and if any letter or request come to you contrary to law, you shall proceed to do the law, any such letter or request notwithstanding. And finally, in all things belonging to your said office, during your continuance therein, you shall faithfully, justly and truly, according to the best of your skill and judgment, do equal and impartial justice, without fraud, favor or affection, or partiality.’’

Such special oaths, however, unnecessarily encumbered our Statute Books, till the amendment in that respect recently introduced by the New Code. Whilst there has been in the judiciary of Virginia every grade of ability and efficiency, all have been remarkably upright ; and even where some of the judges have been of immoral character, they have never incurred any imputation upon their official integrity. No Bacon, or Macclesfield, or Jeffreys, or Thorpe has ever disgraced the Bench of this Commonwealth.

In 1780 the Court was removed to Richmond. The currency having become still further depreciated, the salaries of the judges were changed to 20,000 lbs. tobacco, payable quarterly, the value to be fixed by a jury of freeholders before the County Court of Henrico ; and were finally fixed at £300 in specie.—The Judges of the High Court of Chancery were ex-officio Judges of the Court of Appeals, where they were entitled to precedence. Judge Pendleton was President of both. The other high chancellors were first R. C. Nicholas, and afterwards Mr. Blair.

In 1788, the number was reduced to one, and the terms of the court increased to four a year, still holden at Richmond. The

* See the anecdote related by Mr. Clay, *infra*.

jurisdiction extended over the whole State till 1801, when the State was divided into three districts, and with a Superior Court of Chancery, and a separate Chancellor in each. These Courts were held at Richmond, Staunton and Williamsburg ; and such remained the system till after Mr. Wythe's death.

During the revolution the courts were almost entirely closed, which no doubt gave Wythe and many other leading patriots the opportunity to devote nearly their whole time to the service of the State. His time and talents were not all that he contributed, for he suffered many pecuniary sacrifices ; and the greater part of his slaves were carried over to the enemy, by the dishonest manager of his Hampton estate.

By a change in the organization of William and Mary, effected chiefly by Mr. Jefferson, who was then Governor of the State, and one of the visitors of the college, a professorship of Law was established, and Chancellor Wythe appointed to fill it, in 1781. He discharged its duties with great ability and usefulness for eight years.

It has already been stated that, as Chancellor, he was one of the Judges of the first Court of Appeals,* in which his intrepidity and uprightness were forcibly exhibited in opposing and vacating as unconstitutional, the action of one branch of the Legislature. That court held in the case of the *Commonwealth v. Caton et als.*, 4 Call 5, that the treason law of 1776 was constitutional ; and the House of Delegates could not, without the concurrence of the Senate, pardon persons condemned by the General Court, under that law.

In delivering his opinion, Wythe J. said : “ although it was said the other day, by one of the Judges, that imitating that great and good man, Lord Hale, he would sooner quit the bench, than determine this question, I feel no alarm, but will meet the

* Which consisted of the Judges of the High Court of Chancery, those of the General Court, and those of the Admiralty, assembled together. Chan. Rev. 102. And the sitting members in the case of *Caton, &c.*, were *Pendleton, Wythe* and *John Blair*, chancellors ; *Paul Carrington, Bartholomew Dandridge, Peter Lyons*, and *James Mercer*, Judges of the General Court ; and *Richard Carter*, one of the Judges of the Court of Admiralty. This was in Nov., 1782. 4 Call 5.

crisis as I ought ; and in the language of my oath of office, will decide it according to the best of my skill and judgment. I have heard of an English Chancellor who said, and it was nobly said, that it was his duty to protect the rights of the subject against the encroachments of the crown ; and that he would do it at every hazard. But if it was his duty to protect a solitary individual against the rapacity of the sovereign, surely it is mine to protect one branch of the Legislature, and consequently the whole community, against the usurpations of the other ; and whenever the proper occasion occurs, I shall feel the duty, and fearlessly perform it." Such was really the spirit of the man and the Judge, as he had other occasions to prove. One other will yet be mentioned.

Some biographers have stated that Wythe was a member of the Convention of 1787, which formed the Constitution of the United States. This is a mistake. He was appointed one of the seven deputies from Virginia. But he, prevented perhaps by his double duties of Chancellor and Professor, and Patrick Henry never took their seats. He was, however, a member of the State Convention which ratified the Federal Constitution, and presided over their deliberations in Committee of the Whole. He was a strenuous advocate of the ratification of the instrument ; and Chairman of the committee which reported the amendments thereto proposed by Virginia. He was a member afterwards of the Republican party, which he adorned by truly republican virtue and simplicity ; and twice successively presided over the college of electors in Virginia.

In 1789, when he became sole chancellor, he resigned his professorship in Williamsburg, and removed to Richmond, that he might be nearer the theatre of his judicial duties, and more convenient to those who might require his official services during the vacation of his Court.

The other occasion referred to in which his intrepid uprightness displayed itself, was in the case of the British Debts in 1793. After the peace, in 1783, there were in Virginia many persons who owed debts in England : among whom was Mr.

Robinson, who had been the Treasurer of the Commonwealth. The Legislature had passed a law that payments of paper money into the loan office of the State in satisfaction of debts to British creditors should discharge the debtors. Such men as Edmund Pendleton and Peter Lyons, as administrators of Robinson, sought for their intestate's estate, the protection of a payment under that law. The Court below had extended it to them, and the popular feeling was in their favor. But the venerable chancellor stemmed the tide, and decreed against them; and lived to enjoy the satisfaction of receiving the applause even of those who wished and would have justified a different decision. "A Judge," says he, "should not be susceptible of national antipathy, more than of malice towards individuals;—whilst executing his office, he should be not more affected by patriotic considerations, than an insulated subject is affected by the electric fluid in the circumjacent mass, whilst their communication is interrupted. What is just in this Hall is just in Westminster Hall, and in every other praetorium upon earth. Some judges in the West Indian Islands have been execrated by citizens of the United American States, for several late sentences against the latter, in favor of British subjects, in certain maritime causes; justly execrated if fame hath not mis-reported their conduct. None of those citizens, surely, can wish to see the tribunals of their own country so polluted."*

In 1795, Mr. Wythe published a report of this case, with a number of others in his Court, in a folio volume. Though some of the cases reported were ended in that Court without appeal, and in others the decrees were sustained by the Court of Appeals, yet the chief object of the publication seems to have been to vindicate the decisions of the author from the opposite opinions of the Appellate Court; and in a few instances, of his associate chancellors. In general, and in his writings on other

* See the following Reports, p. 211: Mr. Munford in his funeral oration says: "Yetto the immortal honor of the people of Virginia, be it said, those decisions did not diminish his popularity; but made them admire and respect him more than ever."

subjects, his style may have deserved the compliments sometimes paid to it ; but there is in it as exemplified in his Reports, though some are very well written, no little of stiffness and formality, with some affectation and even pedantry. Even good style is exceedingly various ; and one may write well in a bad style. The tone of his comments on the reversal of his decrees by the Court of Appeals, together with the selection of several of the cases reported and commented on, suggests the idea that there was some pique or jealousy between him and some of the judges of the higher Court. Enquiries have confirmed this. The same impression has been produced on other minds by the same evidences ; and one of the senior judges of the State writes, that “ during their lives there seemed to be a very general impression on the public mind that the personal feelings of Mr. Pendleton and Mr. Wythe towards each other, were less kind and amicable than might have been expected in the bosoms of two men so universally respected for their general amiable temper. In the case of Eppes and Randolph, there is a remark made by Judge Pendleton, in reference to his venerable compatriot, which I have always wished could be expunged from the report.”*

In 1796-9 Mr. Wythe published separately, in pamphlet form, reports of seven other cases decided in his Court, with comments upon the reversal of them by the Court of Appeals. All these reports are contained in the volume herewith submitted to the public.

The long period of seventeen years between his removal to Richmond and his death was spent in the faithful discharge of the duties of his office, to which he gave his undivided atten-

*2 Call 184. The remark is this : “ The term re-acknowledgment [of a deed] seems to have produced in the mind of the Chancellor mistaken ideas. * * * A mistake which information from our clerk would correct.” In the same Report Judge Pendleton uses the phrase “clashing jargon” in such juxta position with a comment upon the Chancellor’s opinion under review, that it also has been by some construed into an unfriendly hit at the Chancellor ; but we hope it was intended to refer only to the conflict between the cases alluded to as cited by the counsel in the argument of the case. 2 Call p. 185.

tion. It is impossible, however, but that a man of his position, influence and positive character should have felt a deep interest and sometimes taken a leading part, by counsel at least, in many important public matters. We have seen that he presided twice over the electoral college; and being not only the personal but political friend of Jefferson during the memorable struggles about the year 1800, from his nature and the spirit of the times, we know that he could not have been inactive any farther than his judicial office rendered it imperative. The following characteristic letter* belongs to this period.

“WYTHE TO JEFFERSON.”

“The friends of Alexander Quarrier will be not a little gratified by hearing that his son, of whom they think well, hath been promoted to some office which he shall be found qualified to execute. Farewell. 4th of July, 1801.”

This is certainly brief and non-committal; but intended as it no doubt was, it had more weight than the puffs for office now too much in vogue; whilst its curt generality would commend it to the adoption of the multitudes, who are constantly solicited to aid the aspirations of those of whose qualifications they know nothing. It brings to mind the general letter of introduction which Dr. Franklin was constrained to draw up, whilst he was our minister to France, in order to save his sincerity, whilst he complied with the applications for such letters that were constantly made to him.

As a practitioner of law, Mr. Wythe erected for himself the highest standard of propriety, candor and fidelity; and a letter of his is still extant, † in which he declines undertaking a cause tendered him, because he could not conscientiously promote the views of his client.

*Kindly furnished us by Geo. Wythe Randolph, Esq., grandson of Mr. Jefferson. The original closely resembles print,—the usual style of Mr. Wythe’s writing.

† Among the papers of Mr. Jefferson recently purchased by Congress.

As a judge, he was not only fearlessly upright and independent, but able, punctual, attentive and industrious. John Randolph used to say of him “ that he lived in the world without being of the world. That he was a mere incarnation of justice,—that his judgments were all as between A. and B. ; for he knew nobody, but went into Court as Astræa was supposed to come down from Heaven, exempt from all human bias.”* Mr. Wythe himself declared, that even “ compassion ought not to influence a judge, in whom, acting officially, apathy is less a vice than sympathy.”† His learning was extensive both in his profession, and in general science and literature ; and he has taken a quaint and even eccentric pleasure in stamping upon his reports and the records of his Court|| traces of his learning ; especially in logic, mathematics and the classics. “ Not only was the father of poetry his intimate companion, but the philosophers, historians, and even dramatic poets of antiquity were as familiar to him in their original dress as were almost all the meritorious works of the day in his vernacular tongue. The writer of this sketch has heard him denominated emphatically ‘ the walking library.’ ”‡

Mr. Wythe had been twice married ; first, as already stated, to the daughter of Mr. Lewis, with whom he studied law ; and

* From a letter of Judge Beverly Tucker to the Editor.

† Following Reports, p. 282.

|| Communication in the Richmond Enquirer, June 10th, 1806.

‡ An instance of this occurs in the decree rendered in May, 1804, expounding the will of Patrick Henry. After quoting the parable in St. Mathew, ch. xx., he says “ the land was a gift, not naturalie nor moralie to be retributed or counter-vaied by price, by pounds or dollars, and their fractional parts, but meriting an intirelie different remuneration, namelie, th’ effusions of ‘ a gratefull mind, Which owing owes not, but still pays, At once indebted and discharged ; ” Then he adds this note. “ Paraphrase, by Milton of ‘ commode autem, quicumque dixit ; pecuniam qui habeat, non reddidisse ; qui reddiderit, non habere ; gratiam autem et qui retulerit, habere ; et qui habeat retulisse.’ Cic’ de offic’ lib’ 2, cap’ 20. One, whoever he was, said well, ‘ a debtor, before payment, may have the money due, and have it not after payment ; but he who is grateful, both hath what he paieth, and paieth what he hath.’ The same sentiment occurs in this passage. ‘ Dissimilis est pecuniæ debitio, et gratiæ. nam qui pecuniam dissolvit, statim non habet id, quod reddidit : qui autem debet, æs retinet alienum, gratiam autem et qui refert habet ; et qui habet, in eo ipso quod habet, refert.’ ”

secondly to a member of the wealthy and influential family of Taliaferro. The only child he ever had died in infancy. He was a widower for several years, before his death.

His earthly career was terminated suddenly and unexpectedly, though he was in his eighty first year, on the 8th of June, 1806.

Cic' pro Cn' Plancio, c' 19, for which i was obliged to m' Warden. G,' W' '' A little mathematics is also introduced into the same decree. But a more amusing instance occurs in a "dissertation and decree" rendered March 7th, 1806, not long before his death. The question was whether certain devisees took estates for life, or estates tail, converted into fees. The conflicting arguments of counsel seem to have produced a singular impression upon him. At one time, he says, "a phalanx of authorities, adjudged cases so styled, hath been mustered, and an argument, a rhapsody, replete with law learning, hath been formed to prove, &c." And again, "Aulus Gellius, (lib' 5 cap' 10) in his attic lucubrations, observes that those arguments are very vicious which, against him who uses them, may with equal cogencie be retorted by his antagonist, and of which he gives an example, which is in the note." That note is as follows: "Eualthus, a wealthy young man, desirous of studying eloquence and of learning to plead causes, and for that purpose becoming a disciple of Protagoras, an acute sophist, and paying to him one half of a liberal fee which he required, contracted to pay him the remainder whenever he, Eualthus, should plead a cause and prevail in it. Eualthus, for a long time, was the pupil of his præceptor, and made a considerable progress in oratorie and jurisprudence, but would not engage in the practice of Law. Protagoras suspecting that Eualthus declined it, to avoid payment of the other half of the fee, institutes an action against him, for breach of contract, expecting that a cunning argument, as he thought one that he had devised to be, would insure success. When the parties were convented before the judges, Protagoras addressing his speech to Eualthus began thus, 'Know, said he, thou most foolish young man, that thou must pay to me what I demand, whether the judgment be against thee or for thee; for if it be against thee, my wages will be due by the Court's sentence; but if it be for thee, my wages will be due by the contract, because thou wilt have gained a cause.' To which Eualthus answered, 'Know thou, too, most wise master, that it cannot either way be that I must pay to thee what thou demandest, whether the judgment be for or against me; for if it be for me, by the court's sentence nothing will be due to thee; if it be for thee, nothing will be due to thee by the contract, because I shall not have gained a cause.' The Judges thinking what was said on both sides to be dubious and inexplicable, lest their sentence on whichever side it should be pronounced, should refute itself, left the matter undetermined and adjourned the cause in *diem longissimam*." Again he says,— "The argument, (of the plff's counsel,) then, at this time is as unseasonable as the condolence in the address of ambassadors from Troas to Tiberius Cæsar upon the death of Augustus Cæsar, which had happened a long time before; to which part of that address, the Emperor to whom it was presented, as Josephus re-

Like Jefferson and all the leading men of that day, he was in favor of the emancipation of slaves. He had liberated three, a man, woman and boy, and by his will made suitable provision for their support. He had taught the boy to read and write.—The legatee of the greatest portion of his estate was his great nephew, George Wythe Swinney, the grandson of his sister.—The freedman died in his life time, and a codicil to his will increased the provision made for the boy,—which, in case the boy should die before the age of twenty-one, was also to go to the nephew. The boy died suddenly, a few days before Wythe himself, and a second codicil to the will, reciting that the boy had died that morning, revokes all the devises in behalf of Swinney, and leaves the whole estate to be equally divided among Swinney's brothers and sisters. These facts and the circumstances attending the venerable chancellor's death excited suspicion that poison had been administered to him; and Swinney was subjected to a public prosecution for the crime of murder, accompanied by the blackest ingratitude.

“How oft alas! does goodness wound itself,
And sweet affection prove the source of woe!”

The circumstances of suspicion were quite strong; two indictments were found against him, in September 1806; he was

lates, answered that he heartily condoled with them upon the death of their Hector.” Again he says: “Dyonisius Halicarnassus in his commentarie upon Homer remarks, that one principal art of an orator is to use arguments the weakest he can invent to maintain that side of an argument which he pretends to patronise but wishes to be decided the other way, and oppose most faintly those arguments which are urged against him. Thus Agamemnon, pretending to recommend abandonment, which he really dreaded, of the siege of Troy, gave the most powerful reasons for its continuance. And the arguments of the plf's counsel appear to the Court to favour the contrarie side of the question, conclusively.” In another decree, (Sept. 18, 1805,) he quotes Justinian's Institutes, Homer's Odyssey, Xenophon, and the Alcestis of Euripides. In another case, (6th of March, 1801,) in construing the will of Robert Beverly, deceased, he decides that “that the plf., the widow, is not entitled to the carriages, with the caps and boots provided for the drivers thereof claimed in her bill. (‘Fine subjects for a HIGH Court of Chancery, are they not?’ exclaims he in a note.) ‘Nor is she entitled to the pipe of wine, which although ordered by the testator for the use of his family, had not arrived, and so was not part of ‘the liquors in or about the house at the time of his death.’” These few instances have been taken from the records of the Court.

tried upon one and acquitted, and then the attorney for the commonwealth entered a *nolle prosequi*.* But four indictments had also been found against him for a misdemeanor in obtaining money, the preceding April, from the Bank of Virginia, upon a false check in the name of Mr. Wythe. He was, therefore, remanded to jail to be tried upon these. He was convicted and condemned to six months' imprisonment in jail, and to one hour's exposure on the pillory, at the market-house in the city of Richmond. But this sentence was never executed. The General Court had arrested one judgment; but the appeal to them on another indictment was ineffectual; yet the Court below granted him a new trial, and then the prosecuting attorney entered a *nolle prosequi*.† The unfortunate man then sought refuge in the West; where his career was brought to a premature and miserable close. During the Chancellor's sickness, he endeavored to continue the discharge of his duties; and despite the racking pains which he suffered, studied cases pending before him, and lamented deeply the inconvenience and delay which his sickness would cause to the suitors in his Court.‡

* At the time of the poisoning, the Chancellor had been confined at home by indisposition. Swinney, indignant at the kindness and munificence of his uncle to the colored boy, intended to poison the boy, and put the poison in the coffee for breakfast, not expecting that the Chancellor would think of coming from his chamber, or would be in any danger of partaking of it. But during his absence, the Chancellor did make his appearance and drank of the coffee. The woman also died. These facts were obtained from Dr. John Dove, who then resided in that neighborhood, and was present when Mr. Wythe breathed his last. The residence of Mr. Wythe in Richmond was a yellow wooden house, with hip-roof, situated on the corner of Fifth and Grace Streets. The garden attached to it extended to Franklin Street, and embraced half the square. It was cultivated as a market garden for several years after his decease. For several years after that sad event, the house was occupied; but then became so dilapidated that it was untenanted. Finally the youths of the city, who had formed a Thespian Corps, obtained the use of it gratis for their performances, and knocked down the partitions to make it suit their purposes. Its ruins and its garden have now made way for some of our handsomest mansions.

† The records of these proceedings have been consulted in the office of the Superior Court of Law for Henrico County. See also 1 Va. Cas. pp. 146, 150.

‡ Munford's Eulogy.

Great solicitude was felt for his recovery. As soon as the news of his death was made public, the bells of the city were set a tolling, the Executive Council assembled, adopted an order for a public procession, and appointed Wm. Munford, Esq., one of their body, to pronounce a funeral oration over the deceased.* Mr. Munford had been a pupil and protege of Mr. Wythe. After the death of his father, whilst he was pursuing his studies at William & Mary, he would have been compelled to leave college in consequence of the embarrassments of his father's estate. Mr. Wythe, who had observed his assiduity, was then about to remove to Richmond, and proposed to him to come and study in his office. This generous offer was accepted ; and Mr. Munford's conduct ever afterwards evinced his gratitude. The duty assigned him by the Executive Council was promptly discharged with ardor and affection ; and he drew a moral and intellectual portrait of his departed friend, which any one might envy.† He rescued his memory, too, from the charge of infidelity that had been asserted against it ; and says that in his last sickness he repeatedly prayed to Jesus Christ as his Savior ; and the correspondent in the Enquirer, already referred to, says, that not long before his death, he exclaimed " let me die righteous." Mr. Munford thus feelingly speaks of his zeal in the cause of education : " The most remarkable instance of his genuine patriotism, to which I confess I am rendered most partial, perhaps, by my own experience of its effects, was his zeal for the education of youth. Harassed as he was with business, enveloped with perplexing papers and intricate suits in Chancery, he yet found time for many years to keep a private school for the instruction of a few young men at a time, always with very little, and often demanding no, compensation."

* It is believed that his remains were deposited in the grave-yard around St. John's Church, in Richmond. But the place is not marked by the slightest memorial. Ought not the bar of Richmond to have it identified, if practicable, and appropriately cenotaphed.

† This oration is published in the Richmond Enquirer, of June 13th and 17th, 1806.

He also bears hearty testimony to the private virtues of the Chancellor, his frugality, simplicity, benevolence and modesty. Though naturally of a quick temper, he had brought it under his control. Quickness and even impatience of temper are, however, entirely compatible with true kindness of heart, and a disposition to be just to every one. He was sometimes facetious with his friends ; but his general deportment was reserved. Although he lacked neither quickness of parts, nor colloquial talents, he was cautious and taciturn,* unless roused by some improper remark, and then he was apt to retort with great severity. He possessed dry humor and considerable wit, and indulged in sarcasm when treated with disrespect. Of this an instance has been given in his retort upon Lord Dunmore.

“ In debate,” says Mr. Call, “ Mr. Pendleton was more captivating ; Mr. Wythe more argumentative. ‘ *Cæsar ne priorem, Pompeius ve parem,*’ was a question which produced no animosity between them ; but which the world never decided.”

In venturing the opinion, that this question has been decided in favor of Mr. Pendleton, it is not intended to disparage Mr. Wythe. Though there may never have been between these two honored men any feeling strong enough to be styled animosity, yet it seems apparent from the circumstances already adverted to, that from some cause, there was some unpleasant feeling between them. Pendleton’s nature was milder than

* He sometimes politely bowed in persons calling on business, attended to it and then politely bowed them out of the house, without speaking a word. He was in the habit of going very early, rather in dishabille, to a neighboring bakery to buy his own bread ; and for days successively put down his money and took his loaf without uttering a word. Judge Beverly Tucker communicated the following anecdotes : Mr. W. visited nobody but his relation, Mrs. Taliaferro, who lived four miles from Williamsburg ; and being a great walker always went on foot, sometimes taking young Munford with him. One evening, as they set out together, M. said on leaving the door, “ a fine evening, sir.” To which, as they entered Mrs. T.’s house, the old man replied, “ yes, a very fine evening.”— There was then a coffee-house in Williamsburg, next door to which my informant lived, and much of the gossip of which, of course, reached her. One evening, she says, Mr. W. was seen approaching the coffee-house. “ Here comes Mr. Wythe,” said one ; “ I wonder if he will talk this evening.” Some said yes, some, no. “ I’ll make him talk,” said a saucy negro boy, who being always

Wythe's, and he did not manifest this feeling as much as the Chancellor did.

Other and abler pens will complete this tribute to his memory. "His virtue," says Mr. Jefferson, "was of the purest kind; his integrity inflexible and his justice exact; of warm patriotism, and devoted as he was to liberty and the natural and equal rights of men, he might truly be called the Cato of his country, without the avarice of the Roman; for a more disinterested person never lived. Temperance and regularity in all his habits gave him general good health, and his unaffected modesty and suavity of manners endeared him to every one. He was of easy elocution, his language chaste, methodical in the arrangement of his matter, learned and logical in the use of it, and of great urbanity in debate. Not quick of apprehension, but with a little time profound in penetration, and sound in conclusion. His stature was of the middle size, well formed and proportioned, and the features of his face manly, comely and engaging. Such was George Wythe, the honor of his own and the model of future times."

Besides those of lesser distinction, Mr. Wythe was the pre-

about the house had become a sort of licensed pet of the customers. The old man entered, walked in silence to the fire, and turning his back to it, stood with his hands behind him. The boy put the hot poker in his hand. "What did you do that for?" was all he said. Judge T. also gives the following personal reminiscence of him, and says: "I was taught from my childhood to venerate him as the purest of human beings." "I have still," says he, "in my mind's eye, the tall, pale, extenuated old man, that I used to see walking silent and alone before the door, and whom we boys always beheld with a feeling akin to superstitious awe. I recollect that once meeting me alone, he surprised me by patting me on the head, speaking kindly to me; and then putting his long bony finger into my hand, leading me up into his chamber, and showing me a swarm of bees at work in a hive which he had fitted against one of the panes of his window." Judge Tucker when he penned these sentences was filling the chair of law in the University of William & Mary, that was first filled by Mr. Wythe. He has since gone to his last account, full of merited honors. We tender to his memory the respectful tribute of a grateful pupil. These details of Mr. Wythe are given to complete the picture of the man. Even his eccentricities and affectations, if such they be deemed, leaned on virtue's side, and were the natural result of his studious and retired mode of life operating upon the qualities which long formed the basis of his character.

ceptor of two presidents, and a Chief Justice of the United States. The following letter* shews that his connections with the eminent greatness of his country are not yet severed :†

ASHLAND, May 3, 1851.

My Dear Sir,—I duly received your favor of the 21st ult., in which you inform me that one of the Richmond booksellers intends to publish a new edition of the reports of the lamented Chancellor Wythe, and you express a wish that I would furnish a brief memoir of the illustrious author. It would be a most pleasing and grateful task to comply with your request, if I possessed the requisite authentic materials, and the requisite capacity to prepare the work. But the first condition does not exist, and it is therefore unnecessary to dwell upon the second. My acquaintance with the Chancellor commenced in the year 1793, in my 16th year, when I was a clerk in the office of the court over which he presided, and when I think he must have passed the age of three score years and ten. I knew nothing personally of his career at the bar, of his ancestry, or of the part which he had taken in public affairs. I understood that he was born in Elizabeth City, that he was taught the Greek letters by his mother and afterwards by her assistance, and by his own exertions, he became an accomplished Greek scholar. How he learned the Latin language I do not remember to have heard, but probably at William & Mary college, or at some other college in lower Virginia. When I first knew him, his right hand had become so affected with the rheumatism or gout, that it

* For that letter special acknowledgments are hereby tendered to the writer. It came very promptly in response to a simple request, made by one who had no claims upon his attention save those of a cordial respect manifested, as opportunity has offered, during an acquaintance of several years; and at a time when it was known that the pressure of numerous engagements, caused by a long absence from home, furnished so good a reason for not complying with it as almost to have prevented it from being made. The public, like ourselves, will feel deeply indebted to that generous disposition to pay tribute to the worthy, and that grateful affection towards a venerable friend which have furnished them the following sketch. We were unwilling to weave it into our own narrative.

† The Hon. Littleton W. Tazewell, still living, was one of his pupils.

was with difficulty he could write his own name. Owing to that cause he engaged me to act as his amanuensis and I attended him frequently, though not every day, to serve him in that capacity for several years. Upon his dictation, I wrote, I believe, all the reports of cases which it is now proposed to republish. I remember that it cost me a great deal of labor, not understanding a single Greek character, to write some citations from Greek authors, which he wished inserted in copies of his reports sent to Mr. Jefferson, Mr. Samuel Adams, of Boston, and to one or two other persons. I copied them by imitating each character as I found them in the original works.

Mr. Wythe was one of the purest, best, and most learned men in classical lore that I ever knew. Although I did not understand Greek, I was often highly gratified in listening to his readings in Homer's Iliad and other Greek authors, so beautifully did he pronounce the language. No one ever doubted his perfect uprightness, or questioned his great ability as a Judge. I remember an incident which occurred in my presence which demonstrated with what scrupulous regard he avoided the possibility of any imputation upon his honor, or his impartiality. A neighbor of his, Mr. H——, who had the reputation of being a West India nabob, and who at the time had an important suit pending in the Court of Chancery, sent him a demijohn of old arrack, and an orange tree for his niece, Miss Nelson, then residing with him. When the articles were brought into Mr. Wythe's house, with the message from the donor, Mr. Wythe requested the servant to take them back to his master, and to present to him his respects, and thanks for his kind intentions, but to say that he had long ceased to make any use of arrack, and that Miss Nelson had no conservatory in which she could protect the orange tree. I was amused at another scene, which I witnessed between him and the late Justice Washington of the Supreme Court, then practising law in the city of Richmond. He called on the Chancellor with a bill of injunction in behalf of General ———, to restrain the collection of a debt. The ground of the application was that the creditor had

agreed to await the convenience of General ———, for the payment of the debt, and that it was not then convenient to pay it. The Chancellor attentively read the bill through, and deliberately folding it up, returned it to Mr. Washington, enquiring with an ineffable smile upon his countenance, “do you think, sir, that I ought to grant this injunction?” Mr. Washington blushed and observed, that he had presented the bill at the earnest instance of his client.

Mr. Wythe’s relations to the Judges of the Court of Appeals were not of the most friendly or amicable kind, as may be inferred from the tenor of his reports. Conscientiously and thoroughly convinced of the justice and equity of his decrees, he was impatient when any of them were reversed, and accordingly evinces that feeling in his reports. Mr. Pendleton, from what I have heard, and the little I knew of him, I suppose was more prompt and ready, and possessed greater powers of elocution than his great rival. Mr. Wythe’s forte, as I have understood, lay in the opening of the argument of a case, in which for thorough preparation, clearness and force, no one could excel him. He was not so fortunate in reply. Mr. Pendleton, on the contrary, was always ready both in opening and concluding an argument, and was prompt to meet all the exigencies which would arise in the conduct of a cause in Court. The consequence was that Mr. Pendleton was oftener successful than Mr. Wythe in their struggles at the bar. On one occasion, when Mr. Wythe, being opposed to Mr. Pendleton, lost the cause, in a moment of vexation he declared, in the presence of a friend, that he would quit the bar, go home, take orders, and enter the pulpit. You had better not do that replied his friend ; for, if you do, Mr. Pendleton will go home, take orders, and enter the pulpit too, and beat you there. Mr. Pendleton was far less learned than Mr. Wythe, but he possessed more versatile talents, was an accomplished gentleman, and better adapted to success in general society and in the busy world. Although not so finished a scholar as Mr. Wythe, he had a much more pleasing style of composition. The high consideration in which

Messrs. Pendleton and Wythe were both held was often evinced by the distinguished honors and eminent offices which they received from their parent state. It was particularly exhibited in the organization of the Convention which adopted the Constitution of the United States, when Mr. Pendleton was appointed to preside over the body, and Mr. Wythe to preside over the Committee of the Whole, which he did during, I believe, the entire sitting of the Convention, the Constitution having been considered and discussed in Committee of the Whole.

Mr. Wythe's personal appearance and his personal habits were plain, simple and unostentatious. His countenance was full of blandness and benevolence, and I think he made, in his salutations of others, the most graceful bow that I ever witnessed. A little bent by age, he generally wore a grey coating, and when walking carried a cane. Even at this moment, after the lapse of more than half a century since I last saw him, his image is distinctly engraved on my mind. During my whole acquaintance with him he constantly abstained from the use of all animal food.

It is painful and melancholy to reflect that a man so pure, so upright, so virtuous, so learned, so distinguished and beloved, should have met with an unnatural death. The event did not occur until several years after I emigrated from Richmond to the State of Kentucky, and, of course, I am not able from personal knowledge to relate any of the circumstances which attended it. Of these, however, I obtained such authentic information as to leave no doubt in my mind as to the manner of its occurrence. He had a grand nephew, a youth scarcely I believe of mature age, to whom, by his last will and testament, written by me, upon his dictation, before my departure from Richmond, after emancipating his slaves, he devised the greater part of his estate. That youth poisoned him, and others,—black members of his household, by putting arsenic into a pot in which coffee was preparing for breakfast. The paper which had contained the arsenic was found on the floor of the kitchen. The coffee, having been drank by the Chancellor and his servants, the

poison developed its usual effects. The Chancellor lived long enough to send for his neighbor, Major William Duval, and got him to write another will for him, disinheriting the ungrateful and guilty grand nephew, and making other dispositions of his estate. An old negro woman, his cook, also died under the operation of the poison, but I believe that his other servants recovered. After the Chancellor's death it was discovered that the atrocious author of it had also forged bank checks in the name of his great uncle, and he was subsequently, I understood, prosecuted for the forgery, convicted and sentenced to the penitentiary ; but whether that was the fact or not, can be ascertained by a resort to the records of the proper criminal courts in Richmond.

I have written this hasty sketch, not as a memoir of the illustrious man of whom it treats, but for the purpose of contributing some materials, which may be wrought by more competent hands, into a biography more worthy of his great name and memory. I conclude it by an acknowledgement, demanded of me alike by justice and feelings of gratitude, that to no man was I more indebted, by his instructions, his advice, and his example, for the little intellectual improvement which I made, up to the period, when, in my twenty first year, I finally left the City of Richmond.

I am with great respect,

Your friend and obedient servant,

H. CLAY.

MR. B. B. MINOR.

MR. WYTHE'S WILL.

“Contemplating that event, which one in the second year of his sixteenth lustrum may suppose to be fast approaching, at this time, the twentieth day of April in the third year of the nineteenth centurie since the christian epoch, when such is my health of bodie that vivere amem, and yet such my disposition of mind that, convinced of this truth, what Supreme Wisdom destinateth is best, obeam libens, i, George Wythe, of the citie of Richmond, declare what is hereinafter writen to be my testament, probable the last : Appointing my friendlie neighbour William Duval executor, and desiring him to accept fifty pounds for his trouble in performing that office over a commission upon his disbursements and receipts inclusive, i devise to him the houses and ground in Richmoad, which i bought of William Nelson, and my stock in the funds, in trust, with the rents of one and interest of the other, to support my freed woman Lydia Brodnax, and freed man Benjamin, and freed boy Michael Brown, during the lives of the two former, and, after their deaths, in trust to the use of the said Michael Brown : and all the other estate to which i am and shall at the time of my death be intitled i devise to George Wythe Sweney the grandson of my sister.

GEORGE  L. S.  WYTHE.”

“I, who have hereunder writen my name, this nineteenth day of January, in the sixth year of the before mentioned centurie, revoke so much of the preceding devise to George Wythe Sweney as is inconsistent with what followeth. The residuary estate devised to him is hereby charged with debts and demands. I give my books and small philosophical apparatus to Thomas Jefferson, president of the United States of America : a legacie, considered abstractlie, perhaps not deserving a place in his musaeum, but, estimated by my good will to him, the most valuable to him of any thing which i have power to bestow. My stock in the funds before mentioned hath been changed into stock in the bank of Virginia. I devise the latter to the same uses, except as to Ben who is dead, as those to which the former was devoted. To the said Thomas Jefferson’s * patronage i recommend the freed boy Michael Brown in my testament named, for whose maintenance, education or other benefit, as the said Thomas Jefferson shall direct, i will the said bank stock, or the value thereof, if it be changed again, to be disposed. And now,

‘ GOOD LORD, most mercifull, let poenitence
Sincere to me restore lost innocence ;

'In wrath my grievous sins remember not ;
My secret faults out of thy record blot ;
That, after death's sleep, when i shall awake,
Of pure beatitude i may partake.'

GEORGE WYTHE.  SEAL. 

* ὅς
φίλος δ' ἦν ἀνθρώποισι ;
Πάντας γὰρ φίλεσκεν.*

“ I will that Michael Brown have no more than one half my bank stock, and George Wythe Swenney have the other immediatelic.

“ I give to my friend Thomas Jefferson my silver cups and gold headed cane, and to my friend William Duval my silver ladle and table and teaspoons.

“ If Michael die before his full age, i give what is devised to him to George Wythe Swenney. I give to Lydia Brodnax my fuel. This is to be part of my will and as it were written of the parchment inclosed with my name in two places.

G. WYTHE, 

24 of february 1806.

“ In the name of God, Amen !

I George Wythe, of the city of Richmond, having heretofore made my last will on the 20th April, in the third year of the nineteenth century since the christian epoch, and a codicil thereto on the 19th day of January, in the sixth year of the aforesaid century, and another codicil on the 24th day of February 1806, do ordain and constitute the following to be a third codicil to my said will ; hereby revoking the said wills and codicils in all the devises and legacies in them or either of them contained, relating to, or in any manner concernig George Wythe Swenney, the grandson of my sister ; but I confirm the said will and codicils in all other parts, except as to the devise and bequest to Michael Brown, in the said will mentioned, who, I am told, died this morning, and therefore they are void. And I do hereby devise and bequeath all the estate, which I have

* [The character drawn by Homer (Iliad, lib. vi. v. 15,) of Axylus, and which is thus translated by Mr. Munford :

But Diomed, the great in battle, slew
Axylus, Teuthras' son, who, blessed with wealth,
In fair Arisba's beauteous town abode ;
To all men justly dear, for all he loved," &c.—*Ed.*]

devised or bequeathed to the said George Wythe Sweney or for his use, in the said will or codicils, and all the interest and estate, which I have therein devised or bequeathed in trust for, or to the use of the said Michael Brown, to the brothers and sisters of the said George Wythe Sweney, the grandchildren of my said sister, to be equally divided among them, share and share alike. In testimony whereof I have hereunto subscribed my name and affixed my seal, this first day of June, in the year 1806.

G. WYTHE.  SEAL. 

“Signed, sealed, published and declared by the said George Wythe the testator as and for his last will and testament in our presence ; and at his desire we have hereunto subscribed our names as witnesses, in his presence and in the presence of each other.

“(The interlineations of the words, “and another codicil on the 24th of February 1806,” and of the words “will and codicils” and “grand” being first made ; and the whole being distinctly read to the testator, before the execution of this codicil.)

EDM. RANDOLPH,
WM. PRICE,
SAMUEL GREENHOW,
SAM'L McCRAW.”

The foregoing will and first codicil are written upon parchment by the testator. The last codicil is believed to be in the handwriting of Edm. Randolph, Esq., and not that of Mr. Duval, as Mr. Clay supposed. The envelope has upon it the following endorsement, apparently in the handwriting of the testator :

“ To William Duval,
to be opened when G. Wythe shall
cease to breathe, unless by him required
before that event.
Xaips!”

[From the Richmond Enquirer of June 10th, 1806.]

“ ‘ Full of years ; and full of honour.’ ”

“ On Sunday morning the 8th inst., departed this life, the venerable chancellor of the Richmond district, GEORGE WYTHE. Over the suspected causes of his death, let us for a moment draw the veil. Every situation in life has its rights and its duties. Let us therefore respect the rights of the accused.

“ But of the deep, the solemn, the almost unparalleled impression produced by his death, we may be permitted to speak.— Let the anxious solicitude manifested for his recovery ; let that sorrow which buries beneath it all political distinction ; let the solemn and lengthened procession which attended him to his grave ; declare the loss which we have sustained. Kings may require mausoleums to consecrate their memory ; saints may claim the privilege of canonization ; but the venerable GEORGE WYTHE needs no other monument than the services rendered to his country, and the universal sorrow which that country sheds over his grave.

“ When the news of his death was made public, the bells of the city were set a tolling : the executive council assembled in their chamber, and determined on the following order of procession. It was published for the information of the citizens :

‘ COUNCIL CHAMBER, June 8th, 1806.

ORDER OF PROCESSION,

Preparatory to the interment of

GEORGE WYTHE,

Late Judge of the High Court of Chancery for the Richmond District.

A Funeral Oration will be delivered at the Capitol, in the Hall of the House of Delegates, to begin precisely at 4 o'clock, P. M. on to-morrow ; after which the Procession will commence in the following order :

1. The Clergymen and Orator of the Day.
2. Corpse.
3. Physicians.
4. The Executor and Relations of the deceased.
5. The Judges.
6. Members of the Bar.
7. The Officers of the High Court of Chancery.
8. The Governor and Council.
9. Other Officers of Government.
10. The Mayor, Aldermen and Common Council of the City of Richmond.
11. Citizens.’

“ Need it be said, that the crowd which assembled in the capitol was uncommonly numerous, and respectable? After the delivery of a funeral oration by Mr. Munford, a member of the executive council, the procession set out towards the church.— It is no disparagement to the virtues of the living, to assert, that there is not perhaps another man *in* Virginia, whom the same solemn procession would have attended to his grave.”