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OGDEN HOFFMAN.

(BORN 1793 — DIED 1856.)

By A. OAKEY HALL.

VETERANS of the Bar of New York recall with pride and pleasure that its bench during the first half of this century listened often to an American Erskine. That was the appellation given to Ogden Hoffman, senior, who, born when the Federal Constitution was under adoption, died on the eve of the Civil War that attacked that document or defended it. Like Erskine, he had vaulted from the berth of midshipman into the legal army; and like that gifted and eloquent Queen's Counsel, whose personal and professional lustre far exceeded any fame that may be claimed to belong to him as an M. P. or a peer or an occupant of the woolsack, Ogden Hoffman's persuasive powers and uninterrupted success before juries became, during a quarter-century, proverbial. Like Erskine, also, he was a comparative parliamentary failure when sent as congressman from New York City to Washington during Jacksonian political complications. But Mr. Hoffman retrieved that early failure when shortly before his death the Whigs elected him as attorney-general of the State of New York, and at the very last election which that once great party participated in before the Slavery and Free Soil issues engulfed all prior political conditions in national controversy.

He inherited name, fame, and legal skill from his father, Josiah Ogden Hoffman, who through several years served as recorder of New York City, and next as a judge in a civil court; and in the same tribunal he was succeeded by his youngest son, Lindley Murray Hoffman, known to the whole profession as a vice-chancellor, as author of a treatise on Equity Practice, and as a State reporter. This brother of Ogden Hoffman died as a judge of the Superior Court of New York, to which Louis B. Woodruff, John Duer, Thomas J. Oakley, and Joseph S. Bosworth, as associate judges, also bequeathed rich legacies of juridical learning.

Ogden Hoffman won honors at Columbia College before adding his degree as counsellor to the primary one of lawyer through a novitiate of seven years, — the then prescribed term of legal study. He served that novitiate in his father's offices at a period when the memories of Alexander Hamilton's eloquence and of Aaron Burr's legal ingenuity were fresh in professional memory, and while the exiled Thomas Addis Emmett stood *primus inter pares* at the New York Bar.

From the outset to the close of his career Ogden Hoffman was regarded as a lawyer grounded in the principles of legal science, and as never "a mere case lawyer." Gifted with handsome and expressive face, graceful figure, excellence of gesture, — not only "suiting the action to the word," but often preceding the strong sentence with that apt and forecasting gesture which Webster, Everett, and Choate remarkably used, — musical voice (popularly termed of silver tones), magnetic eyes, rapid utterance in well rounded Saxon language, logical conception,

THE SUPREME COURT OF APPEALS OF VIRGINIA.

I.

By S. S. P. Patteson, *of the Richmond, Va., Bar.*

REPRESENTATIVE government, without which modern civilization could not endure, sprang into existence — "broke out," as a writer on colonial history[1] expresses it — at Jamestown, July 30, 1619, and at the beginning of the Revolution of 1776 it was practically a bicameral government all over America. But, strictly speaking, there was then no court of last resort in the colonies.

The famous "Parsons Cause," brought in Hanover County Court, April 1, 1762, in which the Rev. James Maury was the nominal plaintiff, and the Rev. John Camm, "Commissary" of William and Mary College, and as such agent of the Bishop of London and the Established Church of England, was the real plaintiff, was tried before a Virginia jury; and after the rout of the clergy by Patrick Henry, a final appeal could only be taken to the king and his privy council in England. All of the Virginia courts and people sustained Patrick Henry. A case in which Camm himself was plaintiff was appealed from the General Court of Virginia; but the king allowed it to be dismissed in 1767 on a technicality, for it was then very evident that public sentiment on this side of the ocean would not sustain the crown. The voices of the Tories who wished to uphold George III. in his encroachments on the rights of the people were soon silenced by the guns of liberty. It was really a matter which was beyond the jurisdiction of the court, as much beyond such jurisdiction as was the ineffective attempt nearly a century later of the Supreme Court of the United States, in Scott *v.* Sandford, 19 How. p. 393, to stem the tide of the "irrepressible conflict" by a decision, perhaps technically right, of a question bargained for in the Constitution, which had grown to be an outrage upon the conscience of mankind.

The principal court in Virginia before the Revolution, known as the General Court, consisted of the governor and council for the time being, any five constituting a court. It had jurisdiction "to hear and determine all causes, matters, and things whatsoever relating to or concerning any person or persons, ecclesiastical or civil, or to any person or thing of what nature soever the same should be, whether brought before them by original process, appeal from any inferior court, or by any other way or means whatsoever." Its jurisdiction, both original and appellate, was limited to controversies of the value of £10 sterling, or 2000 pounds of tobacco and upwards, as appears by Acts of the General Assembly of 1753, ch. 1, §§ 2, 5, and 25. It had exclusive criminal jurisdiction as a court of oyer and terminer. It retained its criminal jurisdiction as an appellate tribunal exclusive of all others until the adoption of the Constitution of 1851, by which it was abolished. For a short time after the Revolution it was consolidated, as to its appellate jurisdiction, with the Admiralty Court and the High Court of Chancery, which formed the first Court of Appeals of Virginia under her first Constitution, which was adopted on the 29th day of June, 1776. After the Supreme Court of Appeals proper was formed, on Dec. 24, 1788, the General Court had no appellate jurisdiction, except in criminal cases, cases connected with the revenue, taking probate of wills and granting administration upon intestates' estates, in which its jurisdiction was concurrent with the District, and afterwards the Circuit, County, and Corporation courts throughout the State. It received

[1] Seeley's "The Expansion of England" p. 67.

the name of General Court in 1661–1662, and existed one hundred and ninety years under the same name.

Until the Constitution of 1851 the judges of the Supreme Court of Appeals and of the General Court held their offices for life. It is true the Constitution of 1829–1830 authorized the General Assembly, by a concurrent vote of two thirds of the two houses, to remove a judge. Under that Constitution none were ever so removed. By the Reformed Constitution of 1851, the judges of all the courts were elected by the people; the Supreme Court of Appeals for twelve years, and of the Circuit Courts for eight years, all being re-eligible after the expiration of their respective terms of service. The Constitution of 1851 was never regularly abolished; as will later on appear, it was destroyed as a result of the Civil War. The terms for which the judges have since that time been elected have remained unchanged; but there has never been an election of the judges by the people in Virginia since the war. All of the records and order books of the General Court and the Supreme Court of Appeals of Virginia were destroyed by fire at the evacuation of Richmond, April 3, 1865. This was a great loss, not only to Virginia, but to the country at large. The General Court, as we have seen, was abolished by the Constitution of 1851, and its appellate criminal jurisdiction transferred to the Supreme Court of Appeals of Virginia, which had no criminal jurisdiction prior to that time. The first Court of Appeals was a legislative court only. The fourteenth section of the first Constitution conferred the power of electing the judges of the Supreme Court of Appeals, the General Court, the High Court of Chancery, and the judges of the Admiralty Court, by joint ballot on the two houses of the General Assembly, who were to hold their offices during good behavior (Hen. stat. vol. 9, p. 117). The Admiralty Court, consisting of three judges, was established in October, 1776; the High Court of Chancery, consisting of the same number of judges, in October, 1777; and the General Court at the same time, consisting of five judges.

The Supreme Court of Appeals of Virginia was established by an act of the May session of 1779; and it was provided that it should consist of the judges of the High Court of Chancery, General Court, and Court of Admiralty. This court, as is shown by an order entered on its order-book, met without being sworn in; and the judges produced no commissions, as they were already judges and knew each other to be judges. Here is the quaint old order: —

"Williamsburg, to-wit. — At the capitol in the said city, on Monday the 30th of August, one thousand seven hundred and seventy-nine: In virtue of an act passed at the last general assembly, intituled an act constituting the court of appeals, then and there convened, Edmund Pendleton and George Wythe, esquires, two of the Judges of the high court of chancery; John Blair, esquire, one of the judges of the general court; and Benjamin Waller, Richard Cary, and William Roscoe Wilson Curle, esquires, Judges of the court of admiralty: And thereupon the oath of fidelity prescribed by an act, intituled, an act prescribing the oath of fidelity, and the oaths of certain public officers; together with the oath of office prescribed by the said act constituting the court of appeals, to be taken by every Judge in the said court, being first administered by the said George Wythe and John Blair, esquires, to the said Edmund Pendleton, esquire; and then by the said Edmund Pendleton, esquire, to the rest of the Judges the court proceeded to the business before them" (4 Call, p. 3).

They appointed a clerk, crier, and tipstaff.

A case of the gravest significance soon came before the court. It was one of the most important ever decided by any tribunal. There was no precedent for the judges to follow.[1] It was decided in November, 1782, and is styled Commonwealth *v.* Caton, *et al.* 4 Call, p. 5. John Caton, Joshua Hopkins, and John Lamb were condemned for treason. They were tried and convicted in the Gen-

[1] Bradlaugh *v.* Gossett, 12 Q. B. D. 280.

eral Court, and appealed on the ground that they had been pardoned, and that they had been refused the benefit of their pardon. The governor had no right to grant a pardon in cases of treason; but he was authorized to suspend sentence "until the meeting of the General Assembly, who shall determine whether such person or persons are proper objects of mercy or not, and order accordingly." The House of Delegates, by resolution of June 18, 1782, pardoned the prisoners, but the Senate refused to concur. The Attorney-General on behalf of the Commonwealth denied the validity of the pardon, because the Senate had so refused its assent to the action of the lower branch of the legislature.

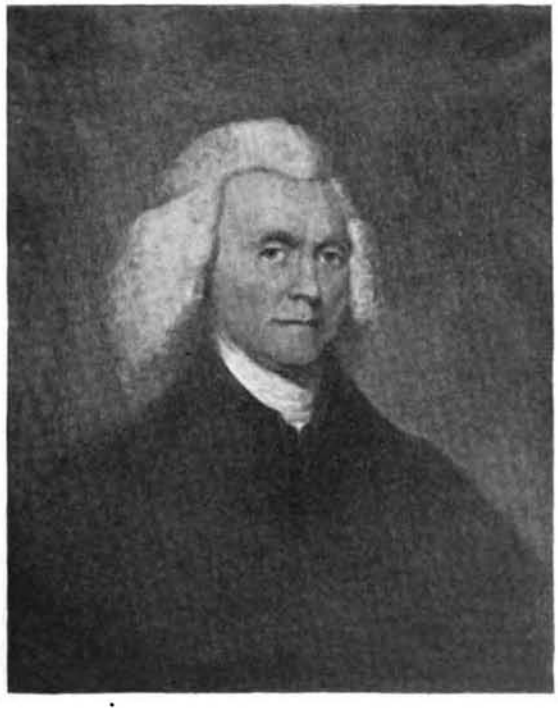
The question then came up squarely: Was this a *constitutional* pardon? All of the judges united in the opinion that the act of the House of Delegates was unconstitutional. Wythe and Pendleton both delivered opinions. Said Wythe, one of the greatest judges who ever sat on the bench in Virginia: —

"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 equally 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. Whenever traitors shall be fairly convicted by the verdict of their peers, before the competent tribunal, if one branch of the legislature, without the concurrence of the other, shall attempt to rescue the offenders from the sentence of the law, I shall not hesitate, sitting in this place, to say to the General Court, *Fiat justitia ruat cœlum*; and, to the usurping branch of the legislature, 'You attempt worse than a vain thing, for although you cannot succeed you set an example which may convulse society to its centre.' Nay, more, if the whole legislature — an event to be deprecated — should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal; *and pointing to the Constitution, will say to them, 'Here is the limit of your authority, and hither shall you go, but no farther.'*"

Virginia had completely dissolved her connection with Great Britain and established a constitution for her own government; and President Lincoln was mistaken in stating, in his message of July 4, 1861, that not one of the States "ever had a State Constitution independent of the Union." The Constitution under which the famous decision was rendered was "unanimously adopted" on the 29th of June, 1776. Mason's Bill of Rights had been adopted with equal unanimity on the 12th of June. The other States declared themselves independent after the Declaration of Independence. Article III. of that Constitution provided that "the Legislative, Executive, and Judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other." That was all the guide these path-breaking judges had to follow.

In September, 1780, Chief-Justice Brearley of the Supreme Court of New Jersey announced that the judiciary had the right to pronounce on the constitutionality of laws; the Rhode Island court in 1786, in Trevett *v.* Weedon, claimed and exercised a similar right; and the Supreme Court of South Carolina (Bowman *v.* Middleton, 1 Bay. 252) in 1792. But one of these cases could by any possibility have been before the Supreme Court of Appeals of Virginia when it decided Commonwealth *v.* Caton *et al.* The language of the judges all indicates that they had never heard of the ruling of the New Jersey court, and the other internal evidence is practically conclusive of the fact that these patriotic men were cutting their way boldly through an unknown forest in the cause of human liberty. It is hardly possible that this important case escaped the notice of John Marshall; it is not improbable that he was employed as counsel by some of the

parties, — the name of the prisoners' counsel is not given in the report, — and it doubtless had its weight with the Chief-Justice of the United States when he rendered his celebrated decision in 1803 in the great case of Marbury *v.* Madison, 1 Cranch, 137. A modern writer[1] of recognized ability says the Supreme Court of the United States has no prototype in history. To all intents and purposes, was not Virginia's court of last resort under her first Constitution the original model? The view of the origin and growth of the principle that a court can declare an act of the Legislature void, here presented, is conceded by the most painstaking writer on the subject[2] to be the correct one. The laurels belong to Wythe and Pendleton.[3] The Admiralty Court ceased to exist on the first Wednesday in March, 1789, that being the date of the commencement of the government under the Constitution of the United States (5 Wheaton, p. 423).



EDMUND PENDLETON.

On the 22d of December, 1788, the General Assembly passed an act amending the act constituting the first court of appeals, which provided that henceforth that court should consist of five judges, to be chosen from time to time, commissioned by the governor, and to "continue in office during good behavior" (12 Hen. stat. p. 764). The act made no provision relative to the then existing judges of the Court of Appeals. The five judges under this new law were elected on Christmas Eve, Dec. 24, 1788, commissioned December 31, and qualified in the following spring. They met June 20, 1789, and proceeded to business. Considerable confusion arose out of these numerous changes, as may be seen by reference to the "Case of the Judges," 4 Call, p. 135. There were no changes of any importance made in the court until the Constitution was changed in 1829–1830. The number of judges are the same to-day as they were then.

In the history of this great court we find no revolt against the past, but a persistent and steady progress. People of Virginia blood and all others can take a just pride in her laws, and those who have interpreted them. The court elected on the 24th of December, 1788, consisted of Edmund Pendleton, John Blair, Peter Lyons, Paul Carrington, and William Fleming.

Edmund Pendleton, the first president of the court, was the son of a respectable man who was too poor to give him more than an English education. Mr. Robinson, then Speaker of the House of Burgesses, observing the brightness of the young man, took him into his office, and taught him law. Pendleton showed all through life marked gratitude for this early kindness. After he came to the bar he soon obtained a good practice in the county courts. His practice rapidly extended to the General Court, where he rose to

[1] Hannis Taylor, Origin and Growth of the English Constitution, p. 73.

[2] Carson's Hist. U. S. Supreme Court, p. 120.

[3] The court had no reporter when the decision was rendered, and 4 Call's Reports, containing Commonwealth *v.* Caton *et al.*, was not published until 1833.

eminence. He went into politics, but not to the detriment of his professional prospects; was a leading member of the House of Burgesses; of the Convention which sat at Richmond in 1775; and upon the death of Peyton Randolph was made president as well of that convention as of the succeeding one which framed the first Constitution of Virginia. He was first judge of the High Court of Chancery soon after it was established, and in consequence thereof, was *ex officio* presiding judge of the first Court of Appeals. Upon the reorganization of that court, he was made president, and held that high place, with the approbation of all parties, until his death, which took place at Richmond, Oct. 23, 1803. Between Wythe and himself there was always great rivalry. He was industrious and methodical, possessed quick perceptions, practical views, great argumentative powers, and sound judgment. He was familiar with statute and common law, as well as with the doctrines of equity, and knew how to apply them to the exigencies of this country.

In his old age he dislocated his hip, and while he was in retirement in the country could not follow rural pursuits. He had easy and engaging manners, a cheerful and social disposition; but always observed perfect decorum, — was what was called pious, and could not bear to hear the name of God irreverently used.

He was not what could be called a deep reader. His reading was confined chiefly to subjects connected with his profession. He knew no language but English, and after the publication of the Reports of *Raymond*, *Peere Williams*, and *Burrows*, he was as fond of reading them as anything else. He was a Democrat, or, as was then called, a Republican in politics, and very much dissatisfied with the Federal Government until the election of Thomas Jefferson. He voted for the adoption of the Constitution of the United States. He was a magnificent judge. In 1789 he was appointed judge of the United States District Court, but declined.

His industry was wonderful, and to that he owes his fame. Success at the bar and on the bench without this is never lasting. His poverty made him great. That cold-hearted and great historian Edward Gibbon tells the world, in his ornate autobiography, that in his early youth Mrs. Gibbon exhorted him to take chambers in the Temple and devote his leisure to the study of the law. Said he: "I cannot repent of having neglected her advice. Few men without the spur of necessity have resolution to force their way through the thorns and thickets of that gloomy labyrinth."

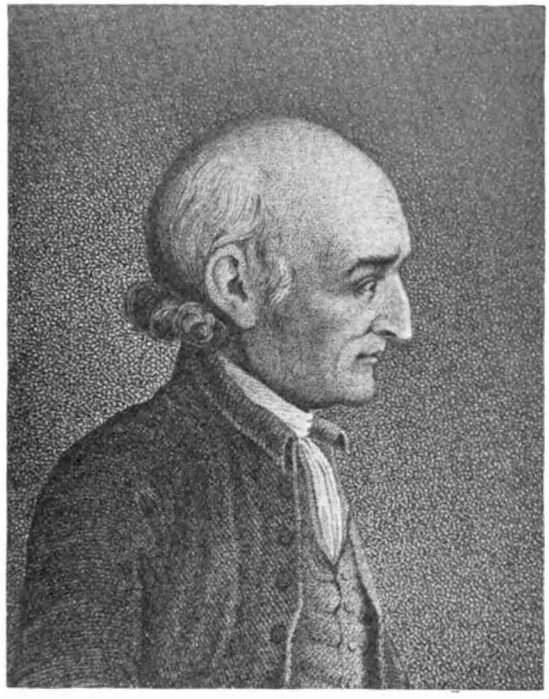
The "spur of necessity" had been driven in deep when it made the President of Virginia's first Court of Appeals read *Peere Williams's Reports* for amusement.

George Wythe was born in Elizabeth City, County Virginia, in 1726. His mother was a Miss Keith, daughter of a Quaker of fortune and education who came over from Great Britain and settled in the town of Hampton, in the year 1690. His father died intestate, leaving his wife and three children a good estate. Under the law of primogeniture, his elder brother fell heir to the estate. But his devoted and clever mother educated him herself. Besides English she was able to teach him the rudiments of Latin and Greek. Whatever may have been the real cause, his early years were spent at home. His literary advantages were thus limited; but his mother's influence implanted in his character the seeds of strength and uprightness for which she is said to have been noted. With no other educational advantages he was placed in the office of his uncle-in-law, a well-known lawyer of Prince George County, at the commencement of his studies for the bar. He had much office drudgery to perform, and made very slow progress. He left the office, and for about two years was a hard student.

A short time before he attained his majority his mother and elder brother died. As soon as he came into possession of the estate, he became very dissipated, going into all

sorts of society, and living in a very reckless way generally.

The old city of Williamsburg possessed many attractions; and as he had the means, as the saying then was, he "lived like a gentleman." At the age of thirty, realizing that his resources were about gone, he suddenly stopped this career, never to resume it. He married a Miss Lewis about this time; and his industry, learning, and eloquence soon secured him a prominent place at the bar. He was a man of great self-control, and used to warn young men, by referring them to his own idle career in early life. He was admitted to the bar in Williamsburg in 1756. A short time afterward Thomas Jefferson began his studies at William and Mary College, and through the influence of Dr. Small was taken under the instruction of Mr. Wythe. Jefferson himself tells of the fine influence he had upon his life. "Mr. Wythe," said he, "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."



GEORGE WYTHE.

While a member of the House of Burgesses, Wythe early and warmly espoused the cause of the colony in her contention with the mother country; but he opposed as unreasonable and inexpedient the famous resolutions of Patrick Henry concerning the Stamp Act in May, 1765. But Henry's fiery eloquence got the resolutions through by a majority of one vote. We are all too familiar with the splendid fight Virginia made in the thrilling scenes immediately preceding the Revolution and during that memorable period to recount them here. In that great struggle, says Massachusetts' impartial and eloquent historian George Bancroft,[1] "Virginia rose with as much unanimity as Connecticut or Massachusetts, and with a more commanding resolution." In 1775 Wythe put on his hunting-shirt, joined the volunteers, shouldered a musket, and participated in the military parades in Williamsburg during the latter part of Lord Dunmore's administration. His good sense, however, soon made him realize that he could be more useful to the State in a civic position; so he abandoned the army. He had great contempt for Lord Dunmore, the royal governor of the colony.

One day in the General Court over which Governor Dunmore presided, a case came up in which Wythe and Nicholas appeared on one side, and George Mason and Edmund Pendleton on the other. Mr. Pendleton, Wythe's great rival, when the case was called, asked for a continuance, on the ground of the absence of his associate George Mason. Lord Dunmore indelicately said to Mr. Pendleton, "Go on, sir, for you will be a match for both of the counsel on the other side." "With your Lordship's assistance," retorted Wythe sarcastically, at the same time bowing

[1] Hist. U. S., vol. viii. p. 375.

politely, greatly to the amusement of the spectators. He was a delegate to the Continental Congress, and signed the Declaration of Independence drawn by his former pupil. Wythe, Jefferson, and Pendleton took a leading part in the revision of the laws made necessary by the change of government, the special part undertaken by Wythe being the British Statutes from the fourth year of James I. In the year 1777 he was appointed one of the three Judges of the High Court of Chancery, and on the reorganization of that court in 1788, its sole Chancellor. With his services as Chancellor Wythe, which were highly honorable and useful to the State, we have nothing to do: nor is there space to tell how well he discharged his duties as professor of law for eight years at William and Mary. He was an earnest advocate of the adoption of the Federal Constitution. In the very important case, which excited a great deal of comment at the time, decided by Chancellor Wythe in the High Court of Chancery of Page *v.* Pendleton, Wythe's Reports, p. 211, the court held that the right to money due an enemy cannot be confiscated. The Supreme Court of the United States in Ware *v.* Hylton, 3 Dall, p. 266, refers to the first decision as authority; and that court finally reached the same opinion as had Virginia's great and upright Chancellor three years before. Every Virginia lawyer knows Wythe as *Chancellor* Wythe, and not as Judge; and if any man doubts his learning and integrity, let him refer to Wythe's Reports (1 vol.), which have recently gone through a second edition. He has the great honor of being the only State Court Judge in Virginia who has reported his own decisions.

Wythe was fearlessly honest, both as lawyer and judge. John Randolph said 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." His learning was extensive, and he was in the habit of putting curious references to the rules of logic and mathematics in his decrees; and some of them fairly bristle with classical allusions. Many of them are very funny. He rendered a decree in May, 1804, expounding the will of Patrick Henry. After quoting the parable in St. Matthew, ch. xx. he says: "The land was a gift, not naturally or morally to be retributed or countervaled by price, by pounds or dollars, and their fractional parts, but meriting an entirely different remuneration; namely, the effusion of a grateful mind, which owing owes not, but still pays, at once indebted and discharged." In the above quotation the spelling has been modernized.

He was married twice, but had no children who survived him. His death was a very sad one, he being poisoned by his great-nephew George Wythe Swinney, who would have been benefited by his will; but Swinney's crime was discovered in time to change it, — which was done, greatly to the satisfaction of the public. Swinney was not hanged, but escaped, because the circumstantial evidence was not sufficient to convict.

Another very singular occurrence at the end of this distinguished man's career is the melancholy fact that no one knows where he was buried, though his funeral was a public one in the city of Richmond. The Virginia State Bar Association now has under consideration the matter of erecting some sort of monument to his memory.

He was the preceptor of two Presidents and one Chief-Justice of the United States.

Henry Clay, who first knew him in his sixteenth year, was engaged by the Chancellor as his amanuensis, because from gout or rheumatism in his right hand he could scarcely write his name. Mr. Clay says: —

"Upon his dictation, I wrote, I believe, all of the reports of cases which it is now possible to publish. 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."

An amusing story is told of the venerable Chancellor and Bushrod Washington, then practising law in Richmond, afterwards Mr. Justice Washington of the United States Supreme Court. The story too illustrates how hard it was for Virginians to accustom themselves to the rigid rules of mercantile life. Mr. Washington called on the Chancellor with a bill of injunction, in behalf of General ——, to restrain the collection of a debt, on the ground that the creditors 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 smiled and said, "Do you think, sir, that I ought to grant this injunction?" We are glad to know that Mr. Washington *blushed*, and retired without argument.

PETER LYONS.

We may truly say, as did the Richmond "Enquirer" of June 10, 1806: "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."

John Blair was a member of a large and influential family. He was bred a lawyer, and studied at the Temple in London, where he took a barrister's degree. Returning to Williamsburg, he practised in the General Court, where he had a respectable share of business. For several years he was President of the Council of State. He was kind and generous, and on one occasion his fine disposition was put to a severe test. Colonel Chiswell killed a Mr. Routlige, and was prosecuted for murder. The Attorney-General was nearly connected with Chiswell, and Mr. John Blair was selected by lot from the whole bar to prosecute him; but poor Chiswell (who would probably have been acquitted, as the provocation from his adversary was very great) committed suicide, and thereby greatly relieved the anxiety of his friend and intended prosecutor. A great deal may be seen of the ferment which was created by this occurrence in the Virginia Gazettes of the summer of 1766.

John Blair was Chief-Justice of the General Court, and a judge of the High Court of Chancery, and by virtue of these offices a judge of the first Court of Appeals. President Washington promoted him from a place on the Virginia Supreme Bench to Associate Justice of the United States Supreme Court. After several years he resigned, and died at Williamsburg, Aug. 31, 1800, in the sixty-ninth year of his age.

Peter Lyons was a native of Ireland, but migrated to Virginia at an early period of his life. He studied law, and soon after he came to the bar had a lucrative practice. He steadily rose, was twice married, and was a friend to the colonies in the Revolution. In

1779 he was made a judge of the General Court, and thereby became a judge of the Court of Appeals, and continued so until his death. He was possessed of great integrity and urbanity, was deeply read in the law, and made an upright and impartial judge. Many of his descendants are now living in Richmond, where they occupy high places in the community.

Paul Carrington, a member of one of Virginia's largest and most respected families, was the eldest son of a wealthy gentleman who died intestate. As the law then was, he was heir-at-law, but generously divided his estate with his brothers and sisters. He was bred a lawyer, and soon had a fine practice. He was elected to a number of political positions, and was an ardent patriot in the War of the Revolution. In 1779 he was made a judge of the General Court, and consequently a member of the first Court of Appeals. He was an upright and impartial judge, and his opinions were highly respected. At the age of seventy-five, in 1807, from conscientious motives he resigned, although his faculties were still perfect, fearing that he might be found lingering on the bench after age had rendered him unable to perform his duties properly. He lived in retirement to the great age of ninety-three, universally loved and respected.

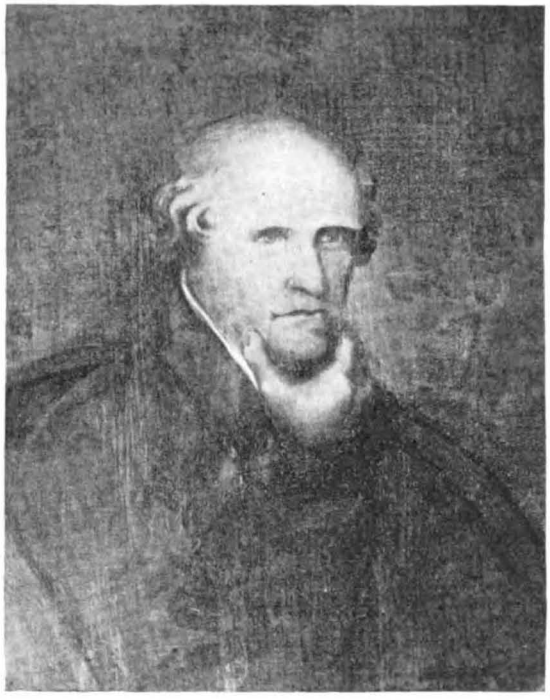
William Fleming was born of a respectable family of Chesterfield County; studied and practised law with success in the county courts; was a member of the Convention of 1775, and took an active part with the colonies; was made a judge of the General Court, and consequently of the first Court of Appeals, and died a member of that court. He was a man of good sense, and an honest judge, who indulged in no theories and aimed to decide a case according to the very right of the controversy, in which object he generally succeeded.

Robert Carter Nicholas, a gentleman of distinguished family, was bred to the bar, and practised with reputation in the General Court under the royal government. He lived on terms of great familiarity with Lord Botetourt, then Governor of Virginia. Lord Botetourt was an amiable and pious man, of a kind and happy disposition. He had an ample fortune, kept a splendid and hospitable court, and was one of the most popular men in the colony of Virginia. He and Mr. Nicholas were both religious men, and often spoke of the hope of immortality to each other. On one occasion Mr. Nicholas said to him, "My lord, I think you will be very unwilling to die." "Why?" said his lordship. "Because," he replied, "you are so social in your nature, so much beloved, and have so many good things about you, that you will be loath to leave them." He made no reply; but when he was on his death-bed sent in haste for Mr. Nicholas, who lived near his residence, which was called "the palace." On entering the chamber, he asked his commands. "Nothing," replied his lordship, "but to let you see that I resign those *good things* which you formerly *spoke of* with as much composure as I enjoyed them." The House of Burgesses erected in the lobby of their hall a marble statue to his memory. The statue is yet in existence, having stood the ravages of civil war, and is now an ornament of the college grounds at old William and Mary. Judge Nicholas was a man of character and integrity; but as he died in 1780, his judicial character had not fully developed itself. He was much esteemed by all who knew him.

Bartholomew Dandridge was born in New Kent County, and soon made a reputation at the bar. He had powerful connections, and was an earnest advocate of the independence of the colonies. He was, in 1778, appointed a judge of the General Court, and consequently judge of the first Court of Appeals. He was an honest man, esteemed by the bench and bar. He died in April, 1785.

Benjamin Waller was descended from respectable parents, and bred to the bar. He was made Clerk of the General Court, and discharged his duties in the most affable manner. He was a good listener to the decisions,

and took practical views of the law. His judgment was sound and reliable, and he was more often consulted in chambers than the most celebrated members of the bar. He expressed his opinion always with great brevity and clearness. While he was yet clerk he continued to practise his profession in the county courts with success. He supported the Revolution, and in 1777 was made presiding judge of the Virginia Court of Admiralty, and thereby became one of the judges of the first Court of Appeals. He presided with dignity in the Court of Admiralty, and his decisions gave great satisfaction; but he gave no reasons for his judgments, — a wise rule, which if carefully followed by some of his successors would have materially added to their reputations.



JOHN TYLER.

He declined to attend the sessions of the Court of Appeals after it was transferred to the city of Richmond, alleging that he had agreed to accept the appointment upon condition that he was not to attend court out of Williamsburg. He died regretted by his friends and universally respected.[1]

William Roscoe Wilson Curle was born in Tidewater, Va., and bred a lawyer. He practised with reputation, and at the beginning of the contest with Great Britain supported his native country. Having been made a judge of the Court of Admiralty, he became a member of the first Court of Appeals; but having shortly afterwards died, his judicial character is little known.

No other judge of the first court had four initials. He was probably the only man of his name in the colony, and it is not known that he left any descendants.

Richard Cary descended from a respectable family in Elizabeth City County, actively supported the colony in her struggles for freedom, and having been made a judge of the Court of Admiralty, thus became a judge of the first Court of Appeals. He was bred a lawyer, and was a man of good understanding. His descendants are yet numerous in Virginia. He was fond of botanical studies, and had some taste for *belles lettres*.

James Henry, a native of Scotland, studied law in Philadelphia, removed to the Eastern Shore of Virginia, and was made a judge of the Admiralty Court, and necessarily of the first Court of Appeals. He was a learned man, whose opinions were well reasoned and much respected. He, Peter Lyons, and St. George Tucker enjoy the unique honor of being the only men born outside of the present limits of the State who have sat on the Supreme Bench.

John Tyler, the father of President Tyler, a judge of Virginia's first Court of Appeals by reason of being on the State Admiralty Bench, was born of respectable parents in Charles City County, and studied law under Robert Carter Nicholas. He was a zealous

[1] His grandson, Judge Waller Taylor, Chancellor of the Territory of Indiana, and by appointment of the President Judge of the Territorial Court, was the first United States Senator from that State.

friend of the American Revolution. In 1808 he was made Governor of Virginia, and in 1811 judge of the United States District Court for Virginia, which office he held until his death. He was a man of popular manners and sound judgment. He liked political tracts and light works, but was not fond of law books. He was very kind and attentive to young lawyers, and did all he could to inspire them with ease and confidence. He had a benevolent heart and sincere and friendly disposition.

James Mercer was bred to the bar, and became a member of the General Court and consequently of the Court of Appeals. His abilities and patriotism were conspicuous. He died in the city of Richmond while attending a session of the court.

Henry Tazewell, a judge of the first Court of Appeals by reason of being a judge of the General Court, was a young Virginian of fortune. He studied law, and married the daughter of Judge Waller while that gentleman was still clerk of the General Court. In 1795 he was appointed United States Senator. He filled all of the public stations he held with great satisfaction. His son was also a United States Senator. There are many of his relatives and descendants in Virginia.

Richard Parker, born in the Northern Neck of Virginia, became a judge of the Court of Appeals in October, 1788, by being a judge of the General Court. Being fond of literary pursuits, he early fell under the notice of the Lee family, then celebrated for their erudition. He was a learned lawyer and an upright judge, and very patriotic, his eldest son having been killed by the British at the siege of Charleston.

Spencer Roane, a distinguished judge of the Virginia Court of Appeals, was born in Essex County, April 4, 1762, was educated at William and Mary College, and there attended the lectures of Chancellor Wythe, the professor of law.

He soon turned his attention to politics; became a member of the Legislature, and married a daughter of Patrick Henry, who was then Governor of the State.

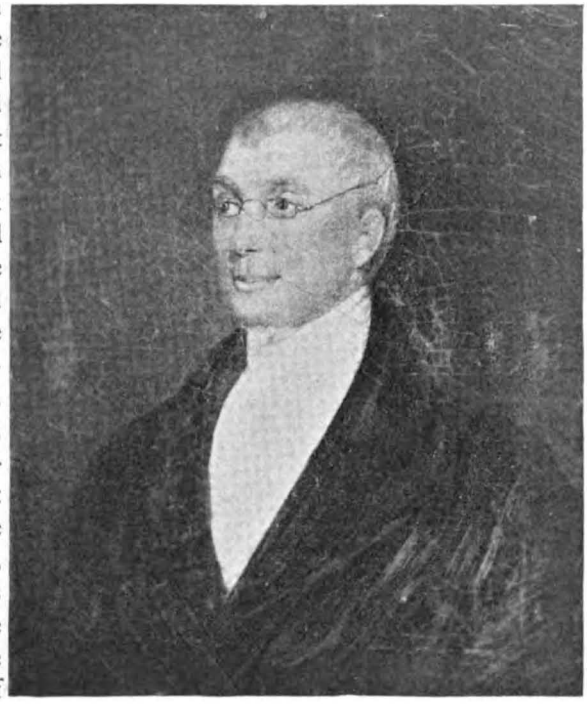
In 1789 he was made a judge of the General Court, which office he held until 1794. On December 2 of that year, a vacancy having occurred on the Supreme Bench by the election of Judge Tazewell to the United States Senate, he was appointed to fill it. Not until that time did he become an earnest student of law. He was a man of considerable literary attainments, and was supposed to be second in ability to Edmund Pendleton only. He never acquired the habit of "mixing law and equity together" says Mr. Daniel Call (4 Call, xxv). But his opinions were generally sound and well-reasoned. He respected the rights of property and the just claims of creditors, and in all of his decisions he inclined to the side of liberty. On the bench he was still a politician engaging in the controversies of the day and frequently writing for the newspapers. He was very ambitious, though he disliked aristocracy and family pride. He held many offices of honor and trust, in all of which he gave satisfaction.

It is said that Thomas Jefferson wished him, at the expiration of President Monroe's term, to run as a candidate for Vice-President.

He was jealous of his associates on the bench, and very disagreeable to all of them. Like Napoleon's Marshal Saint-Cyr, he was calm and cold in his disposition, and passed a good deal of time doing — what do you suppose? Playing the fiddle! It was his master passion. It is not known whether or not he was a skilful performer. He died Sept. 4, 1822, leaving surviving him his second wife, a lady whose amiable disposition rendered her interesting in life and lamented in death.

St. George Tucker, made a judge of the Supreme Court Jan. 6, 1804, must not be confounded with his son Henry St. George Tucker, who was elected president of the same court after the adoption of the Constitution of 1829. St. George Tucker

was born in the island of Bermuda, where he commenced the study of the law, but migrated to Virginia before the Revolution, and completed his studies at William and Mary College. His urbanity, social disposition, and literary attainments introduced him into the best company and most fashionable circles of the city of Williamsburg; and his deportment was such as to procure him the favor of the leading gentlemen of that place. He studied law and settled in Williamsburg, and upon the breaking out of hostilities with Great Britain took part with his adopted country. About the year 1797 he married Mrs. Randolph, the widow of John Randolph of Matoax in Chesterfield County, a lady of exquisite understanding and great accomplishments. He removed to Matoax, and for many years there led a life of ease and elegance. He was made a colonel of militia of that county; and when Cornwallis invaded North Carolina, called out his regiment and took part in the battle of Guilford Courthouse. Mrs. Frances Tucker died in 1788. Her maiden name was Bland, and she was the mother of the celebrated John Randolph of Roanoke. After the death of his wife, Mr. Tucker returned to Williamsburg to educate his children; and in 1803, upon the death of Edmund Pendleton, was appointed a judge of the Court of Appeals, which office he resigned in 1811. In 1813 he was appointed judge of the United States District Court for the eastern district of Virginia, but resigned that also on account of ill health. As a judge, St. George Tucker was diligent, prompt, and impartial. While his opinions are somewhat technical, they are generally learned and sound.



SPENCER ROANE.

He was put into a special pleader's office in Bermuda, and never entirely got over the bias which the rigid rules of that intricate eighteenth-century science gave to his boyish mind. His second wife was Mrs. Carter, the relict of Hill Carter of Curratoman, and daughter of Sir Peyton Skipwith. While a judge of the General Court, he was professor of law in William and Mary College, and published an edition of Sir William Blackstone's Commentaries, a work of great ability, formerly necessary to every student and practitioner of law in Virginia. He was fond of politics, and wrote a number of tracts upon subjects of importance: one upon that question which was the uppermost in American politics until April 9, 1865, — slavery, — in which he took the ground of gradual emancipation as a remedy for the evil. Even at that early day no one was found in Virginia who advocated slavery; the slaveholders simply did not know what to do with the slaves. In private life Judge Tucker was very amiable and much beloved. By his last wife he had no children; but by his first, he had four, two of whom died in his lifetime, and of the two others Henry St. George became President of the Court of Appeals, and Beverley a judge in the State of Missouri. He died in 1827. It

may be as well to sketch briefly the life of his distinguished son here, although the continuity of the history of the Supreme Court will be broken, as he did not become president until after the adoption of the Constitution of 1829–30.

Henry St. George Tucker was born at Matoax, near Petersburg, Dec. 29, 1780, and, like his father, was educated at William and Mary College. In 1802 he went to Winchester to live, and began the practice of the law under the kind encouragement of Judge Hugh Holmes. After reaching a high place in his profession, in 1806 he married Miss Ann Evelina Hunter, of Martinsburg, with whom for forty-two years he lived happily, and raised a large family of children, among whom was the now distinguished John Randolph Tucker, lately prominently mentioned as Attorney-General of the United States in Mr. Cleveland's Cabinet, and President of the American Bar Association.

In 1807 Henry St. George Tucker was elected to the House of Delegates of Virginia, but returned to his profession after a year's service. He took part in the War of 1812; and when it was over, in 1815 was elected to Congress, where he served two terms, and formed intimate friendship with such men as John C. Calhoun, Henry Clay, Lowndes, and others. He occupied a high position in the debates of the period, though a young man, and in contact with his brilliant colleague and half-brother, John Randolph of Roanoke. After leaving Congress he became a member of the Senate of Virginia for four years, when he was elected chancellor of the Fourth Judicial District in 1824, in place of the genial Judge Dabney Carr, who was promoted to the Court of Appeals. While judge of the Fourth Judicial District, he founded his famous Law School at Winchester, Va., which was the largest private law school Virginia has ever known. Among its students were such eminent men as Green B. Samuels, George H. Lee, William Brockenbrough, R. M. T. Hunter (afterward Speaker of the United States House of Representatives), Henry A. Wise, and many other distinguished public men. After the adoption of the Constitution of 1829–30, the Legislature, at its session of 1830–31, elected Chancellor Tucker President of the new Court of Appeals, without his knowledge, over Judges Brooke, Carr, and Cabell, who had been on the bench for years. This unsolicited honor never diminished the mutual regard and esteem of these gentlemen, whose cordial intimacy lasted during all their lives. During the period from 3d to 12th Leigh's Reports, Judge Tucker presided in the Court of Appeals. But in the summer of 1841 he resigned, and accepted the professorship of law at the University of Virginia, where he remained until 1845, when broken in health he retired from all active employments, and returning to Winchester died there on the 28th of August, 1848. He had many charming traits of character.

Some dissatisfaction existed at a very early day at the accumulation of business which was undisposed of in the court. The Legislature passed an Act, Jan. 9, 1811, providing, —

> "That the Court of Appeals shall hereafter consist of five Judges; any three of said Judges shall constitute a court; the said court shall commence its sessions on the first day of March next, and its sitting shall be *permanent*, if the business of the court require it: provided always that the court may in their discretion adjourn for short periods; but it shall be their duty to sit at least two hundred and fifty days in the year, unless they sooner despatch the business of the court."

In conformity with this law, Francis T. Brooke and James Pleasants, Jr., were elected, by joint-ballot of the General Assembly, judges of the Court of Appeals in addition to the three judges then in office; but Mr. Pleasants having soon afterwards resigned his appointment, William H. Cabell was, on the 21st day of March, 1811, commissioned by the Governor to supply the vacancy.

Judge Brooke qualified on March 4, 1811, and was considered an ornament to the bench during his entire career, which was long and faithful.

He was born, Aug. 27, 1763, at Smithfield, the residence of his father, upon the Rappahannock, four miles below Fredericksburg. His father was the youngest son of the Brooke who came to Virginia about the year 1715, and was with Governor Spotswood when he first crossed the Blue Ridge, for which he received from his Excellency a gold horse-shoe set with garnets, and worn as a brooch.

FRANCIS T. BROOKE.

As may be seen by the likeness accompanying this sketch, Francis T. Brooke was a handsome man. He had a life full of adventure, and he has left a charming account of himself in an autobiography.[1] He was one of twin brothers, and one of his other brothers became Governor of Virginia, while he was made a judge of the Supreme Court. They fought in the Revolution with great gallantry. After the term of service of Robert Brooke expired as Governor, he was nominated, in opposition to Bushrod Washington, as Attorney-General, and elected; and while holding that office in 1799, he died. Francis T. Brooke in his own words tells of the start he made in life. Says he:

"My father was devoted to the education of his children. He sent my twin brother John and myself very young to school. We went to several English schools, some of them at home, and at nine years of age were sent to the grammar-school in Fredericksburg, taught by a Trinity gentleman from Dublin, by the name of Lennegan, who having left the country at the commencement of the War of the Revolution was hanged for petit treason, and being sentenced to be quartered after he was cut down, was only gashed down the thighs and arms, and delivered to his mother, afterwards came to life, got over to England, was smuggled over to France, being a Catholic, and died in the monastery of La Trappe (according to Jonah Barrington, in whose work this account of him will be found).

"My father sent us to other Latin and Greek schools, but finally engaged a private tutor, — a Scotch gentleman of the name of Alexander Dunham, by whom we were taught Latin and Greek. He was an amiable man, but entirely ignorant of everything but Latin and Greek, in which he was a ripe scholar. We read with him all of the higher classics; I read Juvenal and Perseus with great facility, and some Greek, — the Testament and Æsop's Fables.

"Having passed the age of sixteen, the military age of that period, I was appointed a First Lieutenant in General Harrison's Regiment of Artillery, the last of the year 1780; and my twin brother, not likely to part with me, shortly after got the commission of First Lieutenant in the same regiment. Our first campaign was under the Marquis La Fayette, in the year 1781, during the invasion of Lord Cornwallis. We came to Richmond in that year, and were ordered to go on board of an old sloop with a mulatto captain. She was loaded with cannon and military stores destined to repair the fortification at Portsmouth, which had been destroyed the winter before by

[1] "Narrative of my Life," by Francis T. Brooke, Richmond, 1849.

the traitor, General Arnold. She dropped down the river to Curle's [probably named after William Roscoe Wilson Curle, one of the judges of the first Court of Appeals], where we were put on board with the stores of the twenty-gun ship, the 'Renown,' commanded by Commodore Lewis, of Fredericksburg; in addition to which ship, there were two other square-rigged vessels and an armed schooner. We were detained some days lying before Curle's, the residence of Mr. Richard Randolph, who treated us with great hospitality."

The arrival of the British fleet in Hampton Roads prevented them from reaching their destination. He returned to Richmond, and was put in command of the magazine at Westham, then seven miles west of the city. His brother John joined his own regiment "under Captain Coleman, and cannonaded General Phillips, then in Manchester, from the heights at Rockets below Richmond." "In a few days," he says, "after I took the command of the magazine, I saw Mr. Jefferson, then Governor of the State, for the first time; he came to Westham with one of his Council, Mr. Blair, whom I had known before, and who informed me they wanted to go into the magazine. I replied they could not, on which he introduced me to Mr. Jefferson as the Governor. I turned out the guard; he was saluted, and permitted to go in. They were looking for flints for the army of the South and of the North, and found an abundant supply."

While the Legislature, to escape the British, had left Richmond and were in session at Staunton, he heard Patrick Henry and Richard Henry Lee speak in the Assembly. He was put in command of a company which was ordered South to join General Green. The regiment was commanded by a Colonel Febiger.

"Having received no pay, the troops mutinied, and instead of coming on the parade with their knapsacks, when the general beat, they came with their arms, as to the beat of the troops. A Sergeant Hogantloy was run through the body by Captain Shelton, and Colonel Febiger ordered the barracks to be set on fire, and we marched about eight miles in the evening. I have said the troops received no pay; one company of them, commanded by Alexander Parker, had been taken prisoners in Charleston, had been very lately exchanged, when it received orders to return to the South; the officers received one month's pay in paper, which was so depreciated that I received, as First Lieutenant of Artillery, thirty-three thousand and two thirds of a thousand dollars, in lieu of thirty-three and two thirds dollars in specie; with which I bought cloth for a coat at $2,000 a yard, and $1,500 for the buttons. Nothing but the spirit of the age would have induced any one to receive money so depreciated; but we were willing to take anything our country could give."

While with the army of the South he tells of an incident which shows what stuff he was made of. He was in the command of Captain Singleton, who was a great favorite of General Green. He says: —

"We lived in the same marquee, on the most amicable terms, until there was a difference between myself and Lieutenant Whitaker, a nephew of the captain. We were eating watermelons, when I said something that he so flatly contradicted that I supposed he intended to say I lied; on which I broke a half of a melon on his head; to which he said, 'Brooke, you did not think I meant to tell you you lied.' I said, 'If you did not, I am sorry I broke the melon on your head;' and there it ended. But his uncle, I presume, did not think it ought to have ended there. Whitaker had fought a duel going out with a Captain Bluir, of the Pennsylvannia line, and wounded him, which made him, at least in appearance, a little arrogant; and our difference was the talk of the camp."

He helped take possession of Charleston and Savannah when the British retired. In the latter place he was very hospitably received. Finally, the company to which he belonged was ordered back to Virginia. They sailed from Charleston for Virginia, and were twenty-four days out of sight of land, almost long enough now to cross and re-cross the Atlantic twice. It was supposed

in Virginia that they had been lost. His own account of himself when he reached home is delightful: —

"Now, what shall I say of myself? The war was over, and it was time that I should look to some other profession than that of arms. I was not quite twenty years of age, and, like other young men of the times, having an indulgent father who permitted me to keep horses, I wasted two or three years in fox-hunting, and sometimes in racing; was sometimes at home for three or four weeks at a time. My father had an excellent family library. I was fond of reading history; read Hume's History of England, Robertson's History of Charles Fifth, some of the British Poets, Shakspeare, Dryden, Pope, etc., and most of the literature of Queen Anne's reign, and even Blackstone's Commentaries, before I had determined to study law. Having resolved at last to pursue some profession, my brother, Dr. Brooke, prevailed upon me to study medicine. I read his books with him for about twelve months, when my brother Robert would say to me, 'Frank, you have missed your path, and had better study law.' I soon after took his advice, and commenced the study of law with him, and in 1788 I applied for a license to practise law. There were at that time in Virginia only three persons authorized to grant licenses; they were the Attorney-General, Mr. Innes, Mr. German Baker, and Colonel John Taylor, of Caroline, — all distinguished lawyers. I was examined by Mr. Baker at Richmond, and obtained his signature to my license. I then applied to the Attorney-General, Mr. Innes, to examine me; but he was always too much engaged, and I returned home. In a few days after, I received a letter from my old army friend, Capt. Wm. Barrett of Washington's regiment, informing me that he had seen the Attorney-General, who expressed great regret that he had not had it in his power to examine his friend, Mr. Brooke, but that he had talked with Mr. Baker, and was fully satisfied of his competency; and if he would send his license down to Richmond, he would sign it. I accordingly sent the license to him, and he signed it, by which I became a lawyer."

He began his professional life in the wilds of Monongalia County, at Morgantown, now West Virginia, and was soon appointed Commonwealth's attorney for the judicial district in which that county was, by Mr. Innes, the Attorney-General who had signed his license. There he met the famous Albert Gallatin, who in his eighty-eighth year wrote him the following letter, namely: —

NEW YORK, 4th March, 1847.

MY DEAR SIR, — Although you were pleased, in your favor of December last, to admire the preservation of my faculties, these are in truth sadly impaired, — I cannot work more than four hours a day, and write with great difficulty. Entirely absorbed in a subject which engrossed all my thoughts and all my feelings, I was compelled to postpone answering the numerous letters I receive, unless they imperiously required immediate attention. I am now working up my arrears. But though my memory fails me for recent transactions, it is unimpaired in reference to my early days. I have ever preserved a most pleasing recollection of our friendly intercourse, almost sixty years ago, and followed you in your long and respectable judiciary career, — less stormy and probably happier than mine. I am, as you presumed, four years older than yourself, born 29th January, 1761, and now in my 88th year growing weaker every month, but with only the infirmities of age. For all chronic diseases I have no faith in Physicians, consult none, and take no physic whatever. With my best wishes that your latter days may be as smooth and as happy as my own, I remain, in great truth,

Your friend,

ALBERT GALLATIN.

Hon'ble FRANCIS BROOKE, Richmond.

He removed to Eastern Virginia, and, says he, "in the year 1790 I sometimes visited my friends at Smithfield; paid my addresses to Mary Randolph Spotswood, the eldest daughter of General Spotswood and Mrs. Spotswood, the only whole niece of General Washington. Our attachment had been a very early one." On account of his poverty there was some opposition to the match; but consent was finally given, and in the seventeenth year of the bride's age, in October, 1791, they were married. He speaks lovingly of her "luxuriant brown hair." She

died on the 5th of January, 1803; and he says: —

"The shock I received on the death of my wife I cannot well describe; but my father had left me a legacy better than property, in his fine alacrity of spirits, (God bless him!) which have never forsaken me; and in the summer afterwards I was advised to go to the Virginia Springs, and began to look out for another wife to supply the place to my children of their mother. While at the Warm Springs, with Mr. Giles and some others, a carriage arrived with ladies. There is something in destiny; for as soon as I took hold of the hand of Mary Champe Carter (though I had seen her before and admired her very much), I felt that she would amply supply the place of my lost wife. I began my attentions to her from that moment. In person and face she was very beautiful. Mr. Jefferson said of her that she was the most beautiful woman he had ever seen, either in France or this country."

The courtship was not long, and on the 14th of the following February they were married. Judge Brooke personally knew all the eminent military men of the Revolution, except Alexander Hamilton and General Knox. He saw Gen. George Washington open a great ball at Fredericksburg, Feb. 22, 1774, by dancing a minuet with a lady, and heard Mr. Jack Stewart, who had been Clerk of the House of Delegates, a great vocalist, when called upon for a song, respond by singing a very amusing one from "Roderick Random." The Father of his Country laughed at it very much; but the next day, when strangers were being introduced to him, he was found to be one of the most dignified men of the age. Judge Brooke freely gives his opinion of many men whom he had met. His sketch of Jefferson is very interesting. He says: —

"He was a man of easy and ingratiating manners; he was very partial to me, and I corresponded with him while I was Vice-President of the Society of Cincinnati; he wished the funds of that society to be appropriated to his central college, near Charlottesville, and on one occasion I obtained an order from a meeting of the society to that effect; but in my absence the order was rescinded, and the funds appropriated to the Washington College at Lexington, to which General Washington had given his shares in the James River Company, which the State had presented him with. Mr. Jefferson never would discuss any proposition, if you differed with him, for he said he thought discussion rather riveted opinions than changed them."

Jefferson's rule might suit for his intellect, but for persons of lesser calibre it will not do. Brooke was a manly fellow, and an ornament to the bench.

Judge William H. Cabell belonged to an old English family which came to Virginia at a very early period. During the Colonial and Revolutionary epochs of our history its members bore a conspicuous part in all public affairs, and in war as well as in peace rendered their country useful and distinguished services. His father had been an officer in the War of the Revolution, and both his father and grandfather had served with distinction in the Virginia House of Burgesses.

Judge Cabell was born on the 16th of December, 1772, at "Boston Hill," in Cumberland County, Va., at the residence of his maternal grandfather, Col. George Carrington. He was the oldest son of Col. Nicholas and Hannah (Carrington) Cabell. He was prepared for college by private tutors at his father's and at his maternal grandfather's, where much of his boyhood was passed. Colonel Carrington had served as a member of the House of Burgesses, chairman of the Cumberland County Committee of Safety, County Lieutenant, and member of the General Assembly. Four of his sons, two of his sons-in-law, and three of his grandsons had served with distinction as officers in the Revolution. His residence was the resort of the eminent men of the times; and the acquaintances there formed, and the influences by which he was surrounded had much to do with shaping the life and character of Judge Cabell.

In February, 1785, he entered Hampden-Sidney College, where he continued until

September, 1789. In February, 1790, he entered William and Mary College, from which he graduated in 1793. In the autumn of 1793 he was licensed to practise law. He soon took a high stand at the bar, and gave evidence of unusual ability. He was elected to the Assembly from Amherst County in the spring of 1796. From that time until he was elected governor, he represented the county of Amherst in the lower branch of the Legislature, his father at the same time representing the Amherst District in the Senate, until his health compelled him to retire from public life. He took a leading part in the Assembly of 1798, and supported the famous resolutions of that session. He returned to the Assembly of 1805, but was that same year elected Governor of Virginia. He performed all the duties of the office with an ability and an industry that won the praise of all parties. It was generally admitted that no executive ever represented the majesty of the State with more propriety, dignity, and grace. Two memorable events occurred in Virginia during Governor Cabell's administration. One of these was the trial of Aaron Burr, at Richmond, before Chief-Justice Marshall, in the spring and summer of 1807, for treason in an alleged design to form an empire in the western part of America. The jury which sat in the case had been formed with much difficulty by repeated venires, summoned from all parts of the State. The foreman of the jury was a conspicuous figure, Gen. Edward Carrington, the uncle of Governor Cabell. General Carrington won distinction in the War of the Revolution; and when Washington formed his first cabinet, he was offered the position of Secretary of War, but declined to enter public life. But another event of greater importance than Burr's conspiracy agitated the country, and produced an excitement hitherto unequalled in the history of Virginia. The disputes with England growing out of the invasion of the neutral rights of American commerce and impressment of American seamen, had aroused universal indignation. Nothing but the prompt and vigorous measures taken by Mr. Jefferson restrained the country from an immediate declaration of war, when it was learned that on the 22d of June, 1807, the frigate "Chesapeake," standing out to sea from Norfolk, had been fired into by the British sloop-of-war, the "Leopard," and several of her men killed and wounded. Some idea of the excitement in Virginia may be formed from the following description: —

WILLIAM H. CABELL.

"Richmond became a theatre of great agitation. Those martial fires which slumber in the breast of every community, and which are so quickly kindled into flame by the breeze of stirring public events, blazed with especial ardor amongst the youthful and venturous spirits of Virginia. Over the whole State, as indeed over the whole country, that combative principle which lies at the heart of all chivalry began to develop itself in every form in which national sensibility is generally exhibited.

The people held meetings, passed fiery resolutions, ate indignant dinners, drank belligerent toasts, and uttered threatening sentiments. Old armories were ransacked, old weapons of war were burnished anew, military companies were formed, regimentals were discussed, the drum and fife and martial bands of music woke the morning and evening echoes of town and country; and the whole land was filled with the din, the clamor, the glitter, the array of serried hosts, which sprang up, like plants of the night, out of a peaceful nation."

During this trying period Governor Cabell displayed great ability, and rendered the country valuable services by his courage and judgment. He was in constant communication with Mr. Jefferson, who valued him as a friend and adviser. He had been an elector at the first election of Mr. Jefferson, and filled the same office again at his second election.

After his term of office had expired, he was elected by the Legislature a judge of the General Court, which office he held until April, 1811, when he was elected a judge of the Court of Appeals, being appointed, March 21, 1811, by Gov. James Monroe and the Privy Council, and qualifying April 3, 1811.

He was elected also by the Legislature, Dec. 7, 1811, and then commissioned by Gov. George William Smith. After the adoption of the new Constitution of Virginia (1830), he was again re-elected a judge of the Court of Appeals, and commissioned by Gov. John Floyd. On the 18th of January, 1842, he was elected President of the court, which position he filled until 1851, when he retired from the bench. He died at Richmond, Jan. 12, 1853, in the eighty-first year of his age, and was interred in Shockoe Hill Cemetery. At a called meeting of the Court of Appeals and Bar of Virginia, held in Richmond, January 14, glowing resolutions in testimony of the singular purity of character and excellences of Judge Cabell were passed, which were published in the "American Times" of Jan. 19, 1853. From thence the following is extracted: —

"*Resolved*, That we cherish, and shall ever retain, a grateful remembrance of the signal excellence of the Hon. Wm. H. Cabell, as well in his private as in his public life. There were no bounds to the esteem which he deserved and enjoyed. Of conspicuous ability, learning, and diligence, there combined therewith a simplicity, uprightness, and courtesy which left nothing to be supplied to inspire and confirm confidence and respect. It was natural to love and honor him; and both loved and honored was he by all who had an opportunity of observing his unwearied benignity or his conduct as a judge. In that capacity wherein he labored for forty years in our Supreme Court of Appeals, having previously served the State as Governor and Circuit Judge, such was his uniform gentleness, application, and ability; so impartial, patient, and just was he; of such remarkable clearness of perception and perspicuity, precision and force in stating convictions, that he was regarded with warmer feelings than those of merely official reverence. To him is due much of the credit which may be claimed for our judicial system and its literature. It was an occasion of profound regret, when his infirmities of age about two years since required him to retire from the bench; and again are we reminded by his death of the irreparable loss sustained by the public and the profession."

Nearly thirty years after the death of Judge Cabell, March 23, 1881, on the occasion of his portrait being placed in the Court of Appeals room at Richmond, the judges caused to be entered in the records of the court an order bearing testimony to his great usefulness and ability, from which the following is taken :—

"We all recognize Judge Cabell as one of the ablest and most distinguished judges that ever sat upon the bench of this court. He was a member of this court for more than forty years. During this time he served his State with a conscientious discharge of duty which he brought to his great office. We, his successors to-day, often take counsel of his great opinions, and those who come after us will do the same. Though dead for more than a quarter of a century, he yet speaketh to us, and will continue to speak, when we shall pass away, to those that come after us, so long as

the jurisprudence of this State shall be governed by the great principles of law and by a fearless determination on the part of her judiciary to declare and uphold that which is just and right."

As legislator, governor, and judge he served his State fifty-six years. The engraving of Judge Cabell which accompanies this sketch is taken from a portrait by the famous French artist Saint-Memmin.

Judge Cabell's opinions were never characterized by a strict adherence to the rigid rules of the common law, but to the more liberal principles of the equity courts. No man ever sat on the Supreme Bench of Virginia who had less pride of opinion than he. A notable instance of this is found in the famous case of Davis *v.* Turner (4 Gratt. 422). Until the decision of that case, the courts of Virginia had followed Edwards *v.* Harben (2 T. R. 587), decided by the Court of King's Bench in 1788, which had established what is known as the doctrine of fraud *per se*. This doctrine was assailed by Judge Baldwin, in a very able opinion, in Davis *v.* Turner. Judge Cabell, after an exhaustive discussion, said, with great candor, that he had changed his opinion, but not without a struggle; yet he would never permit the pride of self-consistency to stand in the path of duty; and he cheerfully changed the opinion which he had theretofore entertained, which would restore the law to the solid foundation of good sense and sound morals. The principles decided in Davis *v.* Turner are the law of Virginia at this day. The case was decided at the January Term, 1848. The General Assembly, which was in session at the time of Judge Cabell's death, adjourned "as an act of respect for his public services."