

PROCEEDINGS

OF THE

Thirty-Third Annual Meeting

OF

The Virginia State Bar
Association

OF VIRGINIA

HELD AT

VIRGINIAN HOTEL

LYNCHBURG, VA.

June 6th, 7th and 8th, 1922

Edited by John B. Minor, Secretary

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FIRST DAY.

VIRGINIAN HOTEL, LYNCHBURG, VA.,
April 6, 1922.

The thirty-third annual convention of the Virginia State Bar Association convened in the Assembly Hall of the Virginian Hotel at 10 o'clock A. M. The meeting was called to order by Mr. William W. Old, Jr., of Norfolk, Chairman of the Executive Committee, who called upon Rev. Carleton Barnwell, of Grace Church, Lynchburg, Va., to deliver the opening prayer.

Rev. Mr. Barnwell then delivered the following invocation:

Almighty God, who in ages past didst teach the hearts of Thy favored people by sending the light of Thy Holy Spirit, grant that we by that same spirit may have a right judgment in all things; send Thy blessings down upon those into whose hands has been entrusted the making and upholding of the laws of this country; fill their minds with love and truth and their hearts with zeal for Thy kingdom and the righteousness of Thy Son. We pray Thee that Thou wilt so guide and inspire the efforts of those who are here gathered together, that their

The Secretary: The report from the Committee on Uniform Judicial Procedure, of which Mr. Shelton, of Norfolk, is Chairman, is the next order of business, but he is not present and I move we pass that by. Motion seconded and carried.

The Secretary: There is a special committee, of which Mr. Massie is a member, appointed to co-operate in providing a suitable marker for the grave of George Wythe.

Mr. Massie: For the Committee I desire to make the following report:

(See Report at end of Minutes.)

On motion, the report was received and filed.

The Secretary: That completes the reports of the Committees that are now ready to report.

Before we adjourn, however, I have some announcements to make, to which I will ask the attention of those present.

I have been requested by the Committee on Arrangements to make the following announcement in regard to the rest of the program for today.

At 3:30 autos will leave the front door of the Virginian Hotel, to take the visiting lawyers and ladies accompanying them for an auto drive to Sweet Briar College, or elsewhere, as the visiting members may wish.

At 7:30 o'clock this evening, not 8:15 as stated in the program, a buffet lunch and reception will be tendered the visiting lawyers and ladies accompanying them at the Oakwood Country Club.

There will be a reception to the ladies attending the Bar Association at the Woman's Club, 1020 Court Street, from 5 until 6 o'clock.

The President: As I understand, we have nothing further on the program for this morning, so we will now adjourn to meet at 10 A. M. to-morrow.

REPORT OF COMMITTEE ON LIBRARY AND LEGAL LITERATURE.

To the Virginia State Bar Association:

Your Committee on Library and Legal Education would respectfully report that up to this time the Library of the State Bar Association is mainly *in gremio legis*; depending in large measure upon the law libraries of the State; and that the legal education referred to in the title is too often meagre and *jejune*, but that with the record of past teachers in the profession whose names are as lights in the darkness, and whose works do follow them, there is set before the profession such a standard of exalted excellence as should make every member of our Association proud of that record and jealous for the reputation of our profession.

The names of Wythe, Tucker, Brockenbrough and Minor stand forth pre-eminent in the annals of legal education. From these great teachers, as the fountains, have flowed those streams of learning and wisdom which have enriched and fructified the labors of many who never drank at the source, but who have known the sweet influence of those mighty springs as they flowed into the channels and irrigated the barren fields of strife and contention.

Within a month past in the church-yard of St. John's, Richmond, there has been put up a notable monument to Chancellor Wythe. Upon the bronze tablet set into the granite is the statement of his name, birth, life's work and death; that he was the first professor of law in the United States—the teacher of Randolph, Jefferson and Marshall.

This monument has been erected by members of patriotic societies and of the Bar Association, and by individual admirers of the great teacher, law-giver and law-maker; for let it be remembered that it was he who was the first of the Virginia signers of the Declaration of Independence.

In a paper read before the Marshall-Wythe Assembly of William and Mary College, the Chairman of your Committee wrote:

"We can well imagine how that distinguished group of Virginians respected the character of George Wythe. An examination of their signature shows that, on the immortal Declaration, his name stands first among them as already mentioned; above that of Thomas Jefferson, the author of the paper, himself; above that of Richard Henry Lee, the "Cicero of the Revolution"; above that of Thomas Nelson, Jr., who had brought from Virginia the resolutions of the Virginia Convention directing Virginia's representatives in Congress to declare for independence. I love to think that the Virginia delegation stood back to yield precedence to the great man whom they and the people of Virginia so greatly loved and revered."

If we lack law libraries, we have had great *law teachers* to supply that lack.

Respectfully submitted,

ROSEWELL PAGE,
Chairman.

June 6, 1922.

REPORT OF SPECIAL COMMITTEE ON MEMORIAL TO GEORGE WYTHE.

To the Virginia State Bar Association:

It is a pleasure to report that on May 24, 1922, a suitable monument was unveiled at the grave of Chancellor George Wythe in the church-yard of St. John's Episcopal Church, on Church Hill, in the City of Richmond. The monument is of granite with a bronze tablet and memorial inscription surmounted by the Great Seal of the Commonwealth of Virginia. This Great Seal was adopted by the Convention of 1776, having been devised by a committee consisting of Richard Henry Lee, George Mason, George Wythe, Robert C. Nicholas, John Page and Arthur Lee. Some have ascribed its classic form to George Mason, who reported it to the Convention; but in Girardin's continuation of Burk's "History of Virginia," it

is stated that Wythe was the originator. Dr. Lyon G. Tyler, an authority in Virginia history, thinks Girardin's account is correct, and says: "As Girardin wrote under the supervision of Jefferson, who was keenly alive to all such matters, there can be no reason to doubt the truth of his statement." The records show—and there is no dispute about the fact—that George Wythe and John Page were appointed to superintend engraving of the Seal; and this was finally accomplished under their direction, by an artist in Paris, after unavailing efforts had been made to have the work properly done in America. To sustain his opinion that the Great Seal was originated by George Wythe, Dr. Tyler says:

"Moreover, Wythe was one of the two entrusted with the execution of the seal, and must have penned the words describing it, which have been admired for their clearness and precision: 'Virtue, the genius of the Commonwealth, dressed like an Amazon, resting on a spear with one hand, and holding a sword in the other, and treading on Tyranny, represented by a man prostrate, a crown fallen from his head, a broken chain in his left hand, and a scourge in his right. In the exergue the word VIRGINIA over the head of Virtue, and underneath, the words *Sic Semper Tyrannis*. On the reverse a group: LIBERTAS, with her wand and *pileus*; on one side of her, CERES, with the cornucopia in one hand and an ear of wheat in the other; on the other side, AETERNITAS, with the globe and phoenix.'

In commenting upon this classic conception, Dr. Tyler says:

"Severe in his republicanism, Wythe, like other Virginians of the Revolution, had a scorn for 'the aristocrat,' and found his ideals in the Roman and Grecian Republics. Caesar, Brutus and Cicero were his names to conjure with, and his faith in the ability of man for self-government was stamped upon all his official action. While Massachusetts, Connecticut, Rhode Island, New Hamp-

shire, along with New York, Pennsylvania, New Jersey and Maryland, and even the United States, clung to the old ideas of English heraldry and fashioned their seals of State on the principle of a coat of arms, Virginia, under the direction of Wythe, chose a purely classic design. She alone of the thirteen original States has no shield on which to emblazon in dazzling colors and lustrous metal the memory of feudal services, of the rich man's power and the poor man's thralldom; but the genius of her seal was made by Wythe, the Roman figure of Virtue, clad as an Amazon, holding in one hand the spear of victory and in the other the sword of authority, and sternly republican in her motto of *Sic Semper Tyrannis.*"

Beneath the Great Seal, which thus has found such fitting place upon the monument to George Wythe, the following inscription appears:

THIS TABLET IS DEDICATED
TO MARK THE SITE WHERE LIE
THE MORTAL REMAINS OF
GEORGE WYTHE.
BORN 1726—DIED 1806.
JURIST AND STATESMAN,
TEACHER OF RANDOLPH,
JEFFERSON AND MARSHALL,
FIRST PROFESSOR OF LAW
IN THE UNITED STATES,
FIRST VIRGINIA SIGNER OF THE
DECLARATION OF INDEPENDENCE.
ERECTED BY
PATRIOTIC CITIZENS OF VIRGINIA,
A. D. 1922.

This monument was erected at a cost of \$785.00, through the co-operation of the Virginia Society of the Sons of the Revolution, the Sons of the American Revolution, the Association for the Preservation of Virginia Antiquities, and the Virginia

State Bar Association. The memorial address was delivered by Mr. George Bryan, a distinguished member of this Association, and is with his permission printed in full as an appendix to this report.

It was to George Wythe that Patrick Henry alluded when he said in the Convention of 1775:

“Shall I light up my feeble taper before the brightness of his noontide sun? It were to compare the dull dew-drop of the morning with the intrinsic beauties of the diamond.”

He was, as his monument now proclaims, “The first professor of law in the United States,” and it might have been added, “The second in the English-speaking world,” as Dr. Tyler has pointed out—Sir William Blackstone, who filled the Vinerian chair of law at Oxford in 1758, being the first.

Not only was he the preceptor of Randolph, Jefferson and Marshall, but also James Monroe, St. George Tucker, Spencer Roane, James Breckenridge, John Coalter, Littleton Waller Tazewell, William Munford, James Innis, George Nicholas and Henry Clay. Mr. Clay said that “to no man was he more indebted, by his instructions, his advice, and his example, for the intellectual improvement which he made up to the period when in his twenty-first year he finally left the City of Richmond for Kentucky.”

In October, 1777, in the second year of the Commonwealth, an act was passed for establishing a High Court of Chancery. The first chancellors were Edmund Pendleton, George Wythe and Robert Carter Nicholas. It was by virtue of this office that George Wythe became a member of the Supreme Court of Appeals of Virginia, where in 1782 he delivered the celebrated opinion in “Commonwealth vs. Caton,” in the course of which he said:

“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 further.'"

In 1788 the number of judges in the Court of High Chancery was reduced to one, and from that time until 1801 George Wythe was the sole Chancellor of the Commonwealth, with jurisdiction over the whole State.

Manifestly it was impossible to give in an epitaph even a summary of the achievements of a life so full of patriotic service, political honors and professional labors. It is enough that a reproach has been finally removed from the generations that have followed the noble Virginian by the erection of a simple monument to his memory. Let us leave him with the words of Thomas Jefferson ringing in our ears:

"No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible and his justice exact; of warm patriotism, and, devoted as he was to liberty, and the natural and equal rights of man, 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. In his philosophy he was firm, and neither troubling, nor perhaps trusting any one with his religious creed, he left the world to the conclusion that that religion must be good which could produce a life of such exemplary virtue.

"His stature was of the middle size, well formed and proportioned, and the features of his face were manly,

comely and engaging. Such was George Wythe, the honor of his own time and the model of future times."

E. C. MASSIE,
For the Committee.

GEORGE WYTHE—PIONEER.

*Memorial Address at the Unveiling of the Monument Erected
at His Grave in St. John's Churchyard,
Richmond, Va., May 14, 1922.*

By George Bryan, Esq., of Richmond.

Commonwealths, like individuals, are sluggish. They call it conservatism, but this is an excuse, not a reason. The tendency is towards inertia—towards the line of least resistance, but inertia means stagnation and ingrowing and consequent disintegration. If men and nations would live, they must resist. When the hour strikes, the pioneer comes to the front, announces his mission and begins his work.

In 1726 there was born in Virginia one whose memory we honor to-day—one who, upon reaching man's estate, looked about him and saw a large work to be done, a great wilderness to be conquered and paths blazed through it upon which men and women could walk to broader freedom, to real self-government and to purer ideals. Thomas Jefferson said of him that he was "the honor of his own and the model of future times"—that he truly might be called, "devoted as he was to liberty and the national and equal rights of man, the Cato of his country, without the avarice of the Roman."

An honored historian of this day and community, Dr. Samuel C. Mitchell has written of him: "In three several instances Wythe was a forerunner. As early as 1764 he wrote Virginia's first remonstrance to the House of Commons against the Stamp Act, taking so advanced a position in regard to that ominous measure as to alarm his fellow-Burgesses. He was perhaps the first judge to lay down, in 1782, the cardinal principle that a court can annul a statute deemed repugnant to the Constitution, thus anticipating by a score of years the classic

decision of his great pupil, John Marshall, in *Marbury v. Madison*. He was an ardent advocate of the emancipation of slaves, actually freeing his own and making provision for them in his will. He was the first professor of law in the United States. In 1785 he wrote to John Adams, 'I have again settled in Williamsburg, assisting as professor of law and police in the University there, to form such characters as may be fit to succeed those which have been ornamental and useful in the national councils of America.' Either in his law office or as professor in William and Mary, he was the teacher of Jefferson, Marshall, Monroe, Clay and scores of others, only less prominent than these."

In the year 1806, at the age of eighty, he rested from his labors, but his works followed him. What are the lessons of such a life? They are many, but we have time to study only one. He was essentially a progressive of his day and generation. He was restless, uneasy, in the presence of oppression in any form, but, better than all else, he did not content himself, as do so many of us to-day, with expressing his dissatisfaction in a timid and formal way and returning at once to the farm or the merchandise or the study. He cried out against the Stamp Act, says Dr. Mitchell, so loud as to alarm his fellow-Burgesses—but, with a soul consumed with a passion for liberty, he cried the louder and tried to shame those conservative Burgesses into taking part in the work of rescuing the colony from the conditions which caused their alarm. He was a pioneer, a pathfinder, a forerunner—and his name shall ever be among the immortal ones of mankind.

The members of these patriotic societies honor themselves to-day by this tribute to the memory of "one of the simple, great ones gone"—though I cannot bring myself to add, "forever and ever by." I bring you this word of cheer—that I believe there are to-day in our midst men and women who, like George Wythe, can differentiate between a genuine and a spurious conservatism, who, confronted by entrenched oppression and evil in whatever form, will not be deterred by expressions of alarm, but will cry out yet the louder for a sane and substantial liberty—freedom from the domination of the dollar, of

the mob, of the dogma—the only liberty under which mankind can be free indeed.

In George Wythe liberty found a worthy champion. He was a State-builder—a nation-builder—and we to-day honor the memory of a great constructive force in this Republic.

REPORT OF COMMITTEE ON MASSIE-FOSTER MEMORIAL.

To the Virginia State Bar Association:

Your Committee appointed for the purpose of deciding upon the form and to cause the erection of a suitable memorial to the representatives of the Commonwealth who were murdered in the tragedy at Hillsville, respectfully report:

The entire Committee met at Wytheville on the 4th day of May, 1922, and decided that with the funds in hand, aggregating some \$1,200.00, suitable bronze tablets, properly inscribed, should be placed in the court-room of the Circuit Court of Carroll County in which the tragedy occurred:

(a) One tablet to the memory of Judge Massie, the presiding judge of that court, and that replicas of this tablet be also placed in the court-room of the other counties of his circuit, to-wit, Wythe, Pulaski and Grayson.

(b) The second tablet to be placed only in the court-room of Carroll County, on which should be placed the names of William M. Foster, Commonwealth's Attorney; Louis F. Webb, Sheriff; Augustus C. Fowler, a juror, and Virinda Ayers, a witness for the Commonwealth.

We submit this report for the approval of the Association, and if approved, the purpose of the Committee is to cause the tablets to be made and erected as indicated.

Respectfully submitted,

LUCIAN H. COCKE,
B. F. BUCHANAN,
S. C. GRAHAM,
STUART B. CAMPBELL,
W. B. TOMPKINS.

June 6, 1922.