

REPORT

OF THE

FOURTH ANNUAL MEETING

OF THE

Virginia State Bar Association

HELD AT
35995

HYGEIA HOTEL, OLD POINT COMFORT, VA.,

July 12th, 13th and 14th, 1892.

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Tuesday, July 12th, 1892.

Frank H. McGuire, of Richmond, Chairman of the Executive Committee, called the Association to order at 11 o'clock A. M., and said :

It is my duty, gentlemen, as Chairman of the Executive Committee to call to order this the Fourth Annual Meeting of the Virginia State Bar Association. By the programme arranged for your edification and enjoyment, it will be your pleasure now, and your privilege, to hear an address from your President. I have not the temerity to introduce him to you. That he does not need to any American audience. He has long been known—I will not say how long, for it is a delightful characteristic of these annual reunions of the Bar, that, as we are always good fellows,

The President: The next is the report of the special committee with respect to the grave of Chancellor Wythe.

R. G. H. Kean, of Lynchburg: Mr. President,—On behalf of that committee, I have a brief explanation and a request to make. Mr. Henry, of Richmond, was the mover of this resolution to inquire into the location of Chancellor Wythe's grave, and that the committee should inquire what the cost would be of a suitable monument, to be erected at or near the spot. I was named second on that committee. I got a letter from him a few days ago, stating that urgent business had called him to the far West, and consequently he would not be present at this meeting of the Association, and requesting that myself and Mr. Hughes would make the report. It was assumed that Mr. Wythe was buried in St. John's church-yard, in the city of Richmond, and the question of the cost of the monument was a matter to be inquired into in that city. I requested our Secretary, Mr. Guy, to get some gentleman, a member of the Association, to make an inquiry in regard to the question of expense, which he was kind enough to do. But that gentleman has not yet made his appearance at the Association. We ask, therefore, that we be allowed to make that report later in the session.

The President: You have heard that request; if there is no objection, it will be granted.

The President: The Association, if there is no other business before it, will now take a recess till 8:30 this evening.

EVENING SESSION.

TUESDAY, July 12, 8:30 P. M.

The President: The Association will come to order. Gentlemen of the Association,—It gives me very great pleasure to introduce to you this evening Mr. Parrish, of Covington, who will read a paper entitled "Master and Servant." Knowing him as well as I do, and his profound acquaintance with the subject he is going to treat, I bespeak for him the attention and consideration of the audience.

Mr. Parrish then read his paper.

(*See Appendix.*)

The President : It is the duty of the Chair to state that it is now in order under the rules of this Association, to hear any discussion upon the subject-matter of the paper that has been read. If any gentleman desires to express any views on this subject, the Association is willing to hear him.

The President : The next question in order is unfinished business.

R. G. H. Kean, of Lynchburg : Mr. President,—On behalf of the committee which was called upon for a report this morning, appointed last year at the White Sulphur Springs (of which Mr. Henry was chairman and Mr. Robert M. Hughes and myself members), to ascertain, if practicable, the exact spot where Chancellor Wythe was buried, and to inquire into the cost of some suitable stone to be erected by this Bar Association to his memory, I have to say that that committee is now ready with its report. I will read it.

Mr. Kean read the report and the resolution accompanying the same.

(*See the Report at the end of Minutes.*)

Mr. Kean : One word of explanation in regard to the terms of this resolution—that was, that it should be the duty of this committee to procure the assent and concurrence of the proper authorities ; such mural tablet to be placed in the new room to be prepared for the Chancery Court of the city of Richmond in the new city hall ; that is to say, have it put there with the assent of the Common Council of the city of Richmond. Of course the authorities of William and Mary would have to be consulted if it should be found expedient for any purpose to place the memorial there.

The President : Gentlemen of the Association,—You have heard the report. The first question will be upon the reception of the report.

R. T. W. Duke, Jr., of Charlottesville : I only suggest—and I make the suggestion with diffidence—that it seems to me that the memorial ought to be erected in some spot where the attention,

not of a portion, but of the whole Bar of the State would be called to it, and I suggest that it be placed in the new Court of Appeals room, which, I understand, is to be provided in the State Library Building to be erected in the Capitol Square at Richmond.

The President: The resolution is before the Association. Does Mr. Duke propose that as an amendment?

Mr. Duke: I propose as an amendment that the location of the mural tablet be left to the discretion of the committee.

R. G. H. Kean: Mr. President,—I do not know, but it seems to me that if the court-room of the Court of Appeals be selected as the place, the proper authority would be the State Legislature, which does not meet for two years.

The President: Gentlemen of the Association,—You have heard the amendment of Mr. Duke. The question is upon the adoption of the amendment.

The amendment was carried, and the resolution, as amended, was adopted.

(This amendment is inserted in the resolution accompanying the report of the committee. See same at the end of the Minutes.)

Thomas D. Ranson, of Staunton, read a letter from the manager of the Rockbridge Alum Springs, offering to entertain the Association at that place at its next annual meeting, which was referred to the Executive Committee for their consideration.

E. C. Massie, of Richmond: Mr. President,—In accordance with Article XX of the By-Laws, notice of any amendment thereto is to be given in writing on the first day of the annual meeting. I now give notice that I shall offer an amendment to Article IV of the By-Laws at this annual meeting.

The President: Is the notice in writing?

Mr. Massie: Yes, sir.

A Member: Read it.

Mr. Massie: Article IV provides for the admission of members to this Association. I take it that all of us are intimately concerned on this subject, and it cannot be denied that if we would preserve the high tone and standing that this Association now

if the gentleman will postpone action until then, I think it can be brought up in that way.

Camm Patteson : I say this, though you have good judges now, the time is coming when you will not get them. This Bar Association will have to say whether or not judges should have the pay of policemen. The proposition I make is that we restore the salaries of the judges as they were before they were changed some years ago.

On motion, adjourned.

EVENING SESSION.

WEDNESDAY, July 13—8 : 30 P. M.

F. H. McGuire : Gentlemen,—I desire to make a very important announcement. There are registered here in attendance at this meeting 148 members only. There are a great many more present. It is very important that they do register. The importance consists in this, that we desire to notify the hotel people how many will be present at the very interesting meeting to-morrow evening at 10 o'clock, and if our members do not give us that information, we will be unable to provide for them. I hope that every member will register, and that he will notify other members who have not registered to do the same thing.

The Secretary : Gentlemen,—I am requested by the Chairman of the Committee on the Admission of Members to state that he desires a meeting of that committee, in this room, to-morrow morning at 10 :45, on business that is connected with the duties of that committee.

The President : Gentlemen of the Association,—It will be remembered that at the last annual meeting of the Association, it was expected that Mr. Riely, who was one of the revisors of the Code of 1887, would read a paper on that subject. He was detained at home and could not do so, and the request was made by the Association that he would read that paper on this occasion. I have, therefore, the pleasure of introducing Mr. Riely, who will read a paper on "Criminal Laws and their Administration," as connected with the duties of the revisors of the Code of 1887.

Mr. Riely then read his paper.

(See *Appendix*.)

L. D. Starke, of Norfolk : Mr. Chairman,—I desire to present the following resolution :

Resolved, That one thousand extra copies of the paper just read by Major John W. Riely, on "The Criminal Laws and their Administration," be printed in the same form as the paper read at the last meeting of this Association by Judge E. C. Burks, on "The Civil Law and its Administration," and distributed to the members of the Association.

Adopted.

The President : Gentlemen of the Association,—A paper will now be read by Mr. John B. Donovan on "Aquatic Rights."

Mr. Donovan here read his paper.

(See *Appendix*.)

There being no discussion, the Chair announced that the question before the Association was unfinished business.

Mr. Parker : I wish to offer the following resolution :

Resolved, That it is the sense of this Association that the judicial system of this State should be changed, both in respect to the organization of the courts and the election of the judges thereof as prescribed by the constitution, as well as in the adjustment of their jurisdiction and the salaries paid the judges as prescribed by legislative enactment.

Mr. Parker : I offer this resolution and move that it be referred to a special committee of seven members of this Association, and that they report thereon at the next meeting of the Association. My reasons for offering this resolution are that I believe that our judicial system does need reform, because not only is this my own experience, but men of larger reputation and broader experience think so. Though our By-Laws have appointed a Judiciary Committee, we have, for three years past, heard not a word from that committee, and had no report from it worth anything.

At the first annual meeting the committee did make a so-called report, but stated that it had held only one meeting, called the attention of the Association to one or two faults in the judicial system, suggested no means by which they should be remedied, and dismissed the subject. Now I take it that it is not so much

the fault of the Judiciary Committee that there has been no recommendation made by it to the Association. Its members are scattered from one end of the State to the other. It is almost impossible to get that committee together during the interval between the meetings of this Association. If a meeting of the committee is called, the members have to travel long distances to get together, pay their expenses out of their own pockets, and then they do not know whether after they arrive, there is going to be a quorum, and they may perhaps have their trip for nothing. For that reason I am thoroughly persuaded that we will never have a report from the committee; and one way to get the question of reform in the judicial system before this body is to have the matter referred to a special committee. Desiring that this question should come up and be considered by this Association, I offer this resolution.

C. E. Nicol, of Prince William: Mr. President,—If the gentleman from Southampton will allow me, I would like to make a suggestion. I believe there is a more or less universal feeling throughout the State that the county and circuit courts do not attain to perfect justice. The terms of the circuit courts are too infrequent, and there is great impatience on the part of the people in consequence of delays. This resolution ought to be one authorizing the Judiciary Committee to inquire whether the county and circuit courts of this Commonwealth ought not both to be abolished, and a court of general jurisdiction, holding a term every month, substituted for them. I trust my friend will accept an amendment to that effect, and finally, I believe, it will result in good to the people of this Commonwealth.

Mr. Parker: I would not object to have the resolution go before the Judiciary Committee, provided we could get a report from them, but I want it referred to a committee that can and will get together and make a report to this Association.

Mr. McKenney: I move as an amendment that it be referred to the Judiciary Committee.

Mr. Pettit: It seems to me, Mr. President, that the form of that resolution commits the members of this Association to the opinion that there is a need for a reform in all the judiciary. I do not think it is the expression of the opinion of this Associa-

tion that reform is needed in all the courts of this Commonwealth, and if we adopt that resolution it will so appear.

Mr. Parker : If the gentleman will allow me to interrupt him, I change my motion to move that it be referred to a committee of seven, to inquire into the advisability of reform.

Mr. Nicol : Will you accept this substitute?

Resolved, That the Judiciary Committee inquire and report to this Association whether any, and if any, what changes should be made in the present judicial system of Virginia.

Mr. Parker : If you will put "Special Committee."

The President : Does the gentleman from Southampton accept the substitute?

Mr. Parker : Yes, sir.

Mr. McKenney : Now I offer as an amendment that it be referred to the regular standing committee of this Association, whose peculiar duty it is to inquire into such questions.

The substitute referring it to the standing committee was adopted.

J. B. McCabe : Mr. President,—I rise to offer a resolution. I do not know that it is in order, because I am not familiar with the By-Laws of the Association. It expresses my own views, and, therefore, I shall offer this resolution :

Whereas it is estimated that the cost of the banquet at the present session of this Association will be about one-half of the annual income of the Association : therefore,

Resolved, That at future meetings no banquet be given at the expense of the Association, but that the funds be accumulated for the purpose of forming an Association Library, or for such other purpose as may hereafter be determined on.

T. D. Ranson : I am heartily in favor of that resolution.

The resolution was rejected.

The President : The Chair would state that on yesterday, when the report from the committee in reference to the grave of Chancellor Wythe was before the Association, the question of reference to another committee was left to the Chair. The Chair will appoint the same committee, to-wit : W. W. Henry, of Richmond ; R. G. H. Kean, of Lynchburg, and R. M. Hughes, of Norfolk.

On motion, the Association adjourned till Thursday at 11 A. M.

of Norfolk; E. M. Pendleton, of Lexington; William R. Duke and W. D. Dabney, of Charlottesville; William Gordon Robertson, C. A. McHugh, D. S. Good, and R. Randolph Hicks, of Roanoke; Roger Gregory, Willoughby Newton, Jr., Raleigh C. Minor, E. B. Thomason, Frank M. Woon, Edmund Waddill, Jr., G. Carlton Jackson, and William A. Moncure, of Richmond; and William B. Clarke, of Surry Court-house.

At a meeting held July 12th, 1892, the following gentlemen were duly elected: J. T. McAllister, Warm Springs, and F. C. Moon, Scottsville.

At a meeting held July 13th, 1892, the following gentlemen were elected: Conway Whittle Sams, Norfolk; F. B. Hutton, Abingdon; William E. Burns, Lebanon; W. A. Fentress, Portsmouth; S. L. Farrar, Amelia Court-house; T. J. Barham, Newport News; W. M. Pierce, Christiansburg; James D. Johnston, Roanoke; and R. R. Fauntleroy, of Richmond—making a total of sixty-one members duly elected by your committee.

The names of the following applicants have been handed to the committee, but from the lack of the endorsement of the member of the committee from the respective circuits of said applicants, the committee have been unable to act upon said applications: R. B. Berkeley, Pulaski, and A. C. Peachy, Williamsburg.

The committee would recommend that these gentlemen, if present, be extended the privileges of the present session of the Association.

ROY B. SMITH,
Secretary.

JOHN H. LEWIS,
Chairman.

REPORT OF SPECIAL COMMITTEE WITH RESPECT TO GRAVE OF CHANCELLOR WYTHE.

SUBMITTED AT THE FOURTH ANNUAL MEETING, JULY 12, 1892.

Whereas the grave of Chancellor George Wythe, in the church-yard of St. John's church, Richmond, Va., is unmarked,

Resolved, That the President of this Association appoint a committee of three, who shall ascertain as nearly as possible the locality of the said grave and report to this body at its next session, and at the same time report what will be the cost of a suitable stone to be placed at or near said grave.—*Minutes, 1891, p. 26.*

Referred to a Special Committee, consisting of Messrs. W. W. Henry, of Richmond; R. G. H. Kean, of Lynchburg, and R. M. Hughes, of Norfolk.

To the Virginia State Bar Association:

Your committee, who were charged with the duty of "ascertaining as nearly as possible the exact locality of the grave of

Chancellor George Wythe," and "what will be the cost of a suitable stone to be placed at or near said grave," respectfully report :

It appears quite certain that Chancellor Wythe was buried in St. John's church-yard, Church Hill, in the city of Richmond.

In "The Two Parsons," written and published some years ago by the late George Wythe Munford, the following passage occurs (pp. 429-430) :

"There is no monument or other mark to designate the spot where his remains repose; but it is believed he was buried on the west side of the church, near the wall of that building.

"There were at that time only two newspapers published in the city—the *Virginia Argus* and the *Richmond Enquirer*—and they were published only weekly. They did not appear until the 10th of June. Each of them published the action of the Executive Council, which, though it was Sunday, met on that day, and entered the following order :

"COUNCIL CHAMBER, June 8th, 1806.

"Preparatory to the interment of George Wythe, late Judge of the High Court of Chancery for the Richmond district, a funeral oration will be delivered at the Capitol, in the hall of the House of Delegates, to begin precisely at 4 o'clock P. M. on to-morrow. After which the procession will commence in the following order: The clergymen and orator of the day; coffin, with the word 'corpse' on the lid; physicians; the executor and relations of the deceased; the judges; members of the bar; officers of the high court of chancery; the governor and council; other officers of government; the mayor, aldermen and common council of Richmond; citizens."

The *Enquirer*, after speaking of the crowd which attended at the Capitol, to hear the oration of Mr. William Munford, a member of the Council, appointed for that function, proceeds as follows :

"The procession set out towards the church. It is no disparagement to the virtues of the living to assert, that there is not perhaps another man in Virginia that the same solemn procession would have attended to the grave."

The language of the order of the Council, and the terms employed in this cotemporaneous notice of the funeral procession, appear to be quite conclusive of the fact that the interment was, as Colonel Munford states, in the church-yard of St. John's, Richmond.

Quite extensive inquiry among old citizens of Richmond, who take an interest in matters of this nature, corroborates the conclusion of Colonel Munford, that the grave was on the west side of the church building and not far from the wall.

The precise spot could not now be ascertained, except, possibly, by exploration with the spade. But your committee is of opinion that if such a memorial stone, as seems contemplated by the resolution, were erected on that side of the church, and near the wall, it would be sufficiently near the place of interment to answer the purpose.

The committee, however, is much impressed with the ephemeral character of monuments exposed to the elements. For this reason, and the yet more controlling one, that a memorial such as this Association would be willing to erect, would cost several hundred dollars at the least, they are forced to abandon the idea of a monument at his grave, even if the grave could be exactly located.

But the committee is not willing to recommend that the Association relinquish the purpose of erecting a memento to such a man as Chancellor Wythe.

On consideration, they are of opinion that a mural tablet might be erected which would serve to hold him out to the profession as a great exemplar. Such tablets are not expensive, and, being protected, are practically unlimited in their durability.

The committee would recommend its erection in St. John's church but for the fact that this church is a wooden structure, which places it out of the question. Two other places suggest themselves as equally appropriate. One is the chapel of the College of William and Mary, at Williamsburg, of which institution he was an alumnus. He was long a resident of Williamsburg, and many of his greatest cotemporaries now sleep beneath that chapel.

The other is the room of the new City Hall in Richmond, which is to be set aside for its Chancery Court. We can imagine no greater incentive for the Bar of the present day than to have constantly under their eyes such memorials to the great jurists of the past.

Your committee recommend the passage of the following :

Resolved, That a committee of three be appointed by the President, whose duty it shall be to procure the assent and concurrence of the proper authorities, and cause to be erected, either in the court-room of the Chancery Court for the city of Richmond, in the new court-room to be erected in the city of Richmond for the Court of Appeals, or in the chapel of William and Mary College, a mural tablet, with a suitable inscription, to the memory of Chancellor George Wythe, at a cost not to exceed the sum of two hundred dollars; which sum shall be disbursed for said purpose by the Treasurer, upon the order of the chairman of said committee.

Respectfully submitted.

R. G. H. KEAN,
ROBERT M. HUGHES, } *Committee.*

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