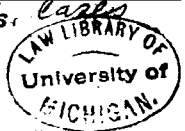


Ca. Supr. Court of appeals. Cases v. 8



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REPORTS

OF

CASES

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5681

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

VOLUME IV.

RICHMOND:

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NOTE BY THE EDITOR.

There is no printed report of the decisions of the first court of appeals, and of those which have been omitted by reporters from that period to the death of *Mr. Pendleton*, although such a work is obviously wanted ; and it is to supply that defect, that the present volume is published : which consists of two parts : the first includes all the important cases determined from the commencement of the first court, to its final dissolution in the year 1789 ; the second contains the unreported cases in the new court of appeals, from that period to the death of judge *Pendleton* in 1803, besides two cases in the general court, and court of admiralty.

THE REPORTER'S PREFACE

TO THE FOURTH VOLUME.

The history of a people is, often, best preserved by their laws and civil institutions; and nothing adds more to the true glory of a nation, than narratives of its wise and impartial administration of justice. The fame, of the Areopagus, survived the military glory of Athens: and when the battle of Marathon, the passage of the Hellespont, and the victory of Salamis, were treated as fables at Rome, (a) the memory of the Grecian laws still lived in the twelve tables of the capital of the Universe. (b)

Impressed with those ideas, the writer of this article commenced at an early, and continued to a later, period of his life, to collect the subjects of the present volume.

The first part of which contains all the important cases, upon the laws and constitution, decided in the first court of appeals, by the judges of the high court of chancery, general court, and court of admiralty; whose members were coeval with the revolution, and distinguished for their talents, and patriotism. This part embraces the period, between the commencement of the first court of appeals, and its final dissolution in March 1789.

The second part contains the unreported cases in the new court of appeals of five judges, from the dissolution of the first, to the death of judge *Pendleton* in October 1803, with one or two cases in other courts.

The work has been prepared with great labour and expense from the notes and memoranda of the judges and lawyers, who attended the courts, and a diligent examination of the records: and although it is probably defective in point of style and arrangement, it is submitted to the public, with great confidence in the fidelity of the reports.

May 1st, 1827.

(a) *Liv. lib.* 28, *cap.* 43. *Juv. Sat.* x. l. 174, &c.

(b) *Adams's Antiq.* 169. 5 *Gibb. Rom. Emp.* 308.

To the Honourable St. GEORGE TUCKER.

SIR,

Having been enabled, by the assistance you kindly lent me, to complete the following work, I venture, without previous application, to inscribe it to you. For, when I review the past scenes of my life, few recollections are dearer to me than the constancy of your friendship : none that inspire warmer gratitude : and I have long wished to evince it by some public testimonial of my esteem for your virtue and talents. The opportunity has, at length, occurred ; and I embrace it with pleasure, hoping that the acknowledgment will be acceptable to you, and that I shall continue to be honoured with your regard, until our days are numbered. That the remainder of your's may be easy, tranquil and happy, is the sincere wish of one who loves and respects you.

I am, sir, your most ob't serv't,

DANIEL CALL.

May 1st, 1827.

NAMES
OF THE
JUDGES OF THE COURT OF APPEALS,
DURING THE
PERIOD OF THIS VOLUME OF REPORTS.

EDMUND PENDLETON, Esquire, *President.*

GEORGE WYTHE.

ROBERT CARTER NICHOLAS.

JOHN BLAIR.

PAUL CARRINGTON.

PETER LYONS.

WILLIAM FLEMING.

BARTHOLOMEW DANDRIDGE.

JAMES MERCER.

HENRY TAZEWELL.

BENJAMIN WALLER.

WILLIAM ROSCOW WILSON CURL.

RICHARD CAREY.

JAMES HENRY.

JOHN TYLER.

RICHARD PARKER.

SPENCER ROANE.

ST. GEORGE TUCKER.

BIOGRAPHICAL SKETCH

OF THE

JUDGES OF THE COURT OF APPEALS,

DURING THE PERIOD

OF

THIS AND THE SUCCEEDING VOLUME OF REPORTS.

Moribus ornes, Legibus emendes.

JUDGE PENDLETON.

“EDMUND PENDLETON of Virginia, was distinguished for talents and patriotism; and was one of the most conspicuous among the great men of that state, during the war of the revolution. His education was defective, but his fine endowments and vigorous application soon remedied that disadvantage. He was for a long time one of the leading members of the house of burgesses of that state; and, in 1773, was appointed one of the committee of correspondence for gaining intelligence of the acts of the British government, and communicating with the colonies. He was a member of the congress of 1774. In 1787, he was appointed president of the convention of Virginia, elected to consider the constitution of the United States, and employed his influence to obtain its adoption. In 1789, he was appointed judge of the United States district court for Virginia, but declined the office. He was, for many years, a judge of the court of appeals of that state, and

its president at the time of his death, which took place at Richmond, 23d October, 1803. He held the first rank as a lawyer and statesman; and was particularly distinguished for the force and clearness of his thoughts, for subtlety in discrimination, and dexterity in argument." *Lemp. Biograp. Dict.*

The foregoing sketch was probably furnished by a distinguished gentleman of this state, who knew Mr. PENDLETON well; and it is mainly correct: but the following additions may, possibly, be deemed interesting.

Mr. PENDLETON was the son of a respectable man, but poor, and unable to give him more than an English education. Mr. *Robinson*, however, the then speaker of the house of burgesses, observing the excellence of his parts, took him to his office, and taught him law. For which kindness Mr. PENDLETON always shewed an honourable gratitude, and was attached to him through life. Under the auspices of his patron, he began to practise in the county courts; where he soon became distinguished, but left them in a few years, and attended the general court, with great eminence, for a long time. During which period, he was, as above remarked, a leading member of the house of burgesses; was elected to the convention which sat at Richmond in 1775; and, upon the death of *Peyton Randolph*, was appointed president, as well of that, as of the succeeding convention of 1776, which framed the state constitution. He was appointed first judge of the high court of chancery soon after it was established; qualified in 1779; and, in consequence thereof, was, *ex officio*, presiding judge of the first court of appeals, until its dissolution in 1789. In the same year, he was made presiding judge of the new court of appeals; and held that situation, with the approbation of all parties, until his death.

He lived in retirement in the country; but never meddled much with rural occupations; and, indeed, in the latter part of his life, he was unable to do so, owing to an accidental dislocation of his hip. His manners were dignified, but polite, easy and engaging; his temper cheerful and social; and his conversation familiar and interesting; particularly among his neighbours and intimates; to whom he allowed full liberty, each to express his sentiments, as he pleased; at the same time that he observed perfect decorum in his own discourses; for he disliked vulgarity, was pious, and could not bear to hear the name of God irreverently used.

He was not what is called a deep reader : yet he frequently read : law books chiefly in the early part of his life ; for I have heard him say, that after the publication of the reports of lord *Raymond*, *Peere Williams* and *Burrows*, he was as fond of reading them as any thing else ; and he certainly was very well acquainted with them. But, at a later period, he read, upon other subjects, in English ; for he had never learned the languages.

He grew early dissatisfied with the administration of the federal government, and continued so ever afterwards, until the election of Mr. *Jefferson*, to whom he was attached. Before and after that period, he wrote several essays, upon political subjects ; which were published in newspapers and pamphlets, and attracted much notice at the time ; for they were founded on practical views, and written with great ability.

His style was not classical, and shewed, occasionally, the defect of his education ; but he was, nevertheless, a distinguished proof, that neither *eloquence*, nor *lucid order*, will ever be wanting, in him, who completely understands his subject.

He is said to have resembled lord *Mansfield*, as much in his person and manner, as in the structure of his mind ; and he certainly entertained a very high respect for the judicial opinions of that nobleman, as if he had an innate sense of congeniality.

As a judge, Mr. **PENDLETON** was a man of the first order of talents. Industrious and methodical in business, he possessed quick perceptions, clear discernment, practical views, great argumentative powers, and a sound judgment. Perfectly acquainted with the statute and common law, as well as with the doctrines of equity, he knew, remarkably well, how to apply them to the habits and exigencies of this country ; which he understood, not only from observation and experience ; but almost by intuition ; and may be truly said, to have been born "*Utilium sagax rerum*," et "*Ad unguem factus*."

JUDGE WYTHER.

MR. WYTHE'S parents, on both sides, were of respectable families: but, as he had little reverence for the merit of ancestry in others, he put no value on it, in his own case. The following sketch of his life was probably furnished by the same hand, which drew that of Mr. *Pendleton*.

“GEORGE WYTHE, chancellor of Virginia, was born in the county of Elizabeth City in 1726. His mother possessed uncommon strength of mind and knowledge, and taught him the Latin language. His education in other respects was defective. At the age of thirty, he abandoned a course of dissipation to which he had addicted himself, and devoted his attention to the acquisition of knowledge. After accomplishing himself in the languages and sciences, he studied law, and commenced its practice. At the opening of the revolution, he, with *Pendleton*, *Henry*, *Mason* and the *Lees*, espoused the cause of liberty, and was one of the distinguished men who were the leaders in Virginia during that struggle. He was, for some time, speaker of the house of burgesses, and in 1775, elected a member of congress, and signed the declaration of independence. In 1776, he was appointed one of the committee to revise the laws of Virginia, and had a principal share in preparing the code, which, with some alterations, was adopted in 1779. He was soon after appointed one of the three judges of the high court of chancery, and afterwards sole chancellor, in which station he continued till his death. He was a member of the convention of Virginia which considered the constitution of the United States, and exerted his influence to obtain its adoption; and he was twice one of the electors of president and vice president of the United States. He died in 1806, on the 8th of June; it was supposed by poison. Chancellor WYTHE was one of the most eminent of the great statesmen and jurists among his cotemporaries. His mind was uncommonly vigorous and rapid in its perceptions, his knowledge of law profound, his uprightness and impartiality preeminent, and his patriotism ardent. He was unambitious of wealth, plain and frugal in his method of life, and condescending and amiable in his manners.” *Lemp. Biogr. Dict.* This delineation, like that in the case of Mr. *Pendleton*, is in the main correct;

but there are slight errors, and some omissions, which it will be proper to notice : and that will be best done by a more general account of his life.

Mr. *Keith*, a quaker gentleman of a good fortune, migrated from Great Britain to the town of Hampton in Virginia, about the year 1690. He was well educated, and I have seen, in Mr. WYTHE'S library, a folio volume written, by him, upon mathematical and other subjects. He had five daughters : One of whom married Mr. *Walker*, a wealthy gentleman on Back river near Hampton, whose son afterwards removed to the county of Brunswick ; another married Mr. *Wray* of Hampton, the ancestor of the present family of that place ; another married Mr. *Dewee* a lawyer of distinction, who settled in the county of Prince George, about four miles below Petersburg, and died without issue ; another married Mr. *Taylor*, the captain of a merchant ship, who likewise settled in the county of Prince George near Petersburg, and was possessed of a moderate, but independent estate ; and the other married Mr. *Wythe* of the town of Hampton, who owned a good farm on Back river, and died intestate, survived by his wife, a daughter and two sons, *Thomas* the eldest, who was his heir at law, and *GEORGE*, the subject of this essay, a small boy. As the widow and her son *GEORGE* were not left wealthy, she undertook his education herself ; but only taught him the Latin grammar, and to read the colloquies of *Corderius* very imperfectly, as he told me. After which, she sent him to Prince George, to study law, under Mr. *Dewee* ; who treated him with neglect, and confined him to the drudgery of his office, with little, or no, attention to his instruction in the general science of law. So that, upon his return to Elizabeth City, in the course of a year or two, he had made little progress ; but he then applied himself, with great assiduity, unassisted by any tutor, to the study of the law, the dead languages, and liberal sciences, until the death of his mother ; and that of his brother, who died intestate, and without issue. Upon the happening of which events, he succeeded to a comfortable estate ; and, from that period, the following sketch, taken from the Encyclopedia, may be considered as, tolerably, correct.

“ The death of both his parents, before he came of age, and the uncontrolled possession of a large fortune, led him, for some time,

into a course of amusement and dissipation. At the age of thirty, however, his conduct underwent an entire change. He applied himself vigorously to the study of law; and soon after his admission to the bar, his learning, industry, and eloquence made him eminent. For several years previous to the revolution, he was conspicuous in the house of burgesses; and, in the commencement of the opposition to England, evinced an ardent attachment to liberty. In 1764, he drew up a remonstrance to the house of commons, in a tone of independence too decided for that period, and which was greatly modified, by the assembly, before assenting to it. In 1775, he was appointed a delegate to the continental congress, in Philadelphia. In the following year, he was appointed, in connexion with Mr. *Jefferson* and others, to revise the laws of Virginia; a duty which was performed with great ability. In 1777, he was elected speaker of the house of delegates; and, during the same year, was appointed a judge of the high court of chancery of the state. On the new organization of the court of equity, in a subsequent year, he was appointed sole chancellor. A station which he filled for more than twenty years. In 1787, he was a member of the convention which formed the federal constitution; and, during the debates, acted, for the most part, as chairman. He was a strenuous advocate for the instrument adopted. He, subsequently, presided twice successively in the college of electors, in Virginia. His death occurred on the 8th of June 1806, in the eighty-first year of his age. It was supposed he was poisoned; but the person suspected was acquitted by a jury. In learning, industry and judgment, chancellor WYTHE had few superiors. His integrity was never stained even by suspicion; and, from the moment of his abandonment of the follies of his youth, his reputation was unspotted. The kindness and benevolence of his heart were commensurate with the strength and attainments of his mind." *Encyclop. Americ.*

The following additional circumstances will not be uninteresting.

The independent conduct of Mr. WYTHE never lost him the esteem of government; for he was intimate with all the royal governors, except lord *Dunmore*, whose want of literature and habits were not agreeable to him. He was several times clerk of the house of burgesses, which was considered as an honourable office; and in his election to that and the speaker's chair he was supported

by the government party. His great reputation and literary attainments made Mr. *Jefferson*, at leaving William & Mary college, desirous of studying law, under his instruction: Which, by the intervention of one of the professors, with whom Mr. WYTHE was very intimate, was effected; and, during that period, a friendship was formed between them, which was ardent and uninterrupted through life. He was one of the most active men of the time in favour of the revolution; wore a hunting shirt, carried a musket, and joined the military parades, which took place at Williamsburg, during the latter part of lord *Dunmore's* government. As a judge of the high court of chancery, he was, necessarily, one of the judges of the first court of appeals; where he was the most forward, in favour of the power of the court to declare an unconstitutional law void: and his argument, upon that subject, in the case of the *Commonwealth* against *Caton and others*, will ever remain a monument to his honour. In 1781, he was appointed professor of law in the college of William & Mary; and performed the duties of the office, with great ability and usefulness, until the year 1789, when he resigned it, and removed to the city of Richmond, that he might be nearer to the scene of his judicial occupations, and more convenient to those, who had occasion to apply to him, as judge, during vacation. He possessed a good constitution; but exposed it too much, even to the last years of his life, to cold and hardship, in order to save time, and not molest others. He died venerated by his country; was honoured with a public funeral; and his eulogy was pronounced by Mr. *William Munford* one of his pupils, and then a member of the executive council.

Mr. WYTHE's person was handsome, and his manners polished. In private life, he was every way amiable: a dutiful son, affectionate brother, fond relation and benevolent man. Always polite, modest and upright.* Sometimes facetious with his friends, his general deportment was reserved; for although he neither lacked quickness of parts, nor colloquial talents, his temper was cautious and taciturn, unless roused by some improper remark; when he was apt to retort with great severity. For he possessed dry humour

* No man ever better merited the character drawn by *Suetonius*, the historian, " *Fuit morum lenissimorum, verecundiæ virginatis, formæ pulchræ, pietatis erga matrem et sororem et amitam exemplo sufficientis. Fuit frugi et pudicus.*

and considerable wit; and indulged in sarcasm, when treated with indignity or irreverence.*

In debate, Mr. *Pendleton* was more captivating, Mr. WYTHE more argumentative. "*Cæsar ne priorem, Pompeius ve parem,*" was a question which produced no animosity between them, but which the world never decided. *Patrick Henry*, however, gave a remarkable proof of his estimation of Mr. WYTHE, when he said "shall I light up my feeble taper, before the brightness of his noon tide sun? It were to compare, the dull dewdrop of the morning, to the intrinsic beauties of the diamond."

As a judge, Mr. WYTHE was industrious, and attentive to the business of the court. He possessed clear discernment, great powers of investigation, and deep learning, as well in the municipal law of his own country, as in the civil law, and that of nature and nations. Independent in his judiciary, as well as in every other situation, he was inflexibly just and impartial in his decisions; and gave the first judgment that was ever rendered, here, in favour of the right of a British subject to recover, under the treaty of peace, debts due, to him, before the revolution: which, for the moment, created some disgust; but the recollection, of his firmness and integrity, soon wiped off the impression, and restored him to the esteem and affections of his countrymen.

In 1795, he published a work under the title of "*Chancery Decisions,*" in order to review particular sentences of the court of appeals, reversing some decrees made by himself. The book is written in a stiff and affected style; but is very caustic, and animadverts, with great asperity, upon the judgments of the court of appeals.

Mr. WYTHE, even after death, continues to benefit mankind, as a noble example to rising generations, of what virtue, industry and

* This quality, as well as the intrepidity of his character, was shewn one day in the general court, where lord *Dunmore* the governour presided, of course, as chief justice. The occasion was as follows; Mr. WYTHE and Mr. *Nicholas* were engaged on one side of a cause, Mr. *Pendleton* and Mr. *Mason* on the other. The suit being called, Mr. WYTHE urged the trial of it; Mr. *Pendleton* wished it continued, as Mr. *Mason* was absent, and there were two counsel on the other side. When lord *Dunmore*, forgetting the dignity of his situation, had the indelicacy to say to Mr. *Pendleton*, go on; for you'll be a match for both of them. "*With your lordship's assistance,*" answered Mr. WYTHE, bowing politely. The governour and court felt the stroke; but neither had any thing to say: for the sting was deserved, and the spectators were delighted, at the pang, it produced.

perseverance, unaided by tutors and adventitious circumstances, in the acquisition of knowledge, and promotion of the public service, can effect; evincing the remark of *Buonaparte*, that "every man in this world is the child of his own actions."*

JUDGE NICHOLAS.

ROBERT CARTER NICHOLAS was a gentleman of family and fortune. He was bred to the law; and practised, with reputation, in the general court under the royal government. He took no part in the opposition to the government, until the convention of 1775; but, from that period, he was an ardent friend to the revolution; and very active in maintaining it. In 1766, upon the death of Mr. *Robinson*, he was appointed, by the lieutenant governor, treasurer of the colony; that appointment was confirmed by the assembly in November; and continued, by successive elections, until July 1776; when he resigned the office, and received the following honourable testimonial of the legislature at the October session: "Whereas ROBERT CARTER NICHOLAS, esquire, hath been, from time to time, appointed and continued treasurer of this commonwealth, to receive all taxes and duties imposed by an act of general assembly, or ordinance of convention, and pay the same away in discharge of the demands against the public, which office he hath *faithfully* discharged, and the accounts of the treasury have been examined, and passed by the general assembly to the nineteenth day of October last past; and whereas, by the constitution of government as settled by the last convention, all persons holding lucrative offices are declared incapable of being elected members of either house of assembly, and the said ROBERT CARTER NICHOLAS, rather than incur such incapacity, hath made his election to resign the said office of treasurer." 9 *Hen. Stat. at Large*, 499. He was elected a member of the assembly for the two next years; and, in 1779, was appointed one of the judges of the high court of chancery;

* *In hoc viro tanta vis animi ingeniique fuit, ut quocumque loco natus esset, fortunam sibi isse facturum fuisse videretur. — Invicti à cupiditatibus animi, and rigida innocentia; contemptor gratiæ, divitiarum; in parsimonia, in patientia laboris periculique, ferrei prope corporis animique: quem ne senectus quidem, que solvit amnia, frigerit. Lev. lib. xxxix. cap. xl.*

whereby he, necessarily, became a judge of the first court of appeals. He was a good lawyer; and a man of integrity and sound understanding; but as he died in 1780, his judicial character had not developed itself, although it is probable, that, if he had lived, he would have proved an ornament to the bench: for I have seen a book of manuscripts, part of which were attributed to him, and denoted high talents. He was a church going man, very religious, and fond of polemical discussions upon divinity. He was on terms of great friendship and familiarity with lord *Botetourt*, then governour of Virginia, who was also religious, and a church going man, whose disposition was kind and happy; who had an ample fortune, kept a splendid and hospitable court; possessed fine manners; and was gracious, courteous, benevolent and attentive to the interest of the colony: qualities, which endeared him to every body, and rendered him exceedingly popular; and to whose memory a marble statue was erected, at the public expence, in the lobby of the house of burgesses. One day Mr. NICHOLAS said to him, My lord, I think you will be very unwilling to die; and was asked his reason; because, said he, you are so social in your nature, are so much beloved, and have so many *good things* about you, that you must be lothe to leave them. His lordship made no reply; but, some considerable time afterwards, being on his death bed, he sent in haste for Mr. NICHOLAS; who lived near the palace, and instantly repaired thither, to receive the last sighs of his dying friend. 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; after which, he grasped his hand with warmth, and instantly expired. This scene, it will be recollected, bears a strong resemblance to that of the last moments of Mr. *Addison*; but the difference between them is, that Mr. *Addison's* was ostentatious, and contained admonition and reproach; lord *Botetourt's*, equally instructive as an example, was free from asperity, and graced with the charm of a tender adieu to an affectionate friend. Mr. NICHOLAS, in private life, was amiable, a good family man, and much esteemed: His death was consequently deplored by his relatives, and regretted by his acquaintances. He left four sons, *George, Wilson C., John* and *Philip N.*, all men of distinguished abilities.

JUDGE BLAIR.

JOHN BLAIR was a descendant of commissary *Blair*, former president of the council of Virginia. He was a gentleman of fortune, and powerful family connexions. He was bred a lawyer, studied at the temple in London, and took a barrister's degree there. Upon his return to his native country, he settled in Williamsburg, and commenced the practice of the law in the general court; where he had a respectable share of business, and was supposed to have some influence in the council of state, of which he was for several years president. He possessed great benevolence and goodness of heart, which were put to a severe trial in the case of *Col. Chiswell*: for the attorney general, on account of his near connexion with the accused, threw himself upon the friendship of the bar; and Mr. BLAIR was selected, by lot, to conduct the prosecution; but *Col. Chiswell* (who would probably have been acquitted, as the provocation from his adversary was very great, as I learned from an old gentleman, some years ago, who was present, at the rencounter,) disdaining to submit to a trial, put an end to his own existence, and thereby relieved the anxiety of his friend, and intended prosecutor. In 1766, he was elected a member of the house of burgesses, and was one of the committee of the convention of 1776, which drew up the plan of government for the state. In 1779, he was made chief justice of the general court; and upon the death of *Mr. Nicholas*, in 1780, he was appointed a judge of the high court of chancery: and, by virtue of both stations, was necessarily a judge of the first court of appeals. In 1787, he was one of the convention, which framed the federal constitution; and was a member of that which ratified it in 1788. In 1789, he was made a judge of the supreme court of the United States, but resigned the office in a few years afterwards. "He discharged the duties of the several important situations to which he was advanced with ability; and was preeminent, in private life, for amiability, blamelessness, and piety. He died, at Williamsburg, August 31st, 1800, in his 69th year." *Lemp. Biogr. Dict.*

JUDGE CARRINGTON.

PAUL CARRINGTON the elder was descended from a respectable family in Charlotte county. He was the eldest son of a wealthy gentleman, who died intestate; and, consequently, was his heir at law; but generously divided the estate with his brothers and sisters. He was bred a lawyer; and practised, in the county courts, with reputation and profit. He was several times elected to the house of burgesses; and, in all the political struggles of the day, took a decided part with the colonies. He was elected to the convention of 1775; appears, by the journal of their proceedings, to have been an active member; and was appointed one of the committee of safety. He was present, at the convention, during all the session of 1776; and assisted in framing the constitution. His patriotism was ardent; and, in 1779, he was appointed second judge of the general court, whereby he became a judge of the first court of appeals; and, upon the translation of Mr. *Blair* to the high court of chancery in 1780, he became chief justice of the general court. In 1789 he was appointed a judge of the new court of appeals, consisting of five judges. As a judge he was upright and impartial; and his opinions were respected. From conscientious motives, he resigned his office in 1807, at the age of 75, although his faculties were still perfect, through fear that he might, without perceiving it, be found lingering on the bench, after the increase of years had rendered him unable to perform the duties of it. From that time, he lived in retirement, contented and happy. A good citizen, a just man, and a sincere christian. He died at the great age of ninety-three, universally loved and respected.

JUDGE LYONS.

PETER LYONS, a native of Ireland, migrated to Virginia, at an early period of his life, and studied law, under Mr. *Power*, an English gentleman, whose daughter he married, and succeeded to his practice, in the county courts; which was very profitable. Upon the death of his wife, he married a lady of considerable connexions,

and commenced practice in the general court. In the contest with Great Britain, he took part with the colonies, and was a friend to the revolution. In 1779, he was made third judge of the general court; and thereby became, *ex officio*, a judge of the first court of appeals. In 1789, he was appointed a judge of the new court of appeals, consisting of five judges, and continued so, until his death. As a man he possessed great integrity and urbanity: as a judge, he was upright and impartial; had a sound understanding, was deeply read in the law, and his judgments were highly respected.

JUDGE FLEMING.

WILLIAM FLEMING, born of a respectable family, in Chesterfield county, was bred to the law; and practised, in the county courts, with success. He took part with the colonies in their disputes with the mother country; was elected to the convention of 1775; and was decidedly in favour of the revolution. In 1779, he was made a judge of the general court; and consequently of the first court of appeals. In 1789, he was appointed one of the judges of the new court of appeals; which station he held the rest of his life. He had good sense; was an ardent patriot; and a very upright judge: Indulging in no theories or subtilities, his opinions were on the honest side of the cause; and, always aiming to decide rightly, he generally attained his object.

JUDGE DANDRIDGE.

BARTHOLOMEW DANDRIDGE was a gentleman of distinction in New Kent county. He was bred a lawyer; and practised, with reputation, in the county courts. He had powerful connexions; and, throughout the contest with Great Britain, took part with the colonies. He was elected to the convention of 1775, and appears to have been an active member on the side of liberty and the revolution. In 1779, he was appointed a judge of the general court;

and was, consequently, a judge of the first court of appeals. He was a very honest man; and as a judge he was upright and impartial; displayed good sense; and was esteemed by the court and bar.

JUDGE MERCER.

JAMES MERCER was bred a lawyer; and after attending the county courts for some time, he practised in the general court. In the struggle with Great Britain, he took part with his native country, and was a zealous patriot. He was elected to the conventions of 1775, 1776; and was a decided friend to the revolution. In 1779, he was appointed a judge of the general court; and was, of course, a member of the first court of appeals. In 1789, he was appointed a judge of the court of appeals consisting of five judges, and died in the city of Richmond while attending a session of the court. He possessed a sound understanding; was an honest man, a learned lawyer, and an impartial and upright judge.

JUDGE WALLER.

BENJAMIN WALLER was descended from respectable parents, and bred a lawyer. He was appointed clerk of the general court; performed the duties of the situation, with great promptitude and integrity; and was much esteemed by the court and bar. The best clerks were instructed in his office; and, among others, Mr. *John Brown*, the former clerk of the court of appeals. He was practical in his views; well read in the law; and very attentive to the decisions of the court; which created such confidence in his judgment, that he was frequently appealed to, by the court, for aid in solving difficulties; and was oftener consulted as chamber counsel, than the most celebrated members of the bar. The opinions he gave were always expressed with great brevity and clearness; and gene-

rally convincing to those who advised with him. Notwithstanding the most unwearied application to the public business, he yet found time to pursue a profitable practice in the county courts. Many of the young gentlemen of the country studied law in his private office, with great advantage; for, as he was very industrious in his own pursuits, he required diligence in theirs; examined them daily in the books they were reading; and explained the passages, which they did not understand. He took side with the colonies in the struggles with the mother country, and supported the revolution. In 1777, he was made presiding judge of the court of admiralty; and consequently one of the judges of the first court of appeals. He was polite and cheerful; conversed freely with his friends and acquaintances; and was very communicative and obliging to young men. He presided, with great dignity, in the court of admiralty; decided the causes very properly; but gave no reasons for his judgment. His opinions were respected in the court of appeals; but he never attended its sessions after it was transferred to the city of Richmond, alledging, that he had agreed to accept the appointment, upon condition, that he should not be obliged to attend the court out of Williamsburg. He died regretted by his friends, and universally respected.

JUDGE CURL.

WILLIAM ROSCOW WILSON CURL, born in the lower parts of Virginia, was bred a lawyer, and practised, with reputation, in the county courts. At the beginning of the contest with Great Britain, he took part with his native country; and, through all her struggles, was a firm patriot, and steady friend to the revolution. In 1777, he was appointed a judge of the court of admiralty; and thus became a member of the first court of appeals. But, as he died shortly afterwards, his judicial character is little known.

JUDGE CAREY.

RICHARD CAREY was descended from a respectable family in the county of Elizabeth City; was bred a lawyer; and practised with success in the county courts. In the conflicts with Great Britain, he took part with his native country; and was a zealous supporter of her rights. In 1777, he was appointed a judge of the court of admiralty; and succeeded Mr. *Waller* as presiding judge. As judge of that court, he necessarily became a judge of the first court of appeals. He presided with sufficient ability in the court of admiralty; and, upon the establishment of the court of appeals of five judges, he was made a judge of the general court, and continued so, until his death. He possessed a good understanding; was facetious and condescending in his manners; had some taste for *belles lettres*; and was fond of botannical studies, in which, he is said to have made considerable progress.

JUDGE HENRY.

JAMES HENRY was a native of Scotland, but migrated, at a very early age, to Philadelphia; where he studied law; and afterwards settled on the eastern shore of Virginia. He was well read in the learning of his profession; and practised, with great reputation, in the county courts. He took part with his adopted country in the contest with Great Britain; and was an ardent friend to the revolution. After the declaration of independence, he was, for several years, a member of the legislature; took great share in its proceedings; was considered as an able reasoner; and his opinions were very much respected by the house of delegates. In 1779, he was appointed a judge of the court of admiralty; and consequently became a judge of the first court of appeals. In 1789, he was made a judge of the general court: which office he held for several years; and then resigned it. He was a very honest man, and an upright judge. He possessed a sound understanding; and his decisions were argumentative, learned and convincing.

JUDGE TYLER.

JOHN TYLER was born of respectable parents, in Charles City county; studied law under *Robert Carter Nicholas* in Williamsburg; and retained an attachment to his family ever afterwards. He practised, in the county courts, with success, and reputation. In all political controversies he was on the side of liberty; and, in the contests with Great Britain, took part with the colonies; displayed great patriotism towards his native state, and was a zealous friend to the revolution. After the declaration of independence, he was, for several years, a member of the legislature, and ultimately speaker of the house of delegates. In 1786, he was appointed a judge of the court of admiralty, and was consequently a member of the first court of appeals. In 1789, he was made a judge of the general court; and performed the duties of the office without reproach. In 1808, he was made governour: and, in 1811, judge of the district court of the United States for Virginia; which office he held until his death. In all his public situations, he maintained an independence of character, which was highly honourable to him. His parts were quick, his judgment sound, and his manners popular. He disliked law books, and particularly those of England; but was fond of light works, and political tracts in favour of republican doctrines. He was very attentive to young lawyers, upon their first coming to the bar; and did every thing, in his power, to put them at ease, and inspire them with confidence. His conversation was familiar, his heart benevolent, and his friendship sincere. He left a son, who has since been governour; and is now a distinguished senator of the United States.

JUDGE TAZEWELL.

HENRY TAZEWELL, a young gentleman of fortune, studied law under Mr. *John Tazewell*, his relation at Williamsburg; and married the daughter of Mr. *Waller*, who was afterwards judge. He attended the county courts for a short time, but soon commenced practice in the general court, and continued it, with profit, until

the year 1785, when he was made a judge of the general court, and consequently of the first court of appeals. He was a friend to the revolution; and before his elevation to the bench, served several years in the legislature, where he was considerable in debate; and had great influence in the public councils. In 1793, he was appointed a judge of the court of appeals consisting of five judges; and, in 1795, a senator of the United States. In all the public situations which he filled, he was a firm patriot, and a friend to the liberty of the citizen. Blessed with a sound understanding, he was a worthy man, a good lawyer, and an excellent judge. He disliked the course pursued in the administration of the general government; and in the senate adhered to the republican party. He left one son, a gentleman of eminent talents, and lately a senator of the United States.

JUDGE PARKER.

RICHARD PARKER was born of respectable parents in the Northern Neck of Virginia; bred a lawyer, and practised, in the county courts, with great reputation. He was fond of literary pursuits and literary men; very early experienced the notice and regard of the *Lee* family, then celebrated for their erudition; and, upon his first appointment to the general court, I remember to have heard Mr. *Wythe*, who was in great friendship with that family, say, that he was considered as a very sensible man. In all the contests between Great Britain and the colonies, he took part with his native country; was an ardent friend to the revolution; and during his whole life, devoted to liberty. As a lawyer he was learned; as a judge upright, collected and discreet; and as a man amiable, polite, sprightly and agreeable. He was appointed a judge of the general court in 1788; qualified as a judge of the first court of appeals in October of that year; and was one of the judges who signed the act of resignation on the 5th of March, 1789. He had three sons in the revolutionary army: the eldest of whom was a colonel in the Virginia line, a gallant officer, and killed, by the British, during the siege of Charlestown, regretted by his friends, and lamented by his father.

JUDGE ROANE.

SPENCER ROANE was born in the county of Essex, on the 4th of April, 1762, of a very respectable family. He was put to the best schools in the neighbourhood, to learn the dead languages; and made considerable progress in them. At the proper age, he was sent to William & Mary college, where he went through the usual academic courses, with reputation; attended the lectures of chancellor *Wythe*, the professor of law; and afterwards commenced practice in the county courts; but, having a strong inclination to politics, he soon turned his attention that way, and obtained a seat in the legislature; from whence, he was, in a short time, transferred to the executive council; where he did not long remain; for, on his marriage with a daughter of *Patrick Henry* the governour, he returned to his paternal estate, resumed the practice of the law, and was elected, again, into the legislature: in which occupations, he was engaged, until the year 1789, when he was made a judge of the general court; where he continued, until the year 1794; when, upon the translation of *Mr. Tazewell* to the senate of the United States, he was appointed a judge of the court of appeals. From that time, he read law assiduously, and became very well acquainted with some of the most popular of the modern reporters, particularly *Burrows* and *Atkyns*. This, together with the natural vigour of his understanding and his other literary attainments, soon rendered him one of the most distinguished members of the bench, second, only, in public estimation, to *Mr. Pendleton*; and, upon the death of that gentleman, he was, beyond dispute, the ablest judge of the court. His perceptions were distinct, his judgment strong, and his powers of reasoning great; but, from the want of an earlier application to chancery studies, he did not possess that happy turn, for mixing law and equity together, which was so conspicuous in *Mr. Pendleton*. His opinions however were generally sound, and their authority almost incontestible. In all of them he inclined to the side of liberty; but had a due regard to the rights of property, and the just claims of creditors. He abhorred oppression, and the arbitrary assumption of power by courts, or individuals; and never thought the end justified illegal means to obtain it.

His judicial pursuits did not suppress his turn for politics. He belonged to what was called the republican party; or, in other words, to the school of Mr. *Jefferson*; and, although he never neglected the business of the court, he was much engaged in the political controversies of the day: and frequently wrote in the newspapers concerning them. He had honourable and laudable ambition: but, being from feeling and education a republican, he hated aristocracy, and family pride, as well in those of his own party, as in those of the opposite side.

He had taste for *belles lettres*, although his reading was chiefly confined to law, history and politics. His style was nervous, often eloquent, but sometimes careless.

He was, twice, one of the persons appointed to revise the laws of the state; and several times one of the college of electors of president and vice president of the United States. In both situations, he gave satisfaction; and was one of the commissioners for locating the university of Virginia.

Mr. *Jefferson*, it is said, wished him, at the expiration of Mr. *Monroe's* term, to be run as vice president under Mr. *Crawford*, with a view, that he might succeed the latter, as president; and had he lived, and Mr. *Crawford's* health continued, it is probable the event would have been accomplished.

As a man, Mr. ROANE was benevolent, social, and a friend to general order. His patrimony was small; but he improved it, and left a very comfortable estate. He died at the age of sixty, on the 4th of September, 1822, survived by his second wife, a lady whose amiable disposition rendered her interesting in life, and lamented in death.

*"Dignum laude virum musa vetat mori:
"Cælo musa beat."*

JUDGE TUCKER.

ST. GEORGE TUCKER was born of respectable parents in the island of Bermuda, where he commenced the study of the law, but migrated to Virginia, before the revolution, in order to com-

plete his academic exercises in William & Mary college : where he was entered as soon as he arrived, and went through the classes, with success and approbation. His urbanity, social disposition and literary attainments, introduced him into the best company and fashionable circles of the city ; and his general good conduct and deportment procured him the favour of most of the distinguished gentlemen of that place. When he had completed his college courses, he resumed the study of the law, settled permanently in Williamsburg, and commenced practice in the county courts ; but, upon the breaking out of the disturbances with Great Britain, he took part with his adopted country, laid aside his legal pursuits, and engaged in other occupations. About the year 1777, he married *Mrs. Randolph*, the widow of *Mr. John Randolph* of Matoax in Chesterfield county, a lady of exquisite understanding, and great accomplishments, whose taste and sentiments corresponded with his own, and mutual affection blessed their union. Upon that event, he changed his residence to Matoax, where he led, for many years, a life of ease and elegance, amid literary pursuits, and the society of wealthy and fashionable neighbours, part of whom were men of letters. His politeness, good breeding, and ardour in the American cause, soon attracted the notice of the authorities of the county, and he was made a colonel of the militia, to the satisfaction of every body ; but he still continued in the enjoyment of domestic felicity, and attention to his private affairs, until the invasion of North Carolina by lord *Cornwallis*, when he took command of the Chesterfield militia, joined general Green's army, and distinguished himself, very highly, by his courage and good conduct, at the battle of Guilford courthouse. This rendered him very popular with the militia, and was the source of his future appointments to office : After the peace, the prospect of a growing family, induced him, once more, to enter on the practice of the law in the county courts ; where he soon arrived to eminence, and was second to none of his competitors ; but, in a few years, he left that theatre, and attended the superior courts, with considerable reputation, respected by all the court and bar, and beloved by *Innis* and *Marshall*. In the latter part of 1788, he lost *Mrs. Tucker* ; and, upon that melancholy event, returned to Wil-

Williamsburg, and engaged in the pleasing occupation of educating his children; about which period, he was appointed a judge of the general court; the duties of which he performed with assiduity and ability; and was considered as decidedly the most learned judge of the court, after Mr. *Tazewell* left it. During that period he was one of the persons appointed to revise the laws, and was very active and useful in the execution of the work. In 1803, he was, upon the death of Mr. *Pendleton*, appointed a judge of the court of appeals; where he continued, with distinguished ability, for several years; but resigned the office in 1811; and, in 1813, was made judge of the district court of the United States, for the eastern district of Virginia: which situation he held for several years, but resigned it, in consequence of the decline of his health.

As a judge, Mr. *TUCKER* was diligent, prompt and impartial. He kept a note book of all that was done in court; in which his own opinions are written at large, but the concurrence or dissent, only, of the other judges, is mentioned. His opinions are generally learned and sound; but sometimes a little tinctured with technicality, arising I believe from his having been entered in a special pleader's office in Bermuda, in order to learn that intricate science; which gave a bias to his mind, that he never, entirely, got rid of.

In 179—, he married Mrs. *Carter*, the relict of *Hill Carter, Esq.* of Curratoman, and daughter of Sir *Peyton Skipwith*, a lady of high endowments; who proved a comfort to him in sickness and in health, and survives to weep over his tomb.

Soon after he became a judge of the general court, he was appointed professor of law in William & Mary college; and published an edition of Sir *William Blackstone's* Commentaries, comprizing some very ingenious disquisitions upon the federal constitution, the law of descents, and several other important subjects; a work of great ability, and necessary to every student and practitioner of law in Virginia.

He was fond of politics, and wrote several tracts of that kind, upon interesting subjects. One of which, written about the year 1786, upon the propriety of making Norfolk the great port of entry for the state, I remember to have read at the time, and thought it well worth the consideration of the legislature.

He was attached to Mr. *Jefferson*, and belonged to what is called the republican party; but was liberal and just towards his political adversaries, with many of whom, he lived in great friendship.

He was a well informed scholar; fond of *belles lettres*; and wrote very good poetry: Some of which (particularly a translation of the *Integer vitæ* of *Horace*, some original odes, and a piece upon the surprize of the Hessian troops, at Trenton, by general *Washington*) was much admired. His style was easy, grammatical, flowing and neat.

In private life, Mr. TUCKER was very amiable. Exemplary as a husband, parent, and step father,* he was benevolent and upright, a good neighbour, agreeable companion, and sincere friend. He had no children by his last wife, but four by the first; two of whom died in his lifetime: the other two are still living—*Henry St. George*, president of the court of appeals; and *Beverley*, a judge of the state of Missouri. Mr. *George Tucker*, professor of moral philosophy in the university of Virginia, was his near relation.

He died, in November 1827, after a long and painful illness, deplored by his relatives and friends, and mourned by one, who still cherishes the remembrance of him, with affection, and will continue to cherish it, while life remains.

* This trait in the character of judge TUCKER was proverbial among his acquaintances every where; and I remember to have heard a brother of mine (the father of the present general *Call*) who married a niece of Mrs. *Randolph* of *Curl's*, and was thus occasionally thrown into circles, where he sometimes met the *Matoax* family, once say, that "Mr. TUCKER must be one of the best fathers in law in the world; or his step children would not be so fond of him." To which I add, that Mr. *Richard Randolph*, the eldest of them, retained very warm affection and high respect for him during his whole life. There was great intercourse between the families. Mr. *Randolph's* family often went to judge TUCKER's, and I have seen the children of judge TUCKER, at *Bizarre*, but a short time before Mr. *Randolph's* death: And, after Mr. *Randolph* died, the intercourse was still kept up, until the death of his wife. Indeed Mr. *Randolph's* esteem for judge TUCKER approached to reverence. He considered him as a parent; and I never heard him mention him, (although he often mentioned him) without the respectful appellation of "*My father.*"

ADDENDA.

At the end of the Biography of Judge PENDLETON, add:
He was honoured with a public funeral; and his eulogy was pronounced by Mr.
Edmund Randolph.

ERRATA.

In the biography of Judge PENDLETON, in the last line, page ix. read *Unguem* for *Ungeum*.

In the note at the star, at the end of the biography of Judge WYTHE, page xv. in the second line, read *ipse*, for *isse*. In the same line, read *et* for *and*.