

GENESIS AND BIRTH OF THE FEDERAL CONSTITUTION

*Addresses and papers in the Marshall-Wythe School
of Government and Citizenship of the
College of William and Mary*

EDITED BY

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"We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted, not as reaching out for new guaranties of the rights of the citizen, but as securing to every individual such as he already possessed as a British subject—such as his ancestors had inherited and defended since the days of Magna Carta"—(*Mr. Justice Brown in Mattox vs. U. S., 156 U. S., p. 243*)



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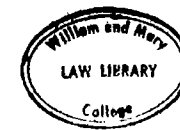
TORONTO

New York

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1924

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39162

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Set up and printed.
Published October, 1924

KF
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Printed in the United States of America by
THE FERRIS PRINTING COMPANY, NEW YORK.

PREFACE

In the summer of 1920 a movement was inaugurated to establish at the College of William and Mary the Marshall-Wythe School of Government and Citizenship, and a committee consisting of Messrs. Alton B. Parker of New York, Albert J. Beveridge of Indiana, William Marshall Bullitt of Kentucky, Hampton L. Carson and William A. Glasgow, jr. of Philadelphia, H. Snowden Marshall of New York, and J. K. M. Norton, Robert R. Prentiss, H. St. George Tucker and Thomas H. Willcox of Virginia, kindly consented to sponsor the movement.

Soon thereafter a circular was issued by Judge Alton B. Parker, chairman of the committee, from which the following extracts are taken:

THE MARSHALL-WYTHE SCHOOL OF GOVERNMENT AND CITIZENSHIP

AT THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

"Next after that truth on which the eternal welfare of man depends, what study can be so important to the youth of this republic as that of our own institutions? What work of man deserves so much to engage your attention as those charters in which your rights and your duties are alike defined? What philosophy so worthy of your profoundest thoughts as the philosophy of government? . . . The function of a sovereign citizen is an affair not of right alone but of duty also; and he who presumes to act in that exalted character, far from being subject to no law but his own will, no reason but his own caprice, is exercising a high duty to which he is called by God Himself, whose unworthy instrument he is, in his great work—the moral government of man."—JUDGE BEVERLY TUCKER, to his Law Class at William and Mary, in 1845.

To inculcate sane views of our form of government is conceded to be an important function of education. The

intelligent exercise of American citizenship, as a patriotic duty, must be regarded as a subject of major importance in our colleges.

The establishment of such a school at the ancient College of William and Mary, founded in 1693, at Williamsburg, Virginia, is contemplated. No better site could be selected than this, midway between Jamestown and Yorktown, where many stirring scenes in our colonial and revolutionary drama were staged. The very atmosphere is an education in the science of government—like a laboratory to the physical sciences.

No college has higher claims upon the Nation. She educated Thomas Jefferson, who drew the Declaration, Edmund Randolph, the able coadjutor of Madison in the Federal Convention, and James Monroe, who gave us the Monroe Doctrine.

Founded in 1779 and continuing to the Civil War, William and Mary's Law School was the oldest in this country. Its sole predecessor in the Anglo-Saxon world was the Vinerian Chair at Oxford, where Sir William Blackstone lectured. Chief Justice Marshall, the expounder of the Constitution, was a law student at William and Mary, under George Wythe, Signer of the Declaration, and father of legal instruction in America.

This law school educated four justices of the United States Supreme Court, more than half the judges of the Virginia Court of Appeals, and countless incumbents of *nisi prius* courts, both State and Federal.

* * *

The great need of present-day education is to train the coming generation to a conception of the duties of citizenship as well as its privileges. The treatment for anarchy should be prophylactic rather than curative. This school is

intended, not for expectant lawyers alone, but for expectant citizens; though the full course will have in view an adequate preparation for public life in legislative, educational, or diplomatic lines, as well as legal. It is, however, an academical course, designed to lead to the A. B. degree. The preliminary subjects are already being given at the College, as follows:

First year: English, Mathematics, Science, Latin.

Second year: English, Latin, French (with Spanish or Italian as electives), Political Science, History, Psychology.

Third year: History, Economics, Philosophy, Finance and Commerce.

The plan is to enlarge the foregoing by adding two chairs:

1. JOHN MARSHALL CHAIR OF CONSTITUTIONAL HISTORY AND LAW

Designed as a memorial to the great Chief Justice. It would show the gradual evolution of government from the very beginnings, teaching history from its economic and political rather than its military side. It would review the Greek forms of government and leagues, which were familiar to the draftsmen of our Constitution (and had been taught to a number of them at William and Mary), and on which some features of our Constitution were modeled. (Fiske, "Political Ideas," p. 76; Freeman, "History of Federal Government," Ch. 5.)

It would discuss the Roman form and subsequent European developments therefrom, and follow with a series of lectures on the English Constitution, to which special attention would be paid.

The different colonial governments would then be taken up, with the successive steps toward union, followed by the Confederation and culminating in the Constitution.

Then would follow a discussion of its development along the paths blazed out by Marshall, and a political history of the country to the present day.

Attention would be given to state constitutions, especially to the management of municipalities, which is one of the problems of the day.

The subject of parliamentary law, so useful to the large number who may be called on to preside at directors', stockholders' or public meetings, will be treated.

2. GEORGE WYTHE CHAIR OF GOVERNMENT AND INTERNATIONAL LAW

This would be a memorial to the first professor of the first chair of law in any American college, the preceptor of Jefferson, Marshall, and Clay. Its course of study would supplement the first course by treating specially of our international relations and obligations, and by comparing our government with other forms.

As this is necessarily tentative, it would be subject to such modifications as experience might dictate.

It is impossible to overemphasize the value of such a school. The tendency to overlook the fundamentals of government is largely responsible for present-day difficulties. The proposed Marshall-Wythe School of Government and Citizenship offers to all who are interested in the maintenance of American institutions a channel for productive investment. It is the serious, constructive effort of the college which produced such men as Marshall, Jefferson and Monroe, to equip its students for the problems of today.

A survey shows that a large number of students now at William and Mary will teach in the public schools. They will help to mould the next generation. Under this system of training, each can be made a centre for the diffusion of true governmental principles in the community where he teaches.

The College of William and Mary now admits women. It is imperative that these new voters be given opportunity to prepare themselves for intelligent use of the ballot.

* * *

The foundation of such courses of instruction has been endorsed by the Executive Committee of the American Bar Association. Resolutions of approbation have been passed by the Board of Directors of the National Security League and other organizations.

The plan should appeal especially to our brethren of the bar, whose influence has always been on the side of sanity in government.

Such a school, to succeed, must have men of the highest type as instructors.

It will require an endowment of two hundred thousand dollars to secure two such men, and subscriptions are solicited.

(Signed) ALTON B. PARKER, Chairman.

The course was formally begun at the College on January 14, 1921, on which occasion the General Assembly of Virginia attended in a body and the opening address was made by Judge Parker. This was followed during the remainder of the college term by the other addresses contained in this volume (except that two of them were written subsequently to complete the course). In addition, Hon. Hampton L. Carson has kindly permitted the use of his presidential address before the American Bar Association, which has been inserted as an introduction.

The College felt under too much obligation to the eminent gentlemen who gave these addresses to undertake any sort of censorship, so that they have been printed exactly as delivered. This may involve some duplication—perhaps, some conflict—but it will not detract from their interest.

In offering to the public this series of addresses we wish to express our most grateful appreciation to each contributor for his interest in our efforts to develop the Marshall-Wythe School of Government and Citizenship. We feel also that the efforts that they have made to instill into the youth in attendance upon this college the right ideals of American citizenship based upon a knowledge of the evolution of our governmental concepts will be fruitful in stimulating study on the part of all who examine these essays. If one thing is essential above another in American society to-day, it is an appreciation of the ideals of the founders of our government.

I desire, without detracting from the contributions of all the eminent gentlemen who have aided in this course, to express in particular my thanks to a distinguished alumnus of the college, R. M. Hughes, LL.D. of Norfolk, for it was he who arranged the course of lectures and secured the cooperation of those who delivered the addresses.

J. A. C. CHANDLER.

Williamsburg, Va.

March 11, 1924.

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GENESIS AND BIRTH OF THE
FEDERAL CONSTITUTION

Britain were the inseparable inmates of the same bosom; when patriotism and strong fellow feeling with our fellow-citizens of Boston were identical; when the maxim 'United we stand, divided we fall,' was the maxim of every orthodox American. I had imbibed these sentiments so thoroughly that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different States who were risking life and everything valuable in a common cause believed by all to be most precious; and where I was in the habit of considering America as my country, and Congress as my government." Such was his own explanation of the manner in which, though Virginia-born, he was a Federalist *intus et in cute*. Yes, "the Union and a government competent to its preservation," were the fond creed of his entire public life. Yes, "America is my country," was the sentiment which inspired alike the young soldier at Valley Forge and the chief justice at Washington.

After thirty-four years of service in the most exalted position known to our laws, in the metropolis of your own State, at the advanced age of eighty, he who had been the chief instrument in making the national government "competent to the preservation of the Union," died the peaceful death of a Christian and patriot. A President of the United States, speaking of him, has condensed a volume of eulogium in a single sentence: "He found the Constitution paper, and he made it a power; he found it a skeleton, and he made it flesh and blood."

His principal glory is the Constitution, to which he gave life and power; and John Marshall, the patronym of the noble college which you have called in his honor, is a name that will ever be associated with the strength, stability, and grandeur of the American Union. And as that Union has now been relieved of the danger which attended its birth and imperiled its existence for nearly a century, let us hope that its destiny shall be to endure for all time.

GEORGE WYTHE

By Rosewell Page, Lt. D.

THERE has just been erected in St. John's churchyard a granite monument whose bronze inset contains the statement of the birth and death of George Wythe, the jurist and statesman, and that he was "The teacher of Randolph, Jefferson, and Marshall. First professor of law in the United States. First Virginia signer of the Declaration of Independence."

Although more than one hundred years have elapsed since the death of Chancellor Wythe, at his home near Fifth and Grace streets, Richmond, and this stone is the first marking of the place where his mortal remains were laid, not since Plato's time, perhaps, has any teacher been made more illustrious, judged by the performance of his disciples. Like so many other great men of Virginia, his name and work, illustrious as they were, are almost forgotten.

He lived in a great age and measured up greatly to its requirements.

His grandfather, Thomas Wythe, had come from England in 1680 and settled in the county of Elizabeth City, where he married Anne Shepherd, daughter of John Shepherd. His father was Thomas Wythe of the same county, for which he was a burgess from 1718 to 1726. His mother was Margaret Walker, daughter of George Walker and granddaughter of Rev. George Keith. By these strains he was associated with two of the most notable families in Virginia, from the former of which have come writers, explorers, and statesmen, and from the latter have come in

our own time the late distinguished president of the Court of Appeals, Judge James Keith, and other notable Virginians of that name still residing in northern Virginia. There is a question, I am told, as to the Keith relationship as set out.

George Wythe was born in 1726 and belongs to that array of great men taught by their mothers. He attended William and Mary College and studied under his uncle-in-law Stephen Dewey in Prince George County. He settled in Williamsburg, where he reached distinction at the bar and in 1754 was appointed attorney general by Governor Dinwiddie in the absence of Peyton Randolph. He succeeded Armistead Burwell as a burgess from the city of Williamsburg which he represented until 1756. He moved to Spottsylvania County for a short time and married Anne Lewis, a daughter of Zachary Lewis. In 1758 he was back in Williamsburg and served as a burgess for the college until 1761.

In that year he returned to Elizabeth City and was burgess for that county until 1769.

In 1765 he opposed Patrick Henry's resolution on the Stamp Act as being premature; though, in June, 1765, he was on the committee of correspondence and protested against the Stamp Act, and had drawn the remonstrance to the House of Commons which was adopted by the House of Burgesses in 1764. "In the Norton correspondence (*Tyler's Quarterly*, Vol. III, No. 4, p. 289, April, 1922) Wythe is shown writing from Williamsburg in the summer of 1768 ordering eight or ten gallons of the best arrack in carboys properly secured, and some gardenseed, an elegant set of table and tea china, with bowls of the same of different sizes, decanters and drinking glasses, an handsome service of glass for dessert, four middlesized and six lesser dishes, and three dozen plates of hard metal, 100 skins of writing parchment prepared for enrolling our acts of Assembly on,

several bundles of bed quilts, two pieces of blanketing, and as many of rolls for servants, 10 or 12 pairs of shoes and two slippers for himself, and one or two other articles, and a bonnet for Mrs. Wythe. Also an handsome well built chariot, with the device sent painted on it, as well as a copper plate with the arms of Virginia neatly engraved, and some impressions of them to be pasted on books belonging to the House of Burgesses." In 1775 he was clerk of the House of Burgesses in which year he was elected a member of Congress. In 1776 he was a member of the Congress which signed the Declaration of Independence written by his former pupil, Thomas Jefferson, and in the same year he was on the committee to revise the law of the commonwealth of Virginia—a position which he was well qualified to fill not only because of his great learning and familiarity with the law and public affairs but because he had been the compiler of the Code of 1769.

In 1777 he was Speaker of the House of Delegates and in the same year was one of the three judges of the Chancery Court established by law. In 1779 he was professor of law in William and Mary College, and it is said that he was the first professor of law in the United States. It is also said of him that he was the first judge to rule an act of the General Assembly as unconstitutional.

In 1787 he was elected a member of the convention which met in Philadelphia and adopted the Constitution of the United States, but like Dr. McClurg he was not present when the Constitution was signed. Inasmuch as Edmund Randolph and George Mason who were present refused to sign, the three Virginia deputies who did sign it were George Washington, John Blair, and James Madison, Jr.

In 1789 George Wythe resigned the professorship of law in William and Mary College and became the sole chancellor of the State by which title he is best known. In 1788 he was vice president of the Virginia convention

which ratified the Constitution of the United States, Edmund Pendleton being the president. That convention met on the second of June, 1788.

The Virginia members of Congress who signed the Declaration of Independence were George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee, and Carter Braxton. Maryland signed just above them and Pennsylvania just after them. There are well-known stories told of the grim pleasantries of the members at that instant. One is that as Charles Carroll of Maryland signed his name, which is just above that of George Wythe, to that immortal document, some one observed "Carroll, they'll never catch you; there are so many Charles Carrolls in Maryland"; whereupon that gentleman took up the pen and added "of Carrollton." Another story is that as the Pennsylvania delegation were signing some one remarked, "We must all hang together!" "Or else we all hang separately," replied Benjamin Franklin.

We can well imagine how that distinguished group of Virginians respected the character of George Wythe when an examination of the signatures shows that his name stands first 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; which resolutions had been drawn by Patrick Henry and offered by himself. I love to think that the Virginia delegation stood back to yield precedence to the great man whom they and the people of Virginia in common, so greatly loved and revered.

In preparing this sketch of Chancellor Wythe I have considered the great work that he did as judge of the High

Court of Chancery where his opinions rank with those of his great pupil, John Marshall, who owed so much to him in what he did in establishing the Constitution of the United States; for it was in the convention of 1788 already referred to as having met in Richmond to ratify the Constitution that George Wythe as chairman of the committee of the whole offered the resolution for the adoption of the Constitution of the United States by that convention.

NOTES OF CASES

I have been fortunate enough to have in the making of the following notes, the volume of Wythe's "Reports" formerly owned by Judge Peter Lyons, on which Judge Lyons has in his own hand marked and commented upon the "comments" of Chancellor Wythe. Judge Lyons represented the Parsons in the "Parson's Cause" at Hanover when P. Henry emerged into history. After Judge Pendleton's death he was president of the Court of Appeals, which at that time was composed of President Edmund Pendleton, Peter Lyons, William Fleming, Paul Carrington, James Mercer. November 12, 1793, Henry Tazewell qualified in place of Mercer who died during the term. March 15, 1796, Spencer Roane qualified in place of Henry Tazewell, resigned.

In 1779 Judge Lyons was judge of the General Court, and ex officio judge of the Court of Appeals. In 1789 he was judge of the New Court of Appeals of five judges. In 1803, president on death of Judge Pendleton.

Decisions of Cases in Virginia by the High Court of Chancery with Remarks upon Decisions by the Court of Appeals, reversing some of those Decisions.

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Title of Book 1795

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William Dawson, plff. } P. 110
and } (I give the comments of the
Beverley Winslow, deft. } Reporter, RP).

"This doctrine is not peculiar to us nor to our times. In Athens, the sentences of their *diallacterioi*, who were judges chosen by

the parties, differing from other arbitrators only in being sworn, were not reversible, as we learn from the Oration of Demosthenes against Midias." In "Wilkins *vs.* Taylor" Note, "Why Gordian Knot," "the touxnoutas amadzas ho desmos," etc.

In note to
Devisme & Smith, London Merchants,
vs.
Henry Martin & Co., London Merchants,
Wythe, the reporter says: } do., p. 134

The writer of these notes, differing in this point with three capital English judges, is aware that he will be regarded with a fastidious eye by men whose veneration for the *Westmoastrian oracles* is equal to the veneration of the ancients for the *dodonæan* and *delphic* oracles; but when he has *reason*, the only despot to which he profeseth unconditional submission, on his side, he will venture to differ with any man.

Wythe disapproves the determination in the case between Solomons *vs.* Ross for these considerations, etc.

In Farley *vs.* Shippen (do., p. 142) the Court of Appeals say, "When out of empires violently dismembered (which was the case between America and Great Britain) separate, and independent nations are formed, such of the evils which must happen, both during the conflict and after it, may be cured by treaties between nations when tranquility is restored, more humanely than by fulminating the panoply of escheats, forfeitures, and confiscations, involving in distress and ruin many people on both sides innocent, otherwise than by a fiction, of the injuries which caused the separation."

To the above statement the great Chancellor Wythe adds as a note: "May we not hope the period not to be far distant, when the regum ultima ratio will give place to modes of disceptation, rational, just and humane for terminating national differences of every kind? What nation, by their example, is fitter than Americans, to recommend those modes!"

In Hinde *vs.* Edmund Pendleton and Peter Lyons, Admrs. of John Robinson, (do., p. 146) The court deals with *by-bidding* at a sale of slaves, saying "he bid the pretium affectionis which is unlimited and which was therefore—*What the By-Bidder and His prompter pleased!*"

The chancellor's note is "Men most commend him who most deceives them, because

"'Doubtless the pleasure is as great
Of being cheated as to cheat.'

as Butler hath observed, when they are cheated out of their senses only; but when by a deception they are injured in their property, they are not disposed to commend him who deceived them."

In Edmund Pendleton *vs.* Thos. Lomax (do., p. 90) Wythe says as to a divided court, in a criminal prosecution being an acquittal of the accused. "Æschylus in his *Eumenides* informs us that such was the dictate of Minerva in the case of Orestes, when there was the same number of judges on each side, when he was tried for slaying his mother."

In Rose against Pleasants and others (do., p. 153) as to the valuation of land in tobacco by tobacco inspectors:

After citing extracts from the opinion and decree of the Court of Appeals, there is added by the chancellor:

A commentary upon this opinion and decree.

(Quoting). "*There is error in the said decree.*" He adds bitterly, "That decree surely was not erroneous entirely, although it was reversed entirely."

(Quoting). "*The parties having chosen certain persons to value the land purchased, none others could, without their mutual consent, be substituted to perform the same.*"

Wythe adds, "but upon this principle the Court of Appeals are supposed to have deviated in a subsequent part of their decree."

(Quoting). "*The power delegated to those persons was merely to value the land, and not to adjust the accounts, or settle other disputes, between the parties.*"

Wythe adds, "one of the reversed decrees set aside everything that those persons did, and the other approved nothing more of what they did than that part which the correcting decree established; namely, the valuation of the land in sterling money."

(Quoting). "*No time being fixed for the valuation to be made, etc., it ought to be governed by circumstances at the time of making the valuation, and not at the time of the contract, and no objection arises from the situation of the country, etc.*"

Wythe adds, "the persons appointed by the parties to value

the land in tobacco compared the values of land and tobacco with sterling money, and declared the value of so much tobacco to be equal to the value of the land, because those articles being each equal to the same quantity of sterling money are equal to one another."

(Quoting). "What the valuers did in adjusting the accounts between the parties was not only void in exceeding their powers, but improper in the exercise of what they assumed in their allowing credits to Mr. Ross, etc."

Wythe adds, "For the same reasons these credits are disallowed by the reversed decrees."

(Quoting). "Neither law nor custom do warrant the scaling of a tobacco payment made in discharge of a tobacco debt."

Wythe adds, "this part of the correcting decree ministereth occasion to enquire whether the debt in this case which is confessed to have been originally a tobacco debt after what had happened remained a tobacco debt. . . . The men chosen . . . perform the business in such a manner, that the Court of Appeals annihilate the part relative to the conversion of the money into tobacco, establishing the other part of the referee's act, that is, in money."

After citing another long paragraph from the opinion of the Court of Appeals, Wythe adds briefly: "Between this paragraph and any sentiment in the reversed decree no discrepancy appeareth."

To another paragraph of the opinion he adds, "When a case like this shall be shown, perhaps a precedent for the reversed decree may be shown."

In reply to another statement in the opinion, he adds, after referring to what was uncertain in the testimony before the lower court.

"Whosoever can show what else would be done with it,
——— erit mihi Magnus Apollo."

He then goes into logarithms as to the four cases in *compound interest*, to prove how, when principal, time, and rate of interest are given, to find the *amount*, at the end of that time, at *compound interest*.

In *Hill vs. Gregory and Braxton vs. Gregory* (do., p. 15), quoting the opinion of the Court of Appeals, Wythe adds "the doctrine contained in the proemium to the latter decree, was not controverted in the present case, nor is recollected to have been controverted for almost two centuries before it in any case, and is thought not to have required at this day grave dis-

cussion and the sanction of solemn decision" (as to relief in equity against mistake or accident and of unconscionable and oppressive use of a judgment at law made by one party to an agreement recovered against another).

Then he adds, "The words "*there is no error in so much of the said decree* (that is, the decree of the high court of chancery) *as sustains the suit for relief*" seems an approbation of something done by the judge of that court in sustaining the suit for relief: but if by any effort of him the suit for relief was sustained, the effort must have been like the *vis inertiae*, for it was as inert in sustaining the suit for relief as the ground whereon the Capitol stands, is inert in sustaining that edifice."

Again, the chancellor in his comment on the opinion of the Court of Appeals, says, "The agreement included in this opinion is an enthymema, an imperfect syllogism, in which one proposition is suppressed. If the agreement be cast in the figure of a perfect syllogism, *the major proposition* would be by law, if a debtor, who oweth money on several accounts making payments, do not at the times of payments, or before, direct in which of those accounts, the payments shall be entered to his credit the creditor may enter the payments to the credit of the debtor in any other account subsisting between those parties.

"The minor proposition would be: But Carter Braxton who owed the money on several accounts, viz, on account of bills of exchange, protested, and on account of a bond, making payments, did not at the time of payments, or before, direct that to his credit, on account of the protested bill of exchange, the payments should be entered. And the conclusion would be: therefor the creditor, Fendal Southerland, might enter the payments to the credit of the debtor, Carter Braxton, on account of the bond. With this conclusion the reversed decree accorded.

"It is said to be erroneous, and if it be so, it must be erroneous either because the major proposition is false; or because the minor proposition is false; for if those premises be true, the conclusion is unavoidable; and the decree according with it cannot be erroneous."

He goes on to analyze the opinion, using the same inexorable logic as follows: "The two paragraphs contain four distinct propositions: but between any one of them and the conclusions, or any one of the conclusions, or between all the propositions and all or any of the conclusions doth not occur one single instance of a middle term to connect the extremes together."

After supplying the middle term which results in the conclusion different from that found by the Court of Appeals, he adds:

"By what form of ratiocination can one or two, or all of the conclusions mentioned be deduced from that proposition? If neither, why was it stated?"

In *Maze vs. Hamilton* (do., p. 44) the chancellor says: "The judge of the High Chancery Court who is bound to adopt the decrees of the Court of Appeals, register them, and enforce execution of same, when he performing this duty, in such an instant as the present, where the sentence for which he is compelled to substitute another, was the result of conviction, imagines his reluctance must have in it something like the poignancy which Galileo suffered when having maintained the truth of the Copernican in opposition to the Ptolemaic System, he was compelled by those who could compel him to adjure that heresy."

In the same case under the head of "Commentary" after quoting a paragraph of Judge Pendleton's decision, he writes "instead of this farrago of text and gloss, let the unsophisticated words of the act be substituted." . . . And further, quoting, he adds, "This may pass for demonstration with those who have sagacity to discern a concatenation of the arrangement with what is said to be shown by it." And when the Court of Appeals said: "I am sure the interpretation is more natural, more proper, etc.," he adds: "Confidence cannot determine what interpretation is more natural, etc., with the principles of justice."

In his "Remarks" to "*Williams vs. Jacob and Wife*" (do., p. 49) he says: with reference to the act of the General Assembly from which any man with a military warrant might extrude the proprietor . . . in his anguish of soul, he could only "bemoan his misfortune in some such terms, perhaps, as *dulcia linquimus arva* and mutter to himself, *Impius haec tam culta novalia miles habebit?*"

In *Burnsides vs. Reid* (do., p. 50), the chancellor says in a note, "The climax of rights here attributed to the statute seems to have been fabricated by companies of land mongers, who, not content with the extravagant license granted them by orders of council, perhaps as beneficial as if they had been boundless, wished to convert them into monopolies."

On page 53 he adds, under "Remarks," "The decree is admitted to be erroneous by him who delivered it, and who de-

clared, at the time, that it did not accord with his own opinions; but that it was congruous, as he believed with the sentiments of the Court of Appeals, he was mistaken; but, perhaps to avoid such a mistake will not seem easy to one who peruseth the reversing decree, and endeavoreth to connect the conclusion with the premise."

He further adds, "this naughty decree . . . is repeated almost literally although it is said to be reversed entirely."

In *Roane et al. vs. James Innes, Attorney General; Jacquelin Ambler, Treasurer; and John Pendleton, Auditor* (do., p. 68) the chancellor's note is, "By this doctrine, the officer who was thus unluckily discharged would have the thirst of Tantalus.

"*Nee bibit inter aquas, nec poma natantia carpit, Petronius Arbiter.*"

In *Hilton vs. Hunter* (do., p. 88), he says, "This specimen of refutation seemeth not less happy than compendious. It is economical; for by it are saved the expenses of time and labor requisite, in a dialectic investigation which is sometimes perplexed with stubborn difficulties. It is a safe mode; for fallacy, if it exists in the refutation, cannot be detected."

The year after George Wythe had signed the Declaration of Independence, there was born in the County of Hanover in the parsonage of a Baptist minister, a man child, who was to become perhaps the most famous citizen of the United States in his time, Henry Clay by name. When a youth of sixteen he wrote in the clerk's office in the city of Richmond and there formed the acquaintance of the great man of whom I am writing who, at that time, presided over the court of which Peter Tinsley, Esq., was clerk. The judge invited young Clay to his house, who nearly fifty years afterward wrote of him, "My first acquaintance with Mr. Wythe was 1793 in my sixteenth year, when I was a clerk in his court and he then probably three score and ten. His right hand was disabled by gout or rheumatism and I acted as his amanuensis and wrote the cases he reported. It cost me a great deal of labor. Not understanding a single Greek character, to write citations from Greek authors which he inserted in the copies of his report sent to Mr. Jefferson, to Samuel Adams, and one or two others I copied them by imitating each character from the book.

"Mr. Wythe was one of the purest and best and most learned men in classical lore that I ever knew. . . . His countenance was full of blandness and benevolence and he made in salutation to others the most graceful bow that I ever witnessed."

Of Chancellor Wythe, Jefferson has spoken in the most affectionate and appreciative way:

"The pride of the institution of William and Mary is Mr. Wythe, one of the Chancellors of the State and a professor of law in the College; he is one of the greatest men of the age, having held without competition the first place at the bar of our general Court for 25 years and always distinguished by most spotless virtue. He gives lectures regularly and holds moot courts and parliaments wherein he presides and the young men debate regularly in law and legislation learning the rule of parliamentary proceeding and acquire the habit of public speaking.

"The tragedy of his death January 8, 1806, must be alluded to though it were well that it might be overlooked. He was poisoned by a great nephew in whose behalf he had made his will devising him the greater part of his estate. The old Chancellor lived long enough to revoke the will and disinherit the ungrateful and guilty kinsman who was discovered after his death to have committed forgery of his great uncle's name and attempted to avoid detection by the additional crime already referred to.

"The great County of Wythe, which has so recently furnished the Chief executive of the Commonwealth, was named after the patriot whom I have herein described."

At the end of his will was written by the great Virginian:

"Good Lord most merciful, let penitence
Sincere to me restore lost innocence;
In wrath my grievous sins remember not;
My recent faults out of thy record blot
That, after death's sleep, when I shall wake
Of pure beatitude I may partake.

GEORGE WYTHE (Seal)."

At a great dinner presided over by Colonel Linn Banks, Speaker of the House of Delegates, aided by William H. Fitzhugh of the Senate as vice president, given in Richmond in 1822 to Henry Clay and George M. Bibb of Kentucky, who were there upon matters of state, among the twenty-one toasts drunk, the last but one was offered by Mr. Jos. C. Cabell:

"The memory of George Wythe—the patron of genius, and the friend of youth!"

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