BIOGRAPHICAL SKETCHES

OF THE

BENCH AND BAR

OF

South Carolina:

BY

JOHN BELTON O'NEALL, L. L. D.,

PRESIDENT OF THE LAW COURT OF APPEALS AND THE COURT OF ERRORS.

To which is added,

THE ORIGINAL FEE BILL OF 1791.

WITH THE SIGNATURES IN FAC-SIMILE.

THE ROLLS OF ATTORNEYS ADMITTED TO PRACTICE,

FROM THE RECORDS AT CHARLESTON AND COLUMBIA, ETC., ETC.

IN TWO VOLUMES.

VOL. I.

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TO

JAMES LOUIS PETIGRU,

AS A FRIEND, AND THE OLDEST AND MOST EXPERIENCED PRACTICING LAWYER OF THE STATE, THIS WORK IS DEDICATED AS A SLIGHT TESTIMONIAL OF RESPECT, FOR HIS VIRTUES, TALENTS, LEARNING AND BENEVOLENCE,

BY

THE AUTHOR.

PREFACE.

THESE sketches of the "Bench and Bar," now about to be published, have been the work of the author for the last twelve months, or more; every moment of leisure time having been devoted to them.

The work was commenced at the suggestion of friends who thought my long acquaintance with the administration of justice, in South Carolina, would enable me to accomplish such a task better than a younger person. Whether this belief was true or not, it induced the author to make the attempt. His personal knowledge and recollections are given in the following pages.

He has sought information, from friends and acquaintances, of the Judges and Lawyers whose lives are noticed in these volumes, by many of whom it has been promptly, fully given. He is indebted to the Honorable Alfred Huger, Charles Fraser, Esquire, Daniel Ravenel, Esquire, William Henry Trescott, Esquire, James W. Gray, Esquire, R. C. Gilchrist, Esquire, Mrs. Horlbeck and the late General James Gadsden, for the sketches of Chancellor Hugh Rutledge, John Julius Pringle, Timothy Ford, Judge William Johnson, Judge Gilchrist, C. Warren Cross, John S. Cogdell, and John Seigling, Jr. These gentlemen were either unknown to the author, or at most, his acquaintance was not as perfect as that of those alluded to above; hence he gladly availed himself of their aid.

To Daniel Holbeck, Esquire, and many others in Charleston, he is indebted for much information which enabled him to speak of the great and good men of the Bar of Charleston, who practiced in earlier days; indeed, without Mr. Horlbeck's generous and prompt assistance this labor of love would not have been completed; he is, therefore, under obligations, which, regarded as a debt, never can be cancelled, but which, as a free-will offering to the great cause of preserving the names and the virtues of eminent men of past days he accepts, and cherishes the hope that they will be so regarded by his fellow-citizens. To the elegant pen of his friend,

Judge King, he is indebted for a most delightful and complete auto-biographical sketch, which has been assigned a place in the work.

To Thomas E. Power, of Cheraw, he is indebted for a sketch of Colonel J. R. Sims.

The materials furnished by friends and relatives he has freely used—sometimes adopting their words. From the ladies—Miss Gratia Bay and Mrs. Brooks—he promptly received information in regard to the father of the first and the husband of the last.

In seeking for information, he received from an old friend, now in his eighty-third year, John D. Witherspoon, Esquire, the materials for his own sketch, and for those of James Erwin and William Falconer, Esquires; for which he returns many thanks, and expresses the hope that he will still longer be spared to honor and bless his native State.

To Judge Porter, of Sydney, Alabama, he is under obligations for much which graces with beauty, and felicity of description, many of the sketches.

He is sensible of the imperfections of the work, but it was impossible to give extended biographies; so, too, generally opinions and speeches could not be given at length. He fears it may be thought full justice has not been done to many distinguished men; the effort has been made to give life-like descriptions in as few words as possible; so too, even when his political opinions differed from those of the eminent men he was writing of, he has scrupulously endeavored to avoid every appearance of detracting from their merits.

The object of the work has been to rescue the memory of the good and great from oblivion, and to place their actions before their young countrymen, as marks by the way-side for their journey of life. If he has succeeded in his labor of love he will be content, and if he has failed, he can only say—it is the fault of the head—not the heart.

JOHN BELTON O'NEALL.

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EARLY HISTORY

OF THE

JUDICIARY OF SOUTH CAROLINA.

It would be instructive to look back carefully to the origin and mutations of our judiciary system. But time will not more than suffice to glance at the beginning, and to note rapidly the changes. The Court of Law, or General Court, as it was called, was confined to Charleston, and the cases were there to be tried before the Chief Justice and the Assistant Judges. Edmund Bohun seems to have been the first Chief Justice, and to have died the year of his appointment. Nicholas Trott was the Chief Justice in 1712—to him we are indebted for the first collection of our statute laws. Who were the Assistant Judges until 1736, I have no means of knowing. There is in the Library of the Court of Appeals, in Charleston, a beautifully written charge to the Grand Jury, by Chief Justice Trott. In 1731, a Court of Record, by the name and style of the Court of General Sessions of the Peace, Oyer and Terminer, Assize and General Gaol Delivery, was established and directed to be held in Charleston before the Chief Justice and two Assistant Judges. Its jurisdiction was declared to be in all causes or matters, capital or criminal, arising within the province. Previous to this, to wit: in 1725, county and precinct courts had been appointed, but they were superseded by a Court of King's Bench and Common Pleas. In 1736, the authority of the latter was extended to the whole State. These Courts, sitting only in Charlestown, were the parents of many abuses and much oppression. Judge Brevard has well described it, when he said in his introduction of Brev. Dig.,

"great oppression and inconvenience was felt by the people living remote from the seat of justice; by parties, witnesses and jurors, who were obliged to attend the Court, and especially by suitors and prosecutors, who were often worn out by 'the law's delay,' insulted by 'the insolence of office,' and ruined by costs and expenses, most unreasonably incurred and cruelly exacted."

The Regulation, an association of respectable planters, took the matter in hands, and enforced order by a system of Lynch law. The lash, applied to every disorderly inhabitant of the districts above Charleston, corrected in some degree the abuses, and finally obtained the Circuit Court system of 1769, whereby the Courts were directed to be held at Orangeburg, Ninety-Six, Cheraw, Georgetown, Beaufort and Charleston.

This system was in force at the beginning of the Revolution, and continued, with slight modifications, until the Circuit Court system of 1798–1799. Under it, the Revolutionary Judges of 1776, William Henry Drayton, Chief Justice, John Matthews, Thomas Bee and Henry Pendleton, took place. In 1788, Ædanus Burke became one of their number; and in 1799, Thomas Heyward. *Inter arma legis silent*, is an old axiom, which was fully verified in the contest from 1780 to 1783. In March, 1783, John Faucheraud Grimké was elected a Judge.

In 1785, to meet the necessities of the State, the County Court system was adopted. Judge Pendleton was the mover of the system, and the penman of the County Court Act. It was, in the beginning and subsequent modification, too much dependent upon ignorant and rough men for its enforcement. That mistakes, prejudices and gross errors should have been the result of this administration of justice in the County Court was what ought to have been expected. A short period of fourteen years was all which was permitted to its existence. Judge Colcock told me that in '98 and '99, the members came from all quarters charged with the errors and mal-administration of their worships, the County Court Judges. William Falconer, Esq., of the House of Representatives, and William Marshall, (late Chancellor Marshall,) of the Senate, were the

leading spirits in the attack upon the County Courts. That the system perished under the withering sarcasm of the one, and the eloquence of the other, is not the subject of wonder. Indeed, in most parts of the State, it was an intolerable nuisance. Yet Judge Nott often commended Joseph Brown, of Chester, as one of the ablest Judges before whom he ever practiced, and Col. Mayson, the President of the County Court at Newberry, was, generally, clear-headed and impartial. The present Circuit Court system has been continued with many successive alterations from '99 to the present day. By the Constitution of '90, the Judges were required to meet at the conclusion of the Circuits in Columbia, and thence proceed to Charleston and hear motions for new trials, in arrest of judgment, and such points of law as might be submitted to them. This, as I understand from Judge Brevard's introduction, was part of the digest proposed by Pendleton, Burke and Grimké, under the Act of 1785. The Court thus established, was called the Constitutional Court, which remained unchanged (with the exception that the Constitution in 1816 was so altered as to allow the Legislature to fix the time and places of the meeting of the Constitutional Court) until 1824, when a separate Court of Appeals was established. This remained until 1835, when it fell, and the Circuit Court Law Judges, after trying the mass meeting of all the Judges, for a term or two, resumed the double duties of hearing and deciding first, and in the last resort.

The Court of Equity began with the Governor and Council. Three Judges were afterwards clothed with the jurisdiction; and finally, in 1808, two additional Judges were appointed, and a Court of Appeals in Equity was established. This perished in 1824, and the whole appellate jurisdiction in Law and Equity was vested in the separate Court of Appeals. Two Chancellors were charged with the Equity jurisdiction on Circuit. This in the great changes of '35–'36 underwent another revolution, and the Equity jurisdiction in the first and last resort was vested in four Judges, called Chancellors.

To prevent difficulties once regarded as insurmountable in the double appellate system, a Court of Errors in 1836 was established, which provides for the assemblage of all the

Judges in Law and Equity, on constitutional questions, on questions where the Judges of either Courts are divided in opinion, or where two Judges of either Courts require the cases to be further heard.

The list of Chief Justices and Judges published by Brevard, (vol. 1,) and copied by Dr. Cooper, in the Statutes at Large, is very imperfect.

Edmund Bohun is the first Chief Justice on record—appointed in 1696—died the same year. There is a gap from that time to Nicholas Trott, "about the years 1712—1718." I have in my possession, in two volumes, a work published in 1741, at London, with the title, "The British Empire in America, containing the history of the discovery, settlement, progress, and state of the British Colonies on the Continent and Islands of America." It is anonymous, dedicated to Jonathan Bleman, Esq., Attorney-General of Barbadoes.

In the chapter on Carolina, which corresponds with other published accounts as to later history, I find that Nicholas Trott was Chief Justice as early as 1702. The writer mentions a serious riot having occurred against the authorities of the Governor and Assembly, and quotes a "late Act," using the author's own words:

"For Sir Nathaniel Johnson was made Governor in the room of the said Moor. The said Governor Moor was presently made Attorney-General; and Mr. Trott, another of the Chief abettors of the riot, the Chief Justice of the Common Pleas, who in this province is sole Judge."

It is, however, certain that Nicholas Trott was not Chief Justice during the whole period to 1712, as I have in my collection of autographs a writ of attachment dated "at Charleston, this 12th day of October, 1708," and "witness our Chief Justice, Robert Gibbes, Esq.," signed with his name "Robert Gibbes, C. J.," and sealed with his seal. Upon comparing the signature and seal with those to the Acts of Robert Gibbes, when Governor, they are identical.

This document, relating to my ancestor, was kindly presented to me by the distinguished autograph collector, J. K. Tefft, Esq., of Savannah, and my correspondence with him has enabled me to add three other names to the list of the

Chief Justices of South Carolina, from his valuable collection. Robert Daniell was Judge in 1714, and his name signed "Robert Daniell, J.," to a writ which I have before me. The writ is sealed with the seal of the C. J.—the double cornucopiæ, with the letters C. J. There is nothing on record in the Council Journals, in the Secretary of State's office, to show that Assistant Judges were appointed before 1725, when Alexander Parris, John Fenwick, and John Cawood were elected; it is, therefore, probable he also was Chief Justice. Thomas Hepworth was Recorder of the City of Charleston in 1723, as appears by an old record of the minutes of that Corporation, and was Chief Justice of the Province, as is evident by a writ which I have with his signature, "T. Hepworth, C. J.," dated 11th of May, 1726.

Mr. Tefft has also a writ closing thus: "Witness, Charles Hill, Esq., our Chief Justice, at Charles City, the 12th Aug., Anno Dom., 1723," signed Charles Hill, and sealed with the seal of the Chief Justice.

In looking over the Council Journals from 1717, which are the earliest records in the office, I find Thomas Hepworth's name mentioned as Chief Justiae; but it is not in the published list.

In the Council Journals there does not appear to have been any appointment of Assistant Judges until 1725, when three were elected by the Governor and Council—Col. Alex. Parris, Col. J. Fenwick, and John Cawood, Esq. Subsequently, in 1727, Thomas Cooper and Daniel Green, were elected Assistant Judges. In 1725, William Blakeway was Judge of Admiralty, and, in 1727, Benj. Whitaker. The four last names are not in the list given by Dr. Cooper, copied from Brevard.

—*R. W. Gibbes, M. D.*

JOHN BELTON O'NEALL.

As a part of the introduction, it may not be amiss that something should be known of the author. He is the son of Hugh O'Neall and Anne Kelly, his wife, both of whom were members of the Society of Friends, on Bush river, Newberry District,

South Carolina, and consequently he was, by his birth-right, a member. The society there has, for nearly half a century, been, from the diminution of its members, incapable of transacting business; and he is, therefore, still one of them, although he knows perfectly well, from his habits, pursuits and mode of life, that he has forfeited his right to be called "*a Friend;*" yet, he confesses to a great partiality for Friends, when *indeed and in truth they are such.*

His ancestry on both sides were Irish, his paternal great-grandfather belonging to the ancient house of O'Neall of Shane's Castle, Antrim, Ireland. His maternal grandfather, Samuel Kelly, was of King's County, and his grandmother, Hannah Belton, was of Queen's County, Ireland; so that he may rank as a full-blooded Irish-American.

He was born on Wednesday, 10th of April, 1793, about half a mile below Bobo's Mills, on Bush River. At his earliest recollection his father removed to the Mills, and *there* his boyhood was spent.

He began to go to school when he was five years old. A young man, the son of a friend of his father's, boarded at his house and went to "Master Howe," (as the teacher, James Howe, was familiarly called,) about one mile and a half distant. He took the child-like pupil with him, day by day, carrying him across the branches on his back. The first shock of death which he ever experienced, was in the decease of this young gentleman, Capt. Abraham Parkins, in October 1802. He, (young O'Neall,) learned rapidly, but his subsequent life satisfies him that he went to school at least two years too soon. His nerves were unstrung by an attack of what was then called nervous fever, when he was about three years old, and which had the effect to render his hand so unsteady, as to make him incapable of writing a good hand, although taught by the best teachers of penmanship with whom he was acquainted.

The other children of his father were girls. They were all remarkable for talents. His eldest sister, Abigail, went to school with him, and learned more rapidly than he did. She is still alive, and is the widow of John Caldwell, Esq. His

two next sisters, Rebecca and Hannah, have long been tenants of the "silent house." His youngest sister, Sarah Ford O'Neall, is still alive, and is a member of the Society of Friends.

In 1804, a library society was organized at Newberry, of which his father was a member. The books were selected and bought in the City of Boston, by Elijah Hammond, the father of Senator Hammond. This afforded to young O'Neall the opportunity of reading, a taste for which he had acquired by Mr. Howe having permitted him to read, under his direction, his books, of which he had a pretty good selection. He recollects to this day, with what avidity he read the first book placed in his hands—the "Pilgrim's Progress."

He continued to go to English schools, with slight interruptions, until 1808. Occasionally he was employed as a clerk in his father's store, where he learned to abhor the liquor traffic. At the schools to which he went for the first thirteen years of his school life, he learned to spell and read well, and to write an indifferent hand, and came to understand arithmetic perfectly.

He acquired great facility in memorizing promptly, whatever was put in his hands. He committed to memory, in an hour, the 9th Chap. of 2d Kings. In May, 1808, he became a pupil of the Newberry Academy, then under the care of the Rev. John Foster. He pushed his young pupil forward much too rapidly. By January he had him reading Virgil without at all understanding it, as he should have done. In January, 1809, Charles Strong, of the class of 1808, South Carolina College, became the preceptor in that year and the next. Young O'Neall became a thorough Latin scholar, and was sufficiently instructed in Greek and all the branches of English, to prepare him for the Junior Class of the South Carolina College. During this time he acquired the habit of extemporaneous speaking, by practicing to speak every night, after he had got his lesson for the next day, before his uncle and grandmother, with whom he boarded at Springfield.

In the year 1810, his father was deprived of his reason, and this kept him home from school for several months, to

endeavor to close up, satisfactorily, his deranged mercantile affairs. But all was in vain. Bankruptcy came down upon him, and his creditors nearly crushed every hope by suing him in his unfortunate insane condition, and forcing his property to a sale at an immense sacrifice. Thus his family were turned out of doors, and had it not been for the kindness of his father's bachelor brother, must have been left without even a shelter for their heads.

In February, 1811, young O'Neall was allowed to enter the Junior Class of the South Carolina College. In December, 1812, he graduated with the second honor of that institution. His diploma bears date 7th December, 1812, and is signed by Jonathan Maxcy, S. T. D., Præses.; Thos. Park, Ling. Prof.; B. R. Montgomery, D. D., Mor. Phil. and Log. Prof.; Georgius Blackburn, A. M., Matt. and Astron. Prof.; and by Henry Middleton, Governor and President of the Board, and twenty-two Trustees, only one of whom, John J. Chappell, is alive.

The expenses of his collegiate education were paid in part by himself, and the balance out of his father's dilapidated estate by one of his committee-men, and which was not allowed in his accounts. His father, (in 1813,) recovered his reason, and in gathering up the wrecks of his fortune, succeeded in being able to reimburse Mr. Caldwell, such sums as he had expended on his son's education.

In 1813, for about six months, O'Neall taught in the Newberry Academy. At the end of that time he devoted himself to the study of the law, in the office of John Caldwell, Esq. At that time Anderson Crenshaw, Esq., afterwards Judge Crenshaw, of Alabama, lived in the village; he gave O'Neall free access to his library, and imparted to him much valuable instruction.

A debating society then existed at Newberry, to which the young men, and many of the middle aged, belonged. A meeting was held every Saturday, and subjects debated with much energy. O'Neall then improved his habit of extemporaneous speaking very much.

In August, 1813, O'Neall performed, at the muster of a demi-brigade, in Frost's old field, his first military duty, as a mem-

ber of the artillery company under the command of Capt. McCreless; the militia, under the orders of the Governor, were classified. The company to which he belonged were placed in the first class. That class was called into the State's service in March, 1814, and marched for Camp Alston, four miles below Pocotaligo, in Beaufort District, where there was about as much necessity for troops, as there would be, in time of war, at Chalk Hill, near Columbia.

The first class were mustered into service under the command of Col. Starling Tucker, at Newberry, on the 1st, 2d and 3d days of March, by Maj. Thomas Wright, Brigade Major of the then 2d, now 10th Brigade of Militia, and on the 4th, commenced their march for Camp Alston. O'Neall was appointed Judge Advocate for the command, but was allowed to remain as part of the artillery company. The line of march was by the way of Lee's Ferry, Bord's, in Lexington, Pine Log, on Edisto, the White Pond, in Barnwell, Barnwell Court House, Burford's Bridge, across the Saltcatcher, thence across many swamps to Pocotaligo, and Camp Alston. The campaign was inglorious, and closed about the 1st of April. Of all that was interesting, a narrative is given in the life of Solicitor Stark.

A few weeks after his return home, (in May, 1814,) he was admitted to the practice of law and equity. The circumstances attending his examination and admission, are narrated in the sketches of Judges Grimké, Nott and Brevard, and of John D. Witherspoon, Esq. He immediately entered into partnership with John Caldwell, Esq., (who was the Cashier of the Branch Bank of the State at Columbia, and had removed to Columbia.) He opened his office at Newberry, and from the commencement, was honored with a large and lucrative practice.

In October of that year, a volunteer company of Artillery, (in the place of that in which he had served at Camp Alston, and which had been disbanded,) was raised at Newberry, and he was elected captain. To this point in his life he always refers as conferring more pleasure and pride than any other.

His first Equity speech was made at Laurens, before Chan-

cellor DeSaussure, at the June Term of 1814, for Washington Equity District. The Chancellor's approving smile was of great benefit to him *then*, and so was his friendship ever after. His first law speech was made at Union Court House, in October, 1814, in a malicious prosecution case; notice of which was made in the sketch of James McKibben. When the case was going on, Judge Crenshaw, then a practicing lawyer, said to the defendant, James Duncan, son of Alexander Duncan, "you had better employ me, the young man who is about to speak against you is not known to you." "Never mind," was the old man's reply; "cousin Josey (meaning Colonel Joseph Gist) will fix them." But the old gentleman learned, in the sequel, by a verdict of two hundred dollars, that "the race was not always to the swift, nor the battle to the strong." His first law speech at Laurens was, in November, 1814, in defence of a poor fellow, for stealing a sheep, who was acquitted. These were voluntary speeches, and led the way to reputation and future employment. Young lawyers mistake much their duty to themselves, in declining opportunities to speak without fee or reward. His early success at the Bar he always attributed more to the favor of the people, and the encouraging helping hand extended to him by the Bench and Bar, than any intrinsic merits which he possessed. For he knows *now*, that his legal acquirements *then* were very slender.

In October, 1815, he had the misfortune to be visited with an attack of fever; he, however, kept pace with the business of his office, in the midst of successive and daily intermittent attacks. At Court, by the blessing of God, he was able to maintain his usual stand at the Bar.

At the October election of 1816, he was returned third, out of four members of the House of Representatives, from Newberry District. This gave him the opportunity of being more generally known, and probably furthered his views of advancement; but if he had the privilege to live his life over, he would not seek such a position so early in life. On the 2d December, 1816, the degree of Master of Arts was conferred on him by the South Carolina College. On the 7th of

August, in 1817, he was elected from the rank of Captain to that of Colonel of the Eighth and Thirty-ninth Regiments of Militia. He was enthusiastically fond of the military, and soon raised his regiment to a proud position as militia. The whole regiment were devotedly attached to their Colonel. Like many other young men, his vanity was played upon by professed friends, and he was presumptuous enough to offer for Major-General against his commander and friend, Brigadier-General Tucker. That he was defeated was exactly what he deserved. The officers of his own regiment evinced their fidelity by giving him an unanimous vote. This consoled their young colonel in his defeat; and has ever since been gratefully referred to.

In the December Session of the General Assembly of that year, he voted for the increase of the Judges' salaries; the consequence was, that at the elections of 1818 and 1820 he was left at home. This period of rest from political pursuits, he thinks, was of immense advantage to him; it made him a much better lawyer, and increased his reputation and business.

In 1816, he was appointed by Governor Pickens one of his Aids, with the rank of Lieutenant-Colonel; this appointment he resigned, in consequence of his election as Colonel. In December, 1817, he was elected a Trustee of his Alma Mater, the South Carolina College; and he has filled that office ever since, with the exception of a year, from December, 1821, to December, 1822. Thus, for forty years, he has sedulously watched over the interests of that great institution.

On the 25th of June, 1818, he was married to Helen, eldest daughter of Captain Sampson Pope and Sarah Strother, his wife, of Edgefield. For forty-one years they have together toiled through life, enjoying much of happiness, and, in the death of all their children, drinking the cup of sorrow to its dregs.

In June, 1820, his grandmother, Hannah Kelly, died; by her will, she devised to him "Springfield;" thither, in August of that year, he removed, and there he has resided ever since; adding to it many adjoining farms, and the mills on Bush River, just above the Forty-fifth line, Rail-road crossing.

In 1822, he was returned second to the House of Representatives in the General Assembly of South Carolina, and, by successive biennial elections, he was returned in 1824 and 1826. In 1824 and 1826, he was elected Speaker of the House of Representatives, without opposition. During the four years in which he held that great office, there was only a single appeal from his decisions, and in that his decision was sustained. No Reading Clerk existed at his first term; the consequence was, that he read all bills, reports, and resolutions. He had a wonderful facility in this respect. His voice was clear, his enunciation distinct; he read, with great ease and rapidity any writing presented to him. His quick and ready eye, and a prompt understanding of the scope of the writer, constituted the whole secret of his art of reading—being able to make out a word going before and another after an obscure writing, enabled him to read the sentence.

A laughable incident between him and his friend, Hugh S. Legaré, may here be stated. The practice to read every report and the documents, had been so altered, as merely to require the reading of the reports. The Speaker had left the Chair, and placed in it his friend, Colonel Gregg, while he sought a short relaxation; returning, he found the House in a warm discussion on rescinding the recent rule, and returning to the former practice. At the instance of Colonel Gregg, the Speaker resumed the Chair, and presented the question; and the House, by a large vote, refused to rescind the rule. When the vote was announced, H. L. Pinckney, Esq., asked, if a member might not still call for the reading of the documents? He was answered, "yes." In the course of a few moments, a favorable report was read; and Mr. Legaré called for the reading of the documents, which was done. The Speaker, seeing his object, determined on his cure. In a few moments, a favorable report of the Committee on Pensions was read. Mr. Legaré rose, and said, "I claim the reading of the documents." The Speaker, in a mild and pleasant manner, said, "will the gentleman come to the Chair, and read for his own information and that of the House?" He could not resist the request. He came to the Chair with obvious reluctance. A large auditory was present; the gallery

was full of ladies. Fortunately for the Speaker's purpose, the petition was a long one, from Brushy Creek Fork, Chester District, in a very cramped and difficult hand. Mr. Legaré began his task in a very halting, hesitating manner; at every sentence, he had to be prompted. The members enjoyed the scene much: the titter soon became a broad, loud laugh, which extended to the galleries. The late Judge Axson, with his broad, laughter-loving Dutch face, placed himself right under the Speaker's desk, and, every-now-and-then, cried out, "the gentleman don't read loud enough." After a long, protracted, and blundering reading, the petition was read through; one out of the nine accompanying affidavits was handed to Mr. Legaré; with much difficulty, he mastered the words, "Before me, personally appeared, A. B.;" halting *there*, he said to the Speaker, "it is all d——d nonsense," who replied, "if you are satisfied, the House is." He abandoned the reading; the House concurred in the report; and the Speaker, after this reading-lesson of Mr. Legaré's, as Judge Butler facetiously termed it, was never asked to read any more documents.

In February, 1823, he was elected Brigadier-General of the Tenth Brigade, Fifth Division, of the South Carolina Militia; and on the 20th of August, 1825, he was elected and commissioned Major-General of the Fifth Division. In that and the previous election for Brigadier General, the officers of the Thirty-ninth Regiment gave him an unanimous vote. In his election as Major-General, he succeeded in rising over the head of a friend and relative—a much older officer and a most worthy man—Brigadier-General Dawkins, of Union. His commission, as Major-General, is signed by his much-valued friend, Governor Manning; and is, therefore, carefully preserved.

In 1827, the appropriation of ten thousand dollars, for the relief of Mr. Randolph was made. The Speaker was known to be favorable to the measure, though he did not vote. In 1828, the people of Newberry, who have always been remarkable for seizing upon matters of money appropriated, as objections to their members, did that which no other district could

have been persuaded to do, refused to return the Speaker; and, of consequence, lost the honor of having that officer as one of their representatives.

On the 20th of December, 1828, John Belton O'Neall was elected and commissioned as an Associate Judge. He immediately accepted the great trust; qualified, and entered on its duties. He rode the Southern, Western and Middle Circuits, and commenced, in the fall of 1830, the Eastern, now the Northern Circuit; but, at Chesterfield, he was taken dangerously sick. As soon as he could ride, his friend, Dr. Smith, insisted on his accompanying him to his residence, at Society Hill, which he did; this kind attention was rapidly restoring him, when intelligence reached him, that two of his children were dead, and a third at the point of time. He returned rapidly home, and in a few days saw his eldest daughter die, a lovely child of ten years of age. He did not resume his circuit; his friend, Judge Johnson, of the Court of Appeals, held the Courts from Marion to the close.

On the first day of December, 1830, Judge O'Neall was elected a Judge of the Court of Appeals, and entered immediately upon its duties. With Johnson and Harper, he encountered and performed the labors of the Court of Appeals—Herculean as they were—until December, 1835. The extent of them may be judged from a reference to 2 Bailey, 1 & 2 Hill, Bailey's Equity, 3 Rich., 1 & 2 Hill's Chancery Reports, Richardson's Equity Cases.

The decision, The State *ex parte* McCrady *vs.* Hunt, 2 Hill, so displeased the dominant party, that the Court of Appeals, which had done more to give symmetry to the law, than had ever been known before, was abolished, and Johnson and Harper assigned to Equity and O'Neall to the Law. He has ever since then given most of his attention and labors to the Courts. The fact is, he has neglected his own affairs, and much injured his own estate, to serve the people. In May, 1850, on the death of Judge Richardson, he became President of the Court of Law Appeals and of the Court of Errors. His recorded labors from December, 1835, are to be seen in 3 Hill, Dudley, Rice, 1 & 2 McMullen, Cheves, 1 & 2 Speer,

1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, Richardson, and 1st, 2d, 3d, 4th, and 5th Strobhart.

In 1846, the degree of L.L. D. was conferred on him at Columbia College, District of Columbia, and was repeated a few years since at Wake Forest, North Carolina.

In May, 1847, he was elected President of the Greenville and Columbia Rail-road. Aided by an unfaltering devotion, he succeeded in carrying the enterprise successfully forward to Anderson, and within eighteen miles of Greenville; when, in May, 1853, he surrendered the work to other hands. Afterwards, the work had to be carried forward by the individual credit of the president and his friend and endorser, Colonel Simeon Fair. At different times, himself, and all the directors, were bound for more than one hundred thousand dollars. When the great freshet of 1852 broke down more than thirty miles of the road, and Wm. Spencer Brown, the talented and energetic chief engineer, was drowned, there devolved upon the president a work requiring sleepless vigilance and determined energy: that he was enabled to overcome all obstacles is cause of devout gratitude to God, which he has always acknowledged.

On 31st December, 1832, to save a friend, he abandoned the use of spirituous liquors, and in June following gave up the use of tobacco. To these two causes, he ascribes his health, and ability to perform more labor than most men, at his time of life, can accomplish. He joined, soon after, the Head's Spring Temperance Society, Newberry District, where his membership now is, and of which he is president. He became a teetotaller; and, in December, 1841, he was appointed President of the State Temperance Society, which office he still holds. In 1849, he joined the Sons of Temperance, Butler Division, No. 16, at Newberry. He was elected G. W. P. of the Grand Division of South Carolina, October, 1850; and in June, 1852, at the City of Richmond, Virginia, he was elected and installed M. W. P. of the Sons of Temperance, of North America. He attended, in 1853 and 1854, the annual meetings at Chicago, Illinois, and St. John's, New Brunswick. Then, he surrendered his office to his succes-

sor, Samuel L. Telby, of St. John's. In the spring of 1834, the Judge and his wife lost, by the scarlet fever, two of their lovely little girls.

In 1837, he was elected President of the Newberry Baptist Bible Society. To this office, he has annually been elected: much good has been accomplished by this society, under his direction. He is now the President of the Bible Board of the Baptist State Convention—of which body (the Baptist State Convention) he was elected president in July, 1858, and again in 1859.

He was elected President of the Newberry District Agricultural Society, in 1839, and has been annually elected ever since. The good accomplished by that society is known by the fact, that Newberry has reclaimed her wasted fields and made more and better improvements in agriculture than any other district in the State. The society has, once or twice, been on the verge of dissolution; but the people of Newberry know too well its importance to permit it to perish.

On the 5th of August, 1857, the crowning sorrow of their lives occurred to the Judge and his wife. Then, their excellent daughter, Sarah Strother Harrington, the wife of Dr. Harrington, their only surviving child, was taken from them by death. They are consoled by the fact, that she was a Christian, and that she has left seven representatives, (four daughters and three sons,) whom may God spare to comfort and assist their grand-parents, and to become good and useful women and men.

Judge O'Neall has written and labored much for his fellowmen. He has always believed where he could contribute even a mite to knowledge, education, temperance, religion and agriculture, it was his duty to make the effort. He wrote, in 1818, many articles on the increase of the Judges' salaries, signed Cato; in 1840, he wrote the Drunkard's Looking-Glass; and, afterwards, the "Wanderer," with many other subsequent fugitive essays and letters in the Temperance Advocate, the Newberry Rising Sun, the Greenville Patriot, Greenville Patriot and Mountainer, and the Southern Enterprise. He wrote Reminiscences of the Revolution for the

Southern Literary Register, Revolutionary Poetry for the Orion, and a sketch of Joseph M. Jenkins for the Magnolia. He has delivered innumerable addresses on temperance, education, Sunday Schools, and rail-roads. He has permitted to be published an oration on Public Education, delivered before the Clariosophic Society, incorporate of the South Carolina College; a Fourth-of-July oration, in 1817; and another, on the fourth of July, 1827, on the death of Jefferson; another, on Education, before Erskine College, at the commencement, in 1842; another on Female Education, in 1849, at Anderson, before the Johnson Female Institute; another, on Public Speaking, before Davidson College, in North Carolina, in 1851. He has published, this year, the "Annals of Newberry," and now is about to give Sketches of the Bench and Bar of South Carolina. He gave to the people of South Carolina a Digest of the Negro Law, in 1848. He is sensible that he has worked hard, and endeavored to do good. If he has succeeded, *then*, every wish of his heart will be gratified; and he will only add, may he be succeeded by others more, much more, useful than he has been.

ORIGINAL FEE BILL.

"ORIGINAL FEE BILL, 1791."

We, the subscribers, from a conviction of the Justice and Reasonableness of the undermentioned Table of Charges for Conveyancing, &c., do, in order to make the practice of the Bar as uniform as may be, consent and agree not to **take less** *than the sum therein allowed for each particular: the propriety of* **Receiving more** *being left entirely to the discretion of each judicial and the peculiar circumstances of the case:--*

"For every common Letter of Attorney, General Release, Bill of Sale, and the like **printed** *instrument, not requiring attendance from home,*	*s. d.* 10 10 1-2.
Every Special Bond, Letter of Attorney, General Release, Bill of Sale, and the like instrument in Writing,	*£ s. d.* 1 1 9.
Drawing and Engrossing common Conveyance by Lease or Release,	*£ s. d.* 3 5 3.
Filling up printed ditto,	*£ s. d.* 1 17 4.
Drawing and Engrossing Conveyance, by Lease or Release, with special Recitals,	*£ s. d.* 4 7 -.

Drawing and Engrossing Mortgages, the same as for Conveyances, adding a charge for the Bond for payment of the money.

Marriage Settlements of Real Estate, by Lease and Release, and counterpart with Special Limitations,

£ s. d.
7 12 3.

For ditto, by assignment of Negroes, or other personal property,

£ s. d.
5 8 9.

Each Release of Inheritance, or Renunciation of Dower, including clerk's fees,

£ s. d.
2 3 6.

Each Dedimus Postestamus, for taking do., including clerk's fees,

£ s. d.
1 1 9.

For proving and signing away Release of Inheritance, or Renunciation of Dower, when prepared by gentlemen, and who are not Attorneys of the Courts of Law and Equity in this State,

£ s. d.
2 3 6.

Drawing and Engrossing two parts of articles of Co-partnership, being usually special and always different,

£ s. d.
5 8 9.

Drawing and Engrossing Common Wills,

£ s. d.
3 5 3.

Each Lease of a Plantation and House, or Lot of Land, and Counterpart, with the usual covenants for Payment of Rent, Repairing the Premises, and quiet Enjoyment,

£ s. d.
3 5 3.

Each opinion on a question of Law and Equity,

£ s. d.
3 5 3.

For each Letter previous to an action brought,

s.
- 10 -.

For Retaining Fee in every contested cause at Common Law,

£ s. d.
3 5 3.

Counsel Fee in every Chancery Cause, (15 guineas,)

£ s. d.
16 l 3.

The cases under the Summary Jurisdiction to be left to the option of each gentleman who may receive what he pleases."

It is further agreed upon and consented to, that on the Plaintiff filing his declaration, agreeably to law and the practice of the Court, (to wit. upon or after the expiration of 10 days from the return of the writ,) the defendant shall be at liberty, on entering his appearance, to file the general issue, or such other plea, as he may think proper, which plea the Attorney for the defendant is to withdraw at the Second Court, at the time the docket is made up, (if such plea is only intended as dilatory,) and permit the Plaintiff to take his verdict, or order for judgment, (as the case may be.) He not signing his judgment until the sitting of the adjournment

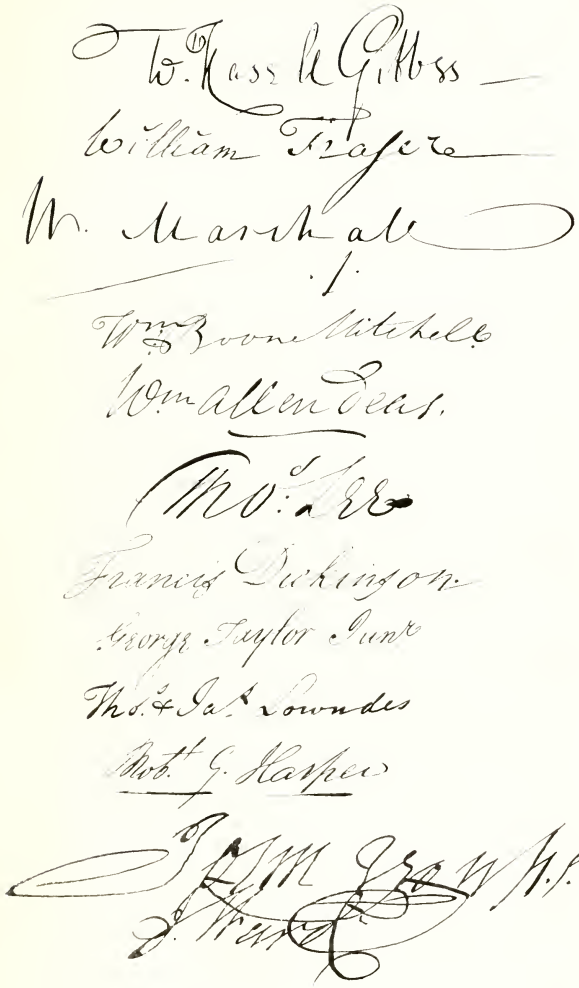
f said Court; and in such cases, where the Defendant has no substantial defence, the plea shall be distinguished by the letters **D. Y.** *written under it.*

It is also further agreed upon and consented to, that all suits uncontested, and to which appearances have been entered, which were ripe for judgment, the last February Court, be and remain in statue quo until the next Court, the Plaintiff's Attorney taking his order for judgment, to prevent the abatement of the suit by the death of either of the parties, in the intermediate time.

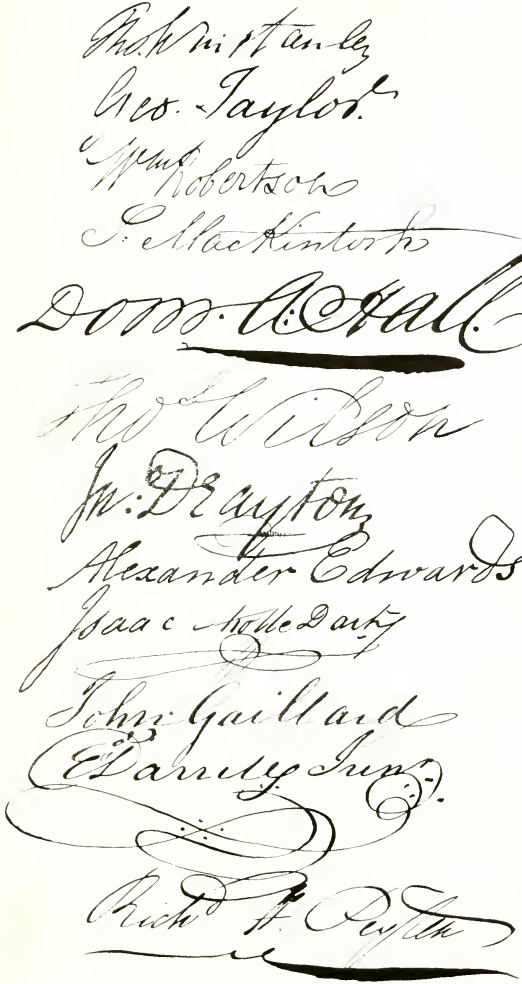
And, whereas a question has arisen among some of the gentlemen of the Bar, whether an appearance by the Dft.'s Attorney, upon the . . . writ, (the same **not having passed** *through the* **Sheriff's hands,**) *ought to be considered (in the issuing of the error) as a copy left at the Defendant's residence, or served personally on such Defendant: it is agreed upon, as well in order to remove such doubts in the future, as for the government of present existing cases, that an appearance so served, be considered as a copy* **left at Defendant's residence.**

Charleston, 25th March, 1791.

☞ The Reader will find fac-similes of the signatures to this agreement on the next and succeeding pages.



A. J. Moultrie.
John & Tho. Parker -
Tim. Ford
Henry Wm. DeSaussure
W. Ward
H. McCall
John B. Adams
John J. Pringle
Theo. Gaillard —
Francis Kinloch
L. Wilkins
Jacob Drayton.
Ed. Rutledge
Charles Cotesworth Pinckney



CHIEF JUSTICES.

NICHOLAS TROTT.

In speaking of the Bench and Bar of South Carolina, the name of Nicholas Trott, L. L. D., ought not to be forgotten.

According to Ramsay, he was an Englishman, who came to this country about the end of the seventeenth century. In 1700 he tells us he was Speaker of the House, and was then on the side of the people, and against the proprietors. In 1703 he was one of the Counsellors, and thenceforward until 1718, when he became too strong for "the Governor, Council, Assembly and people," he was in favor of the proprietors and against the principles which he had maintained in 1700. In this respect he was like the patriots of the present day, who detest the power and patronage of the general government until they are themselves recipients of its favors. Such a state of things reminds me of the feelings expressed by a simple minded German. A lottery was drawing in one of our little villages; he swore it was one of the greatest pieces of rascality in the world; he was the owner of a ticket, and just as his denunciations were at their height, the prize of five hundred dollars was drawn against the number of his ticket. "'The fairest ting in the world, and I will whip any one who says it is not," was his exclamation. So of Trott's and the present day's politics; interest rules and decides.

From 1712 to 1719 he was the Chief Justice. He was superseded by Richard Allen, who was followed by many others, until '74, but until that time, when William Henry Drayton was appointed, we know little beyond the names of the successive Chief Justices and their assistants.

Chief Justice Trott was, however, a lawyer who must be remembered; his charges in 1718, and his collection of the statute law entitle his name to notice. In October, 1715, it seems he had twenty-four criminals on the calender for Charleston, two of these were for blasphemy. These I presume arose under the Act of 1709, P. L. 4, which subjected an offender who was convicted of blasphemy to forfeiture of office. Ram-

say tells us no such offence is now brought into Court; that public contempt is the only punishment to which it is now subjected. If, indeed, contempt followed, then it might answer the purpose, but the blasphemer is now apt to be the most popular man in his neighborhood. The law of 1703 was, perhaps, too severe. But the shilling penalties of 6 and 7th, might be enforced to great advantage in this State. P. L. 89, 1 Bryce Dig. Tit. 24, Blasphemy, Profaneness, p. 87.

This Chief Justice was, however, like Lord Bacon, capable of being seduced by patronage and money; he was charged, it would seem, upon good grounds, with base and iniquitous practices, such as continuing cases from term to term, and for years, for the sake of fees, giving advices and acting as Counsellor in cases depending in his own Court; but the proprietors refused to remove him. This led to the revolution of 1719, in which Trott's power was broken down and that of the proprietors forever annihilated.

But even after that, Ramsay tells us, unaided by power, his great abilities gave him great weight. He died in 1760, and his name is extinct in Carolina. He is only known by the unfortunate combinations of *legal learning*, *talents and corruption.*

We append the Charge of Chief Justice Trott to the Grand Jury, delivered at the Court of Vice-Admiralty, at Charlestown, in South Carolina, October 30, 1718.

CHARGE TO GRAND JURY.

Gentlemen,—We are here assembled to hold this Court of Admiralty Sessions, and the duty of my office requires me to give in charge to you the things that you are to enquire of and to present.

In a former Admiralty charge, by way of preface or introduction to the particular crime of piracy, which will again now be brought before you;

I then shewed you, first, that the sea was given by God for the use of men, and is subject to dominion and property, as well as the land.

And then I particularly remarked to you, the sovereignty of the Kings of England over the British seas.

I then proceeded, secondly, to shew you that as commerce and navigation could not be managed without laws, so there have been always particular laws for the better ordering and regulating marine affairs; with an historical account of those laws, and their origin.

Of all those matters I then spake largely and fully: and shall not now trouble you with any farther repetition of them.

But I shall now proceed, in the third place, to shew you that there have been particular Courts and Judges appointed, to whose jurisdiction maritime causes do belong; and that in matters both civil and criminal.

And then I shall in particular shew you the constitution and jurisdiction of this Court of Admiralty Sessions.

And shall mention the crimes cognizable therein; and shall particularly enlarge upon the crime of piracy, that will now be brought before you.

Time will not permit me to speak of the several sorts of Magistrates, to whose jurisdiction maritime affairs do belong, in the transmarine or foreign parts of the world: Therefore I shall confine myself, under this head, only to speak of the laws of England; by which the general jurisdiction in marine affairs, is by the king as supreme, as well by sea as land, committed to the Lord High Admiral; who, besides his power over the navy, and the government over the seamen, hath a jurisdiction civil and criminal in marine affairs, which are decided by his Maritime Judges in the Court of Admiralty, the chief of which is known by the style of Supremæ Curiæ Admiralitatis Angliæ Judex; within whose cognizance, in right of the jurisdiction of the Admiralty by the sea laws, and the laws and customs of the Admiralty of England, are comprised all matters properly maritime, and pertaining to navigation.

As to the antiquity of the office of Lord Admiral, and the Court of the Admiralty, it is sufficient to remark, that the thing itself that signified that office, now known to us by the style of Lord High Admiral, and the jurisdiction thereof, hath been in the kingdom of England time out of mind.

The learned antiquary Sir Henry Spelman, in his Glossarium, and out of him Dr. Godolphin gives us the catalogues of the Admirals from the reign of King Henry III. Not but that the office of Admiral is far more ancient; for the same learned antiquary saith, that he hath not in that catalogue inserted Marthusius, that Princeps Nautarum, in King Edgar's time; nor those Tetrarchs of his navy; nor of those other Commanders-in-Chief in sea affairs, constituted by his successors, Kings of England; but of such only as in the ordinary way have been dignified with the said office.

The Lord Coke in the first part of his Institutes, in honor of the Admiralty of England, saith, "That the jurisdiction of the Lord Admiral is very ancient, and long before the reign of Edward III. as some have supposed, as may appear by the laws of Oleron, (so called, for that they were made by King Richard I, when he was there,) that there had been then an Admiral time out of mind, and by many other ancient records in the reigns of Henry III, Edward I, and Edward II, is most manifest."

But the learned Selden in his notes upon Fortescue, tells us, that in an ancient manuscript De l'Office de l'Admiralty, translated into Latin by one Tho. Rowghton, calling it De Officio Admiralitatis, there are constitutions often mentioned touching the Admiralty of Henry I, Richard I, King John and Edward I, which shews the great antiquity of that Court.

And as to the jurisdiction of the Court of Admiralty, not to enter upon the disputes between the civilians and the common lawyers concerning the same, I shall now only observe to you that it is allowed even by those statutes that were made purposely to restrain the jurisdiction of the Court of Admiralty, that that Court ought to have cognizance of all things done upon the main seas, or coasts of the sea. And of the death of a man, and of maihem done in great ships, being and hovering in the main stream of great rivers, only beneath the bridge of the same rivers nigh the sea.

And by the preamble to the Statute of the 28 H. VIII. it is declared, that traitors, pirates, thieves, robbers, murderers,

and confederates upon the sea, were tried before the Admiral, or his Lieutenant or Commissary, after the course of the civil law.

But, as appears further by the said preamble, that it was found inconvenient to try those offenders before the Admiral;

Therefore by the said statute this Court of Admiralty Sessions was appointed, whereby such offenders were to be tried according to the course of the common law, as if their offences were committed on land.

And now I shall proceed to speak of the crimes cognizable in this Court. And particularly I shall enlarge upon the crime of piracy that will come before you.

The crimes cognizable in this Court, and within the jurisdiction of the same, by the express words of the statute, are all treasons, felonies, robberies, murders and confederacies, committed in or upon the sea, or in any other haven, river, creek or place, where the Admiral or Admirals have or pretend to have power, authority, or jurisdiction.

There being only one of those crimes, viz: robbery or piracy, that will come before you, I shall omit the rest, and only speak to that: wherein I shall shew you the nature of the offence and the heinousness thereof.

Now, as this is an offence that is destructive of all trade and commerce between nation and nation; so it is the interest of all Sovereign Princes to punish and suppress the same.

And the King of England hath not only an Empire and Sovereignty over the British sea, but also an undoubted jurisdiction and power, in concurrency with other Princes and States, for the punishment of all piracies and robberies at sea, in the most remote parts of the world.

Now as to the nature of the offence: Piracy is a robbery committed upon the sea, and a pirate is a sea thief.

Indeed, the word Pirata, as it is derived from πειράω, transire, à transeundo mare, was anciently taken in a good and honourable sense, and signified a Maritime Knight, and an Admiral or Commander at sea, as appears by the several testimonies

and records cited to that purpose by that learned antiquary Sir Henry Spelman in his Glossarium. And out of him the same sense of the word is remarked by Dr. Cowel, in his Interpreter; and by Blount in his Law Dictionary. But afterwards the word was taken in an ill sense, and signified a sea-rover or robber; either from the Greek word πεῖρα, deceptio, dolus, deceipt; or from the word περᾶν, *transire*, of their wandering up and down, and resting in no place, but coasting hither and thither to do mischief. And from this sense, οἱ κατὰ θάλασσαν κακοῦργοι, sea-malfactors were called πειρατὰι, pirates.

Therefore a Pirate is thus defined by my Lord Coke: This word pirate, saith he, in Latin Pirata, is derived from the Greek word πειρᾶτης, which again is fetched from περᾶν, à transeundo mare, of roving upon the sea; and therefore in English a pirate is called a rover and robber upon the sea.

Thus the nature of the offence is sufficiently set forth in the definition of it.

As to the heinousness or wickedness of the offence, it needs no aggravation, it being evident to the reason of all men. Therefore a pirate is called Hostis Humani Generis, with whom neither faith nor oath is to be kept. And in our law they are termed brutes and beasts of prey; and that it is lawful for any one that takes them, if they cannot with safety to themselves bring them under some government to be tried, to put them to death.

And by the civil law any one may take from them their ships or vessels; so that excellent civilian, Dr. Zouch, in his book De Jure Nautico, saith, in detestation of piracy, besides other punishments, it is enacted, that it may be lawful for any one to take their ships.

And yet by the same civil laws, goods taken by piracy gain not any property against the owners. Thus in the Roman Digests or Pandects of Justinian, it is said, persons taken by pirates or thieves, are nevertheless to be esteemed as free.

And then it follows: He that is taken by thieves, is not therefore a servant of the thieves, neither is Postliminy necessary for him.

And the learned Grotius, in his book De Jure Belli ac Pacis, saith, Those things which pirates and thieves have taken from us, have no need of postliminy, because the law of nations never granted to them a power to change the right of property; therefore things taken by them, wheresoever they are found, may be claimed.

And agreeable to the civil law are the laws of England, which will not allow that a taking goods by piracy doth divest the owners of their property, though sold at land, unless sold in market overt.

Before the statute of the 25 E. III, piracy was holden to be petit treason, and the offence said to be done contra ligeantiæ suæ debitum, for which the offenders were to be drawn and hanged; but since that statute the offenders received judgment as felons.

And by the said statute of 28 H. VIII, the offenders are ousted of the clergy.

But still it remains a felony by the civil law; and therefore though the aforesaid statute of 28 H. VIII, gives a trial by the course of the common law, yet it alters not the nature of the offence; and the indictment must mention the same to be done super altum mare, upon the high sea, and must have both the words felonicè and piraticè; and therefore a pardon of all felonies doth not extend to this offence, but the same ought to be specially named.

Thus having explained to you the nature of the offence and the wickedness thereof, as being destructive of trade and commerce, I suppose I need not use any arguments to you, to persuade you to a faithful discharge of your duty, in the bringing such offenders to punishment.

And indeed, the inhabitants of this province have of late, to their great cost and damages, felt the evil of piracy, and the mischiefs and insults done by pirates; when lately an infamous pirate had so much assurance as to lie at our bar, in sight of our town, and to seize and rifle several of our ships bound inward and outward.

And then had the confidence to send in his insolent demands for what he wanted, with threats of murdering our

people he had on board him, if they were not complied with. Which was putting the province under contribution.

And the success he had in going off from our coast with impunity, encouraged another of those beasts of prey to come upon our coast and take our vessels.

And this very company, which will now be charged before you with the crime of piracy, their ringleader, with many, if not all of the company, were belonging to that crew, which first insulted us. And presuming upon their former success and impunity, had the confidence to lie upon our coast to fit their vessel, and to go on shore at their will and pleasure; designing, as we had just reason to suppose, that when all things were fitted for their mischievous designs, to come again to cruize before our bar, and take our vessels.

And therefore upon receiving these accounts, it was high time for the government to fit out a force against the pirates; and to endeavor to suppress them, in order to support our trade and commerce, which otherwise must have been inevitably ruined.

And being under such a necessity of having forces raised for that purpose, we cannot sufficiently commend and honor the zeal and bravery of those persons who so willingly and readily undertook that expedition against the pirates; and so gallantly acted their parts when they engaged them.

But it will not be fit for me to say any more upon that subject, by reason of the near relation I stand in to the Commander-in-Chief in that Expedition; and who is known to you all to have so well acted his part therein, that as it is not proper, so he needs not my commendations.

But then I must not omit mentioning to you that in this attack made upon those enemies of mankind, many of our people lost their lives in the discharge of their duty to their king and country, and who fell by the hands of those inhuman and murdering criminals which will now be brought before you. And the blood of those murdered persons will cry for vengeance and justice against these offenders.

And therefore I hope the consideration of doing justice to those persons who were killed in the service of their country,

will make you to use your diligence in bringing the criminals to punishment, without which the blood of those persons will in a great measure be required at our hands.

I need not expatiate to you upon the heinousness of the sin of murder; a crime which carries its own natural horror and guilt along with it: so that it is altogether needless for me to aggravate it; and the manifest injustice and evil of which is evident to all persons, even by the light of nature: So that there is no nation so barbarous, but by their universal practice do consent to the equity and justice of that ancient law of God, that, whoso sheddeth man's blood, by man shall his blood be shed, Gen. ix. 6.

Indeed, I freely grant, that the greatness of the crimes the persons are charged with, should make you the more careful in your enquiry, and to avoid any error or mistake on both extremes; that as you would not condemn the innocent, so likewise that you do not acquit the guilty, always remembering what the wise man saith, that he that justifieth the wicked, as well as he that condemneth the just, even both are an abomination to the Lord. Prov. xvii. 15. See chap. xxiv. verse 24.

I have only this to add, that you being a Grand Jury, your business is not to try the prisoners, but to consider whether or no, by the evidence, there is that probable proof of the persons being guilty of the fact charged upon them, as that they ought to be put upon their trial for the same.

An indictment found by you being virtually but a legal accusation, there being another jury to pass upon them.

But on the other side, though your finding the bill of indictment is not conclusive to the prisoners, but that they will have a trial, and be heard in their own defence before another jury, which properly are said to try the prisoners, and pass between the king and them upon their lives or deaths; nevertheless, you ought to be cautious and diligent in your enquiry, and not rashly and carelessly find a bill of indictment against persons, and put them upon the hazard of a trial for a capital crime.

But as to those indictments that will now be brought before

you, I am very well assured the proofs will be so clear and full, that you'll have no reason to doubt the truth of the facts charged therein; and then I shall not question your faithful discharge of that great duty and trust the law hath reposed in you, in bringing such criminals to justice.

Thus having sufficiently explained to you what is likely to come before you, I shall now dismiss you to your business.

WILLIAM HENRY DRAYTON.

William Henry Drayton is a name not to be forgotten while liberty is appreciated. I turn to it with the delight with which the awakened sleeper witnesses the Aurora of a bright day.

He was born in South Carolina, at Drayton Hall, on Ashley River, in September, 1742; in 1753, at the early age of eleven years, he was sent, under the care of the late Chief Justice Charles Pinckney, in company with his sons, Charles Cotesworth and Thomas Pinckney, to England. Under the direction of Mr. Pinckney, he pursued his education at Westminster school, in London, until the fall of 1761, when he was removed to the University of Oxford; he matriculated in Baliol College on the 10th of October in the same year, where he remained for near three years. The call of his father brought him home. His return did not induce him to abandon his studies; he pursued a course of reading which made him acquainted with ancient and modern histories, the laws of nations, and the rights of his own country. His father's large estate saved him from the necessity of pursuing any business as a means of living, but the activity of his mind was such that he could not be satisfied without employment. He, therefore, became a lawyer and a politician.

In 1764, he married Miss Golightly, a young lady of independent estate. By her, he had two children, a daughter and a son, John, afterwards Governor Drayton.

The dispute between the colonies and the mother country was in its embryo state; yet much was done and said, on both sides, calculated to arouse the attention of a young and ardent man. He and Wragg, in 1769, were opposed to the associations in the colonies, and wrote against them: this brought out that indomitable friend of liberty, Christopher Gadsden, and John McKenzie, on the other side. He went to England, and republished there the pieces which he and Wragg had written. He was introduced at court, and for a

time basked in the smiles of royalty. On the 27th of February, 1771, he received from the king, George III., an appointment of privy counsellor for the province of South Carolina. On his return home, he took his seat as a member of the council on the 3d of April, 1772. In the discharge of the duties of his office, he was often in opposition to the crown officers and judges, who were also privy counsellors; and by his daily opposition, he caused laws to be passed in favor of the colony, which would otherwise have been negative. Hence he was viewed with jealousy, but his standing and abilities were such, that his uncle, Lieut. Gov. Bull, was fully justified in appointing Mr. Drayton, on the 25th of January, 1774, an assistant judge in the place of Judge Murray, deceased.

His independent and zealous discharge of duty created ill-will on the part of the Chief Justice, Thomas Knox Gordon, and such of the assistant judges as had been sent over from Great Britain. He wrote an article, signed "Trueman," addressed to the deputies of North America assembled in the High Court of Congress at Philadelphia. "In this, he stated the grievances of America, and drew up a bill of American rights." It brought upon him an attack from the Chief Justice, and one of the assistant judges in the council, and in consequence of it, he was suspended by the lieutenant governor on the 9th December, 1774. He thus lost his place at the council board, and as an assistant judge. But he lost none of his influence in the State. Indeed, he became more and more popular. In the progress of events, and as the Revolution progressed, the Council of Safety was originated in South Carolina; in the year 1775, he was elected one of its members, and continued as such as long as the council existed. He was the chairman of the committee of five members. He was elected a member of the Provincial Congress of South Carolina, which met in January, '75; in the course of that year he became its president. In July, '75, the Council of Safety appointed Chief Justice Drayton its president, and William Tenent, commissioners to go into the interior parts of the colony, and explain to the people the nature of the

dispute between Great Britain and the American colonies. This duty was performed in August and September.

In March, '76, after the formation of a temporary constitution, Mr. Drayton was elected Chief Justice and one of the privy council. The government being organized, the courts consisting of the Chief Justice, John Mathews, Thomas Bee, and Henry Pendleton, associate judges, were opened, and Chief Justice Drayton on the 23d of April, '76, delivered a charge in which he declared that the King had abdicated the Government, which the people had rightfully reëstablished, and that he had no authority over the people of South Carolina, and that they owed no *obedience* to him.* On the 15th of October, 1776, Chief Justice Drayton, attended by the associate judges, charged the grand jury of Charleston as to the rise of the American empire and the duty the grand jury ought to pursue for aiding its establishment. In October, '77, he delivered, in the presence of the associate judges, another charge to the grand jury, as to the situation of the public affairs of the United States, and particularly as to the situation of South Carolina. His conclusion was in the following words: "In every station that I have had the honor to fill, *I have counselled the most decisive measures; nor have I been sparing of my personal assistance in their execution. The public service requires an unwearied application, unabating vigor, and readiness to make the greatest sacrifices. I trust that we shall act as men; and that posterity will have no just cause to reproach our conduct.*"

This was intended to strike at the inertness which had followed the glorious repulse of the British at Fort Moultrie in June, '76. These various charges of the noble Chief Justice had a great and powerful effect in South Carolina and in the United States; they were also read to great purpose in Great Britain.

On the 20th December, 1777, John Rutledge, the President of South Carolina, as he was then termed, by virtue of an Act passed in 1776, as he was about being absent from

* Quere. Is not that the true notion? Are not *obedience* and *allegiance* to the Constitution convertible terms?

Charleston for a time, and the Vice-President was also absent invested the Chief Justice with the powers of President, during his absence, and that of the Vice-President.

Early in '78, Chief Justice Drayton was elected a delegate to the Continental Congress, and in March he repaired to Yorktown, Pennsylvania, where that body was in session.

He took an active part against the propositions of conciliation presented by Lord and General Howe, and Congress, by their President, Henry Laurens, in the absence of any knowledge of a treaty of alliance between France and America, gave a decided negative to them.

Congress returned to Philadelphia and there resumed their sessions. Either before or after their return, he was sent to visit Gen. Washington at Valley Forge, and on the 12th of July, with Mr. Hancock and Mr. Duer, as a committee of Congress, waited on the French Minister on board the French frigate which was anchored off Chester, in the Delaware river, were received with national honors, and returned in company with the French Minister to the headquarters of Gen. Arnold, in Philadelphia, where apartments had been provided for him.

He (Chief Justice Drayton) continued in constant discharge of his arduous duties as a delegate to Congress, while his hours at home were devoted to writing. His sedentary life caused an illness, which in September, '79, ended his useful and glorious life. His son says, "his manners were gentlemanly and elegant—his virtues many—his faults few."

No man ever lived who was more devoted to his country; no one ever presented greater talents and information to her service, or made for her greater sacrifices. He was, indeed, among the first of those great men who were in the Revolutionary Congress.

JOHN RUTLEDGE.

John Rutledge "*clarum et venerabile nomen.*" How can one, who never saw nor heard the Carolina Orator, do justice to his memory! Still it must be attempted; for poor would be the account of the Bench, and Bar of South Carolina, if her last and greatest Chief Justice did not occupy a prominent chapter.

John Rutledge was the son of an Irish gentleman, of the same name, a Physician, who married Miss Hexe, and died in about ten years after the birth, in 1739, of their first son, John, leaving his young widow with the care of seven infant children. Never did a mother more faithfully train up her children to excellence. Three of her sons, John, Hugh, and Edward, are enrolled in the imperishable records of fame.

John, as was then usual, completed his education in England, entered as a student of the Temple in London, and in due time became a barrister at law. In his 22d year, (1761,) he returned to Charleston, and began the practice of the law, in which he distanced all competitors. His debut, like that of Patrick Henry, in Virginia, was irresistible; it carried away Judge and Jury, and gave him a reputation for eloquence, which was not in his lifetime surpassed.

He was a member of the first Congress, which assembled in New York, in 1765. He was then only twenty-six years of age, yet, even then, he was the leader of that august body—and thenceforward he was among the boldest, and ablest of his country's friends. There are no means of speaking of Mr. Rutledge's course at the Bar; the business of the whole State, then done at Charleston, hardly equalled the business of one of our District Courts at this day. I see it is stated in a memoir of Chief Justice Rutledge, that the largest number of judgments ever entered up in Charleston, in any one year before the Revolution, was three hundred and ninety. How meagre, that will appear, when compared with the result of a single regular and an extra term in Nov., 1842, and January,

1843, at Winnsboro', where nearly twelve hundred judgments were given. It is true, in 1769, Charleston ceased to be the only forum of business. Some new District Courts were then created, and no doubt Mr. Rutledge's pre-eminent abilities and acquirements had full employment in them; yet, no doubt, cases were few and far between, worthy of his unrivalled power. In 1764, he was Attorney General, *pro tem.*

He was a member of that first convention of the people of South Carolina, called the Congress of 1774. This was the beginning of organized resistance to the arbitrary acts of the mother country. Rutledge had borne his part in arousing the State, and well did he follow up the impressions already made in the Provincial Congress of 1774. He, with his brother Edward, Henry Middleton, Christopher Gadsden, and Thomas Lynch, were appointed delegates to the general Congress, in Philadelphia. He defeated the attempt to limit their powers; and when one in favor of such limitation asked, "what shall be done with the delegates if they betray their constituents, and pledge the colony to a course inconsistent with the public interest?" He answered with a flashing eye, "*Hang them, hang them!*" Before such patriotic enthusiasm opposition shrank into insignificance.

He and his colleagues untrammelled met the general Congress, consisting of such men as George Washington, John Adams, Samuel Chase, Samuel Adams, Roger Sherman, Richard Henry Lee, and Patrick Henry, and in that body, after Patrick Henry and himself were heard, Samuel Chase said to his colleague, "let us go home, there can be no use for such men as us." After his return Patrick Henry on being asked, who was the greatest man in that body said, if you speak of *eloquence* "John Rutledge, of South Carolina, is the greatest Orator." This was great praise, coming from the lips of Virginia's greatest Orator, and himself, perhaps, the most eloquent man of his day.

Rutledge and his colleagues went for the boldest and strongest measures recommended by the Congress of 1774. They were fully sustained, on their return home, by the Provincial Congress of South Carolina, and were re-appointed

delegates. In the Congress of 1775, Rutledge fully concurred with John Adams in holding, "that the people were the *source* and *original of all power*," and that therefore the people of every colony ought to set up governments of their own; and in New Hampshire and South Carolina it was recommended that this should be done immediately. On the 26th of March, 1776, this advice was carried into effect in South Carolina, by adopting the Constitution of that year. Rutledge was the Chairman of the Committee who prepared it, and he was elected the President of the new Government without opposition. In an extemporaneous address, in which this appropriate sentence is found, "*as I have always thought every man's best services due to his country, no fear of slander,* of *difficulty, or danger, shall deter me from yielding mine,*" he accepted the office. Let us pause for a moment, and consider the sublime spectacle of this young patriot, in the 37th year of his life, surrounded by the representatives of his native State, in defiance of the immensely greater power of the mother country, placing his hand on the Holy Evangelists of God, and swearing, that as President, he would sustain the new Government and "cause law, and justice, in mercy, to be executed, and to the utmost of his power maintain and defend the laws of God, the Protestant religion, and the liberties of America." Thus did the heroic Rutledge, followed by his native State, place himself and her in the van of lawful opposition to Great Britain. They had counted the cost; they had put their hands to the plough; and never did they look back, until liberty triumphed and *freedom was constitutionally* established.

Hitherto South Carolina had been free from invasion, but now it was determined by Sir Henry Clinton and Commodore Parker to bring *the war* home to her. On the 28th of June, '76, was fought the great battle of Fort Moultrie, in which the heroic band, headed by Moultrie, and consisting of such spirits as Motte, Marion, Horry and Jasper, repulsed the British fleet, and Col. Thomson, with his rangers, posted on the Eastern extremity of Sullivan's Island on a redoubt, held Sir Henry Clinton in check and prevented him from

crossing over from Long Island and attacking the fort on the Western side. The enemy made the attempt by marching down to the edge of the inlet, where it was fordable, except at high water; they were flanked by a schooner and a flotilla of armed boats. Col. Thomson had only two cannon which were manned by his rangers, who had never fired a great gun before. The flotilla advanced bravely to the attack; but old Danger, as Col. Thomson was usually called, opened so well directed a fire that the men could not be kept at their posts. General Lee advised the evacuation of the fort; but Rutledge said to Moultrie, "you will not do so without an order from me," adding, "*I would sooner cut off my right hand than write one.*" In the midst of the battle he sent off to the fort five hundred pounds of powder, and said to Moultrie: "Honor and victory, my good sir to you and our worthy countrymen with you. Do not make too free with your cannon." "*Cool and do mischief.*" Moultrie, his officers and men *were cool*, and *did mischief.* Their cannon at slow and deliberate intervals poured the iron messengers of death and destruction into Sir Peter Parker's doomed fleet. No battle, except that of Bunker Hill, was fought under such auspices. It was in full view of the city of Charleston. On every house top were gathered, the anxious wives, mothers, daughters and sisters of the garrison, who, under a summer's sun, and the broad sides of eight men of war, were slowly directing the missiles of liberty and deliverance against their invaders. Well may we conceive the throbbing anxiety with which they listened to the slow and deliberate cannonade from the fort, and with what despair it was noticed that the flag was down, and then with what rapture the appearance of the gallant Jasper, flag in hand, as he mounted the ramparts and planted it there, was hailed. It was a moment of trial and triumph never equalled.

The sun sunk slowly beyond the Western horizon, while every now and then Moultrie spoke in thunder, and his iron balls crashed through the Commodore's ship. At length, after eight hours of suffering, humbled and defeated, the enemy's fleet retired beyond the range of the guns at the fort, and on

the 31st of June, bore Sir Henry Clinton, Lord Cornwallis and the invading army from the shores of Carolina. Rutledge has hardly ever received the honor which was due to him for this affair. His was the head to plan the defence and his the heart to encourage the actors in maintaining it. His speech to them on the fourth of July, when he returned thanks for their heroic conduct, was unrivalled eloquence, and none who heard it could afterwards fail in their devotion to their country. On this very day, and while he was speaking, Congress declared the United States free, sovereign and independent. This was as it should be! The 28th of June was the proper precursor of the Declaration of Independence. South Carolina, with her cannon and rifles, and behind her palmetto logs, had tested the question and in blood had sealed that independence which Congress nobly declared on the 4th of July, '76. Let the two days, 28th of June and 4th of July, '76, ever be commemorated as twin sisters, and always let the names of John Rutledge and Thos. Jefferson be remembered together.

For three succeeding years South Carolina was exempted from invasion; indeed, with the exception of the war of a few months with the Indians, she experienced none of the miseries of the revolutionary struggle. She reaped the benefits of peace, while war was all around her. In the meantime the legislature thought proper to change the Constitution, and accordingly enacted the Constitution of '78, which met with the disapprobation of President Rutledge; but to give the opportunity to carry out the legislative will, he resigned his office and Rawlins Lowndes was elected in his place, and approved the Constitution of '78, which therefore went into effect, and the Chief Magistrate of the State was then and afterwards styled the Governor and Commander-in-Chief. In '79 the State was threatened with invasion, and John Rutledge was, by an almost unanimous voice, called to the head of the government. Although he was opposed to the Constitution, he remembered what he had said on the 26th of March, '76, that "every man's best services" were "due to his country," and accordingly he accepted the office of Governor, and set

about the means of defence. The invasion by Prevost came from the British forces in Georgia. Prevost at their head, compelled General Moultrie to slowly retreat on Charleston. On the 12th of May, 1779, the British troops appeared before Charleston. Two days before the gallant Moultrie, with his little army, had taken refuge within the lines; the Governor reached the city at the same time, and simultaneously with the arrival of the British, came to her defence the gallant Pulaski and his legionary corps. The American forces were so inferior to that of the invading army, that proposals for a capitulation were made. This was probably done to gain time. For it was known that Lincoln, at the head of the main army, was in pursuit of Prevost. It is sad to think that a peace and the prosperity of three years had made the inhabitants tremblingly alive to the fears of an assault; the disgraceful proposition of "neutrality during the war," was submitted to the invader, and fortunately rejected, and thereupon the garrison and citizens determined to defend themselves to the last extremity; all night they stood to their arms, and as morning broke, the joyful cry resounded along the lines "*the enemy is gone.*" The intelligence of the approach of Lincoln turned the haughty invaders into the retreating and pursued enemy.

For a short period the city was spared. On the 11th of February, 1780, Sir Henry Clinton, with a powerful and well appointed army landed within twenty-one miles of Charleston. Lincoln and the Governor were at their posts for the defence of the city; the men and means were, however, very inadequate. The Legislature, then in session, resolved that Charleston should be defended to the last extremity, and the powers of absolute dictatorship were conferred on the Governor and Council till ten days after their next session.

The resolution to defend Charleston to the last extremity was unfortunate. For if it had been yielded, as Philadelphia had been, to the enemy, Lincoln and his army would have been saved, and the wasting and desolation of the whole State would have been prevented. But, as it was, the city was beleagured, and on the 12th May, 1780, was surrendered to the

British. Before this sad event, the Governor and a part of his Council, to wit, Charles Pinckney, Daniel Huger, and John L. Gervais, were advised by Lincoln to leave the city, so that the civil authority of the State might be preserved. His advice fortunately was followed, and Gov. Rutledge and the gentlemen named, on the 12th of April left the city. They made every effort to relieve the city, and afterwards to arrest the progress of the invaders, *but in vain.* They were compelled to seek a refuge in North Carolina; and for near two years, Gov. Rutledge accompanied the armies, approaching to rescue South Carolina, or retreating from the British armies. In this time of gloom, when South Carolina was overrun, he never despaired. Sumter, Marion, Pickens, Williams, all received his encouragements. To each of these gallant men he at various times gave the commissions of Brigadier Generals. He solicited aid from North Carolina, Virginia, and Congress. To these efforts are to be ascribed the armies of De Kalb and Gates. After Gates' unfortunate defeat, at Gum Swamp, he aided materially in re-organizing that army. He gave to Greene, when he assumed the command, all the aid which his knowledge afforded. Both admired each other, and their co-operation was therefore uniform. His first proclamation, it seems, was issued from the high hills of Santee, 5th August, 1781. About this time he issued the unfortunate order directing the wives and children of the loyalists to be sent to the lines at Charleston. I call it unfortunate, because it was the means of killing many innocent women and children; and it was still more unfortunate, as the excuse for the murders and marauding of the bloody scout, in the fall of 1781. But I have no doubt he thought it was wise and just, and as a measure of retaliation it would be generally so regarded. On the 28th of September, 1781, he issued a wiser and better proclamation: it was issued under the advice of that great and good partisan, Gen. Marion. It offered pardon, free pardon, to all the loyalists who had borne, or were bearing, arms in the British service, who would, within thirty days, surrender themselves, and engage to serve six months in the militia of the State. In a few weeks hundreds of the misguided tories

came out from the British lines, accepted the conditions, and showed their sincerity by their bravery, whenever, under Marion, they met their friends.

The time the Governor thought was at hand when he ought to surrender his great powers. He issued writs for an election of members of the General Assembly, to convene at Jacksonborough on the 8th of January, 1782. The elections were held, and the Assembly convened at the time and place mentioned. It would be gratifying, if we could look over the Legislature, and bid arise before us the mighty men who composed it. But the wish is vain. We may be permitted, however, to say, they were men who had borne the heat and burden of the day, whose bodies were scarred by the bloody war through which they had passed, whose hearts had been wrung by the butchery of parents, sons, brothers, relatives and friends, and whose plantations were in ruins. From such men vengeance was to be expected. To this feeling the Governor's message adverted, and recommended, though in very cautious and merciful terms, the confiscation of the estates of the loyalists who had adhered to the enemy in spite of his proclamation. The Legislature unwisely yielded to this recommendation, and thus forced many valuable but mistaken men to leave the state. Tradition reports that an elderly man, the father of a gallant soldier of the revolution, said, on the discussion of the Confiscation Act, that there was a voice in his ears crying, "slay, slay, utterly slay the Amalekites." He was answered by a member, that he too heard "a voice in his ears, but it was like unto the voice of a long eared animal."

Gen. Marion was utterly opposed to this measure; and on that, or some other occasion, he declared, *if his sword was stained with the blood of a captive, or his hand soiled with the plunder*, he was ready to account and return fourfold.

The Legislature, in their addresses to the Governor, assured him of the perfect confidence of the people in him, and of their just appreciation of his past services. It is due to him to say, that his dictatorship in general was exercised with rectitude, and gave no just cause of complaint.

His term of office was at an end, and by the constitution he

could not be re-elected. In his stead, Gov. Matthews, after Gen. Gadsden had declined the office, was elected Governor.

Gov. Rutledge was not permitted to retire to private life; he was elected a member of Congress, and took his seat in that body on the 2d May, 1782. Here again he was actively and fully employed; and here again he showed that he was the orator, statesman and patriot.

On the 14th of December, 1782, Charleston was evacuated by the British troops, and the American army took possession. Gen. Green escorted Gov. Matthews, and the other civil officers, to the town hall. From windows, balconies, even house tops, the troops were greeted with cheers, waving of handkerchiefs, and cries of "God bless you, gentlemen; you are welcome home!" In this stirring scene, Rutledge was not, as I had once supposed, present. He was still at Philadelphia, laboring at the public oar, to guide in safety the shattered bark of the Confederation to safe moorings. He remained until about the middle of June, 1783, when Mr. Jacob Read having appeared as a member from South Carolina, he returned home.

On the 21st of March, 1784, he was elected with Richard Hutson and John Matthews, Chancellor of the State, and entered upon the duties of his office.

During his term as Chancellor he was elected a delegate to the convention at Philadelphia, which resulted most happily for the country, in bestowing upon it the Federal Constitution. In framing that wonderful instrument, (I had almost said inspired instrument,) Chancellor Rutledge largely participated. Of the convention, assembled by the State of South Carolina for the ratification of the Federal Constitution, Chancellor Rutledge was a member, and was the ablest advocate of the ratification. It was opposed by many good and true men, but thanks to the wisdom of a large majority it was ratified, and John Rutledge's prediction has been fulfilled. He said, "so far from thinking that the sun of this country was obscured by the new Constitution, he did not doubt but that, whenever it was adopted, the sun of this State, united with twelve other suns, would exhibit a meridian radiance astonishing to the world."

On the organization of the Federal Government South Carolina, *as she ought to have done*, gave her electoral vote to him as Vice-President. On the 24th September, 1789, President Washington nominated to the Senate John Rutledge, as an Associate Justice of the Supreme Court of the United States. The Senate unanimously confirmed the nomination. His commission is dated 26th September, and placed him as the senior associate, and next in rank to the Chief Justice. He accepted this appointment, as appears by Gen. Washington's letter of 23d Nov., 1789, to Edward Rutledge. 10 vol. writings of Washington 51. He resigned in 1791. Idem 164.

In February, 1791, at the new organization of the Courts of Law and Equity, under the State Constitution of 1790, John Rutledge was elected Chief Justice of the State, and was the last who ever filled that highest judicial office. With his associates, Burke, Grimké, Waties and Bay, he laid the foundation of that noble common law temple which year after year has been built upon, until now it commands the admiration of all our sister States. Many of the principles then to be settled were new, or of new application. Thus in the case of Eden *vs.* Legare, 1 Bay 174, the Chief Justice ruled that to call a man a mulatto was actionable *per se*, on account of the degradation to which the words, if true, subjected him. The Chief Justice was sustained by his brethren. So in Timrod *vs.* Shoolbred, 1 Bay 324, commonly called Stepney's case, it was ruled that a sound price warrants a sound commodity. This principle has been the subject of praise, or censure, as a man's taste led him to be honest, or cunning. My belief is, that no principle in the whole body of our law has done more to elevate the character of our people above the temptations of fraud than this very doctrine of sound price warranting a sound commodity. The Chief Justice's opinion in the State *vs.* Walch, *alias* Washington, for forgery, 1 Bay 120, is perhaps as good a specimen of his legal acumen and reasoning as we could have.

The Chief Justice enjoyed much the wit and convivialities of the country Courts; this was especially the case at Ninety-Six, where Carnes' wit ruled and rioted in wild luxuriance. On one occasion, the opening of Ninety-Six Court, he entered

the Court room an hour later than the usual time. As he took his seat the Grand Jury presented him for being too late. He quietly said, "Mr. Clerk hand me the presentment," and running it into his pantaloons' pocket he turned to the Grand Jury and said, "Gentlemen, I would have you to know that *it is never* 10 *o'clock till I am in Court.*"

On the 1st of July, 1795, he was appointed Chief Justice of the United States by President Washington. He resigned his office, as Chief Justice of South Carolina, and accepted that of Chief Justice of the United States. He presided at the August term of the Supreme Court. The Senate on the 15th December, 1795, from party motives refused to confirm the nomination, by the President, of John Rutledge as Chief Justice. But before this unjust, and indeed most unworthy act, occurred, the Patriot and Statesman of the Revolution, the Orator and accomplished Judge of South Carolina was incapable of understanding the malicious blow leveled at him. About the 1st of December, on his way to hold the Circuit Court of North Carolina, he was taken sick, and in a few days that noble intellect, which had so long led and enlightened his fellow men, was obscured, and never afterwards was relumed.

The balance of his life is the sad blank of want of reason. He died in the summer of 1800. He was married in 1763, to Miss Elizabeth Grimké, by whom he had five sons and two daughters. None now survive, but their descendants are numerous, and his honored name, in the person of his grandson, is in his native city.

In the hall of the Supreme Court, his bust is, by the efforts of the late Senator, A. P. Butler, to occupy its proper place, with Jay, Elsworth, and Marshall.

The character of John Rutledge must be judged by the sketch given of him. He was a fascinating companion, one of the most striking orators, who ever spoke in South Carolina, or in the Union; an honest man, a fearless patriot, a wise statesman, and a pure, just, well-informed Judge. Few men have lived who were greater than John Rutledge, and few will ever live who can excel him.

JUDGES.

HENRY PENDLETON.

Judge Pendleton was a Virginian; when he came to South Carolina, whether before or after the commencement of the revolution, seems to be uncertain. He was elected a Judge of the Courts of Law of South Carolina, 17th April, 1776. Chief Justice Drayton, Justices Matthews, Bee and Pendleton, were elected from the 12th to the 17th of April, and therefore must have acted together as the Judiciary of South Carolina, and did duty together until 1780, when war in reality visited South Carolina, and for a time overturned the authority of the State. Judge Pendleton was, it seems, (from the information which I have fortunately derived from Dr. Joseph Johnson, one of the few noble survivors of '76,) captured by some party of the British adherents. He was afterwards exchanged and became one of General Green's aids; he bore the orders of his gallant chief in the battle of Eutaw, and afterwards aided him in turning back the tide of war, and with him witnessed its final ebb from the wasted soil of South Carolina.

After the evacuation of Charleston in December, 1782, Judge Pendleton sheathed the sword and assumed the toga.

He was the author of the County Court Act, which was passed 17th March, 1785, P. L. 366. This Act is long, and descends to very minute details which, as my venerable friend says, were found to be "tiresome to all who were obliged to hear and discuss it." Yet that Act shews both the ability and pains-taking carefulness of its eminent author. The County Courts had an existence of only fifteen years, and were generally denounced for their worthlessness; but I have no doubt such Courts were, perhaps, better adapted to the state of society then existing than any other system. They prepared the people for the stronger arm, greater powers and sterner behests of the Circuit Court system of '99.

If we could gather up the anecdotes attendant on the

County Courts, it would make up a book of, it is true, many acts of mal-administration, but at the same time of many a hearty laugh. I will endeavor to state, briefly, two or three. At Laurens the jail was a small log house, and being untenanted at the opening of the term of the County Court, their worships leased it to a German named Shute, who kept store at Springfield, Newberry, but who attended with a part of his stock for sale at Laurens. Soon after the Court opened, a fight occurred in this yard, and the aggressor, Clem Davis, an old revolutionary partisan, was dragged into Court; he was (without thought of the consequences on the part of their worships) ordered to jail.

The Sheriff promptly executed the order, thrust the prisoner, Clem, into the jail, and turned out the Dutch merchant, Shute. Clem, who was never out of place, instantly turned salesman, and began to sell the Dutchman's goods out of the window. Poor Shute rushed into Court and cried out, "May it please your vorships, dat man will sell all mine goots." The Sheriff was ordered to correct the error by bringing him into Court and restoring the goods. He was accordingly lugged into Court and said to their worships, "what do you want with me now? You had better take care, I'll have my finger into one of your eyes, if you don't mind." He was discharged as incorrigible. The Sheriff, in gathering up the Dutchman's goods, found a plow mould and a blanket in the possession of an Irishman, McClurkin, to whom Clem had sold: he took them from him. McClurkin went upon Clem for the purchase money; instead of paying McClurkin, he crammed him into a dirt oven in which there had been recent baking, and which he denominated "Piles gaol."

The County Court for Winton, (now Barnwell) was held between North and South Edisto Rivers. Their worships often indulged too much in strong potations. On one occasion a fat dog, called Larry, was baked and served up, and eaten by them as fine venison.

When the Court was ended, by the Circuit Court Act of '99 their worships determined that it would be best to destroy

all their proceedings. They accordingly burnt the Court House and its contents. This was proved before me, in the Spring of 1829, at Barnwell, by Col. Tarleton Brown, a fine specimen of the men of the Revolution.

In 1785, an Act was passed for the appointment of three Commissioners to form a complete and accurate digest of the State Laws, with such additions, alterations and amendments "as they should see fit." Justices Pendleton, Burke and Grimké, were appointed.

In May, 1788, the Convention of the People of South Carolina, to whom was submitted the Constitution of the United States of American for ratification, assembled in the hall of the Custom House, Charleston. Judge Pendleton was a member of that Convention. Dr. Johnson says: "I remember him, a tall, likely gentleman."

He died in that year, shortly before the meeting of the Legislature, which I see was in session in November. What part Pendleton bore in the preparation of the digest assigned to him, Burke and Grimké, is not known. The survivors, on the requisition of the Legislature in 1783, submitted a digest, which was explained by Judge Burke in a letter addressed to the President of the Senate. The digest was not adopted, but many of its recommendations, viz: the Circuit Court Act, the Act of Distributions, were passed as separate Acts. The provision of the Constitution of South Carolina, 3d section, 10th article, whereby the Court of Appeals, called afterwards the Constitutional Court, was established, owes its origin to the digest prepared by these eminent men.

On the 7th March, 1789, Pendleton County was established; its name was, I have no doubt, in honor of Judge Pendleton, who had died a short time before. This fact shews the high stand which he had in public estimation.*

Judge Burke, in the close of his letter to the Senate on the digest, said: "I cannot pass without making a remark concerning our late associate Mr. Justice Pendleton, who is now

* I have lately been informed that Judge Pendleton lived in Greenville District, and that the house he occupied is still existing, and is situated on or near Golden Grove Creek.

no more. The zeal of that able magistrate in favor of County Courts flowed, I believe, from the most pure and honorable motives. If the measure hath fallen short of his expectations, it goes only to prove that the finest talents, a mind highly cultivated and combined with honest intentions, are not always sufficient to exempt a human creature from being mistaken."

ÆDANUS BURKE.

Ædanus Burke was an Irishman, educated at St. Omer's for a priest; he, in the vicissitudes of an Irishman's life, came to the West Indies, thence to America, at the commencement of the Revolution, in which he volunteered to fight for liberty. He was a major in the Revolutionary army, as I have always understood. He was elected a Judge of South Carolina in 1778, and served as such until the State was overrun by the British. The duties of his office being then suspended, he took a commission in the army, and when the courts were re-established, he laid aside the military for the civil office. In 1785, an Act was passed for the appointment of three commissioners to form a complete digest of the State laws, with such additions, alterations and amendments as they should see fit. Pendleton, Burke and Grimké were appointed. Pendleton died before the Report was made. In '89, the survivors reported. Judge Burke's letter to the Senate, explaining the digest, is appended.*

Of him as a Judge and a man, there are more anecdotes than perhaps any other. That he had a military turn is plain from his participation in the *duello*, as it is now fancifully called. In '99, he accompanied Col. Burr to the field, as his second, in an affair with John B. Church, Esq., and on that occasion he was the cause of more laughter than blood. Col. Burr's pistol balls were purposely cast too small, so as to be rammed home surrounded with chamois leather (as patches

* Mr. Justice Burke, in a letter addressed to the President of the Senate, in consequence of a resolution of that body calling for the digest, goes at large into an explanation of the nature of the work, its plan and execution.

"This letter was ordered to be published; and amongst other pertinent and forcible observations which it contains, are the following: "thus the laws of this country, on which depend the lives and property of the people, now lie concealed from their eyes, mingled in a confused chaos, under a stupendous pile of old and new law rubbish, past all possibility of being known, only to the law professors. I will venture to aver, that there are but very few of our lawyers, that have all our laws, or can point out which of them are in force, or otherwise. The ablest of them could not, in all cases, have separated the grain from the immense heap of chaff, without much time and labor in searching for it."

in a rifleman's understanding); to facilitate this, grease was placed in the case, and Burke was accordingly so informed. But in his hurry he forgot the *grease*, and undertook to ram home the ball and leather. This he could not accomplish, and when his attention was called to it by his principal, with his characteristic Irish rashness, he replied: I forgot to grease the leather; but you see he is ready, don't keep him waiting *Just take a crack as it is, and I'll grease the next.*"

He was the judge at Ninety-Six when Matthew Love was tried for sedition, acquitted, but taken from the bar by the relatives of those who had been butchered by the Bloody Scout, of which he was a member, and hanged. When Love was thus taken, Burke commanded the sheriff to suppress the riot. "It is more than my life or yours is worth," was the reply. On hearing it, he sprang from his seat, called to his servant, "Kit, Kit, get the horses, Kit." He was soon in the saddle, and stayed not his flight until he was under the roof of his countryman, Samuel Kelly, at Springfield, twenty-four miles from the scene of violence. He dropped his razors in his rapid ride. Caleb Gilbert found and brought them to him at Springfield. Burke, in his delight, and in his best sounding Irish, said he was "*a proper honest fellow.*"

The habit of Bench and Bar was to ride the circuit on horseback. Burke often indulged in fits of abstraction; on such occasions his order to his servant was to ride as near to him as possible. The boy usually fell back at some distance, but generally in sight, and allowed the Judge to meditate as best pleased himself. Jogging along in this way on one occasion, his servant pressed up too near to the horse which he rode, and which happened to be an ill-natured brute, and the consequence was the horse kicked the negro on the leg, who observing that it had not interrupted his master's study, sprung off his horse, and picked up a stone and threw it at the horse, which it unluckily missed, and took effect between the Judge's shoulders; the instant the negro saw what he had done, he fell in the road with his hands clapsed around his leg, and crying out in apparent agony; as soon as the Judge could straighten himself, he turned around, and said to the

prostrate negro, "Stephen, child, what ails you?" "Lord, master," was the reply, "your horse just now kicked me on the leg, and almost broke it." "Well, child," said the Judge, "he just now kicked me between the shoulders, and almost broke my back, too."

On another occasion, he rode up to the Sampit Ferry, and called to the ferryman, whom he could see across the water; but the man was on a frolic, and paid no attention to the oft repeated calls. In his own good time he crossed over, and Burke, as might be expected, was in no gentle mood; he rebuked the ferryman in strong terms, who retorted by swearing if he did not mind his own business he would whip him! The boat no sooner touched the land, than stepping out, Burke, who was an accomplished pugilist, laid off his coat, and said to the ferryman, "come out, my good fellow, and I'll give you a beating." The latter, thinking it fine fun, sprang out. Burke instantly knocked him down, and continued to apply the same remedy every time he rose, until at last he lay still, and cried enough. Burke then said to him, "My good fellow, when any one comes to your ferry again, be up and away. May be Judge Burke may come this way again."

In one of his rides, he became very dry—that is, he wanted a dram; and on inquiry he was directed to a still house, which he described as "a long house on a brae." He asked for something to drink. It was brought to him, as he said, in a long tin cup, and on being asked, he said, he drank it all up—and "'fore God," he said, "I wanted to steal everything I saw the whole evening." Hence, he sagely concluded that any one who would *drink whisky would steal.*

The Judges' custom formerly was to enter and leave the Court with their bands and gowns on. Madame Van Rhyn, a highly respectable lady from Holland, kept a dry goods store near the Court House in Broad street. Thither the Judges walked, pulled off their gowns, and hung them up. Judge Burke during the Court had left the evening before his gown at Madame Van Rhyn's; being rather behind time, and in a hurry, he did not wait to put on his gown, but snatched down that which he supposed to be it, and hurried to his seat, and attempted to put it on; the whole Bar were in

a titter at the Judge's perplexity; he at last discovered his mistake, and spoke out: "'fore God, I am in Madame Van Rhyn's petticoat." So much for anecdotes, which might be added *ad libitum*.

Notwithstanding his Irish rollicking character, Judge Burke was a pure, just Judge. He aided in laying broad and deep the foundations of our jurisprudence. He had a great contempt for the County Courts, and whenever their worships presumed to sustain a demurrer, he reversed the judgment without argument. On one occasion, a County Court lawyer, speaking to him in court about the strength of the law, he replied: "True, the law ought to be like a wall, through which the lions and bears could not break; but now it is so rotten, that the foxes, the raccoons, and squirrels break through."

Judge Burke, before '90, was often a member of Congress. To prevent him from thus mingling politics and law, the law of 1789 was passed, which prohibited a Judge, or any other officer, on pain of the forfeiture of office, from leaving the State without leave from the Governor. He took a very active part in the convention of South Carolina against the ratification of the Federal Constitution; yet he was elected without opposition the first senator in Congress. Judge Burke was the author of the celebrated attack on the Society of the Cincinnati, and which forced them to abandon many aristocratic provisions originally in their constitutions. His essay was signed Cassius, with the motto: "Sound the trumpet in Zion."

When a vacancy on the Equity Bench was presented to him, and he was advised to resign and become a candidate for it, "'Fore God," he said, "I will wade in the muddy water till I come to the clean." He accordingly retained his place as a Common Law Judge, until he was elected in 1799 a Judge of the Court of Equity. This office he retained until his death, which took place 3d March, 1802.

His portrait hangs in Hibernian Hall—to which Society he made a handsome donation by his will—and on St. Patrick's day, with Walter Goodman, he is always remembered as one of the patrons.

JOHN FAUCHERAUD GRIMKÉ.

Judge Grimké, the son of John Paul Grimké, and Mary Faucheraud his wife, was born 16th December, 1752. He was educated, as is stated to me by his grand-son, at Westminster. I presume, by this is meant, he had there his legal education. It seems, he was one of a number of young Americans, in London, who petitioned George III. against those measures which infringed upon the rights of the colonies, and which ultimately led to the Revolution. He returned home about the breaking out of hostilities; he entered the army as a lieutenant-colonel of artillery. He was certainly in the battle of Stono and the seige of Charleston; what part he bore in either does not appear. It is probable he was taken prisoner at the seige of Charleston. He was married, probably, after the war, to Miss Mary Smith, the daughter of Thomas Smith.

He was elected a Judge of the Courts of Law 20th March, 1783: at this time, and to the Constitution of 1790, there was no inhibition on a Judge being a member of the Legislature. Judge Grimké and the other Judges frequently were members.

He was the Speaker of the House of Representatives from March, 1785, to March, 1786. The wisdom of the 1st Section of the 3d Article of the Constitution of this State, which prohibits a Judge from holding any other office of profit or trust under this State, the United States, or any other power, I have latterly been led to doubt. The knowledge and experience of the Judges would, in many particulars, be of immense service to the cause of legislation. I can see no just objection. The example of England is certainly decisively in favor of it. For there some of the wisest statutes were framed by Judges, and among them have been found some of the ablest advocates of freedom.

In 1799, when Judge Burke was elected a Chancellor, Judge Grimké became the Senior Associate, and thus virtually the Chief Justice. He died at Long Branch, New Jersey, 9th August, 1819.

Judge Grimké, for some reason, became exceedingly unpopular many years before his death. This probably arose from the habit of stern rule, which he acquired in the Revolutionary army, and possibly from his residence at Belmont, in Union District, and his refusal to mingle in the society around him. So too it is possible that his assertion of title to the tract of land lying on both sides of Tyger river, in Union District, and to which he ultimately established his title in Grimké *vs.* Brandon, 1 N. and McC. 356. This had occasioned much and angry previous litigation with persons connected with or descended from Col. Brandon, of revolutionary memory. He was involved in much, and very often, petty litigation. For some reason he and Samuel Farrow, Esq., became inveterate enemies. All these causes, and perhaps instances of hasty action, arising more from the faults of others than himself, as in the case of the Constables, at Newberry, reported by Sheriff Long, for being temporarily absent from their posts, and therefore committed (Fall term, 1807) by the Judge—led to the attempt to impeach him, the result of which is stated below:

But I owe it to his memory to say, that I always found him kind and courteous; he probably sympathized with my youth, poverty, and inexperience. When, in 1814, I had just returned from a tour of duty as a soldier, at Camp Alston, and after being examined by three Judges at Columbia, who signed there the fiat, was sent to Charleston and Camden, to obtain the fiats of Justices Grimké, Colcock and Brevard, he most kindly directed his son, the late Thomas Smith Grimké, in his office, to examine me, signed the fiat, on my petition, and then drew from me a narrative of my campaign, under Colonel Tucker, which seemed to afford him much amusement. He ever after knew me, and treated me with almost parental kindness.

Well do I recollect the scene in 1811, which occurred in the State House, when articles of impeachment were presented against him. The late Thomas Hunt, Esq., was the Chairman of the Committee, and led the attack in a strong but courteous speech against the venerable Judge. It seems to me that I can see him now, sitting in the lobby of the House of Representatives, closely buttoned up in his blue

surtout, wearing his oil-skin covered hat, over his thin grey locks, and leaning upon his staff. Near him stood the tall, majestic and eagle-eyed Daniel E. Huger, who, after all who had aught to say had spoken, took up the defence of the soldier and Judge. After speaking in his usual bold, impetuous and eloquent style, he paused and said, "Mr. Speaker, I have not spoken more than half an hour for the honorable and venerable gentleman before you without tiring, when he for us, without tiring, *fought seven years.*" The vote was taken and the articles were not voted by a constitutional majority.

Judge Grimké was a stern, unbending Judge in a Court House. Before him there was no parleying about being ready. It was not then, as now, when a lawyer has to be politely sent for, and when after coming into Court, he has to indulge in a long talk with his client and witnesses before he can say "I am ready." Those who were then taught know well, that a watch was often laid down, on the circuit, and in the Constitutional Court, and the Bar were told "*you must go on in five minutes or you must go off.*" This would now be regarded as great tyranny; yet it educated lawyers to know their business, and to be "*eager, prompt and ready.*"

In the spring of 1815, I first attended Edgefield Court. The dockets were enormous. My late friend, solicitor Starke, presented forty bills of indictment for every grade of offence from assault and battery to murder. Thirty-nine were found true. Many convictions followed. One of the Edgefield rowdies of that time looking on at the scene, swore it was no place for him. "For," said he, "Starke holds and Grimké skins." Upon the issue docket, there were more than two hundred cases. In the second week of the term, the late General Glascock proposed to give a dinner to the Judge and bar. A civil action for assault and battery was to be tried; there were seven speeches to be made—one for the plaintiff and six for the defendant, (for at that time the rule did not exist which limits two speeches to a side.) It was well known that if all spoke as long as they *could* that the dinner could not be ate. It was therefore proposed and agreed that each of the lawyers for the defendant should speak fifteen minutes

by the Judge's watch. It was accordingly laid down, and as each progressed to the limit, the Judge said, your time is out, and he ceased. At last, Mr. Bacon, who was closing for the defendant, and who was blessed with as fine an elocution as I ever heard, had scarcely finished his exordium, when the Judge said, "Mr. Bacon, your time is out," Mr. Bacon, instead of yielding as good taste would have directed, said, "I claim the right which every citizen has to be heard by his counsel." "Very well," said the Judge, "we will leave it to the jury." A stout man rose and said, "May it please your Honor, we have been tired of their clash for this hour." This ended the contest.

I regard Judge Grimké as a good Judge. Most of the decisions of his period were not written with the care which they now are, and hence it is difficult to make selections. His unwearied industry will be seen by referring to his notes presented to the Library of the Court of Appeals in Charleston, by his matchless son, the late Thomas Smith Grimké, and by his compilation of the Statute Law, called Public Laws, Grimké's Justice of the Peace, and his Law of Executors. These works were invaluable when published, and to-day are worthy of more attention than they receive.

THOMAS WATIES.

Judge Waties was born 14th February, 1760, in Georgetown District. He was descended from those good and pure men, the Huguenots, who fled from France in consequence of the revocation of the edict of Nantz. After receiving a good grammar education at home, he was sent to the University of Philadelphia; there he added much to his stock of knowledge, and became a great favorite. The war was about bursting upon the country, and the military spirit seized upon the young Carolinian, and in his 16th year he was elected captain of a company of his fellow students, and his company had the singular honor to be reviewed by General Washington. He was invited to accompany Commodore Gillon to Europe, and accepted the invitation, but sailed in a different vessel, and was captured and carried to England; thence he passed to France, and made the acquaintance of Dr. Franklin, who aided him with means and imparted to him much of that sage and wise character which afterwards so much distinguished him. He returned home between '79 and '80, and after the fall of Charleston, in May, 1780, he joined General Marion, and served with the rank of captain, under that accomplished partizan officer. This entitles Mr. Waties to live in the recollection of every Carolinian. For each and all of those brave men whose battle cry burst upon the sleeping camps of the English and their friends, the tories, rendered to the State services which never ought to be forgotten. *They saved the State*, and high upon her glorious escutcheon ought to be inscribed their names. Captain Waties' health was not equal to this arduous service, and in consequence of it he was obliged to retire shortly before the close of the war.

When peace came to bless the wasted State, Mr. Waties studied law, was admitted to the bar 16th August, 1785, and soon rose to great eminence in his profession.* He was elected

* His petition and the entries upon it are herewith presented to the public with the memorandum of the assent of Judges Burke, Heyward and Grimké, and the order of Court as noted by the clerk, Wm. Mason.

on 2d February, 1789, an Associate Judge, having thus, at the early age of twenty-nine, attained to the highest legal distinction. He resigned and was elected a Judge of the Court of Equity in December, 1811. In this office he remained until December, 1824, when he was assigned to the Circuit as a Law Judge. The duties, to escape which he had resigned in 1811, he patiently and admirably encountered and performed till his death, 22d June, 1828. Thus for thirty-nine years he performed the great duties of a Judge. He was a most patient Judge, yet on one occasion, at Sumpter, he lost his patience. It was the last day of the Court. He had invited friends to dine with him at his residence, ten miles distant. The last case was a summary processs about a hog. If tried he could not enjoy his dinner. He had the plaintiff called, ascertained the value of the hog, paid him for the animal and adjourned the Court.

Judge Waties was one of those men who, in a quiet and unobtrusive way, won upon the hearts of all men. He was a most distinguished Judge; he loved *the right* and sought to do right, independent of technical rules.

His opinion in the State *vs.* Lehre, 2d Treadway, 809. Zylstra *vs.* the Corporation of Charleston, 1 Bay, 382; Ewing *vs.* Smith, 3d Equity Reports, 417; and Carr. *vs.* Porter, 2 McC. 60, note, are models of judicial eloquence. I knew Judge Waties, and bear witness to his uniform mildness and correctness as a Judge. He lived long in the service of the State, and he deserved more, much more, than the State ever bestowed. His first Court was April, 1789. On that occasion he delivered to the Grand Juries of Beaufort, Orangeburg and Ninety-Six, the beautiful and impressive charge which follows:

Gentlemen of the Grand Jury:

"Although the duties of a Grand Jury may have been frequently explained from this seat, and may be well understood by many of you, yet as they are among the most important that you owe as citizens, they can never be too often repeated or too fully impressed on your minds. If the very existence

of society depends on the preservation, both of public and private rights, from injury and violence, how highly necessary is it for you who are appointed to vindicate them, to be well instructed in the nature of those duties which the oath you have just taken so solemnly enjoins. I shall not enter as largely into the consideration of them as the extensiveness of the subject would admit of, but will only take notice of such parts as require your more particular attention.

You have sworn, gentlemen, "diligently to enquire, and true presentment make of all such things as shall be given you in charge, or shall come to your knowledge." It is not, I hope, necessary for me to remark that the peace and safety of your district require of you a strict and scrupulous discharge of this part of your oath. The discovery and conviction of offenders is indeed so manifestly beneficial to the public, that you can have no need of any arguments to be convinced of it. It is a social duty which even every individual owes to the community, to promote the prosecution and punishment of those who offend against the laws. It is also the interest of every good citizen,—because his private welfare and repose are most sensibly affected by whatever is destructive of the public safety and happiness,—and because the chastisement of the guilty is the best security the innocent have. If, then, it is both the duty and interest of every individual to watch over the laws, how much greater is the obligation on you, gentlemen, to whom the office of public accusation is more particularly assigned, to enquire diligently into offences of every degree, and to bring the offenders to trial. Not that you are bound to hunt out every little trifling offence which human frailty may commit,—for public justice does not demand this,—but when the tranquility of society has been wantonly violated, or private rights been flagrantly invaded, it is essentially necessary to the preservation of these great objects that such offences should be strictly enquired into, and that those who have been guilty of them should be conducted with certainty to the punishments which the laws have ordained.

You are required "to present truly all such matters as shall

be given you in charge, or shall come to your knowledge." By the former are meant all such bills of indictment as may be given out to you by the Attorney General; by the latter, such public offences as are not yet in a train of prosecution, but which, if known to you, you are bound to present, and to give all the information in your power respecting them, in order that the parties may be prosecuted. To the last may be referred, all public nuisances, abuses of public trusts, and the neglect of duty in those who are entrusted with the administration of justice. In judging, however, of these, you ought first to be satisfied that the offence is criminal in so considerable a degree as to merit the animadversion of the laws; for if it be so trifling under all its aggravations as to affect but slightly the public interest, it will be regarded by the law as a thing not worthy of complaint, agreeably to the maxim "that the law takes no concern in trifles." If, on the other hand, the offence is so foul or injurious as to deserve punishment, you will then take notice of it in your presentments, and mention the names of those who can support the charge by evidence.

But in the investigation of such offences, as shall come before you in the shape of indictments, all this caution will be made unnecessary, by the judgment and legal knowledge of the Attorney-General, who will take care to give out to you only such bills as charge specific crimes which are clearly defined by the laws. As these, gentlemen, will be the principal subjects of your enquiry, I will make some observations on them which I hope may be found useful.

When a bill is preferred to you, you are to examine the evidence in support of it. The law confines this to what may be offered only in behalf of the prosecution, because the finding an indictment concludes nothing against the party, but is only in the nature of an enquiry or accusation, which is afterwards to be tried and determined before another jury. Without this previous accusation, no man can be brought into the shame and expense of a public trial. And how much tenderness and caution does the law manifest in this respect! The life and reputation of a citizen shall not be exposed to the

private attack of every malignant person; he shall not be liable to be suddenly dragged to the bar to defend an ignominious charge, surprised and unprepared; but the grounds of any accusation against him shall first undergo the dispassionate and impartial enquiry of a grand jury, and his very country must attack him, before he can be obliged to answer to the charge. You are not only, therefore, appointed to bring the guilty to trial, but you may also be considered as a house of refuge to the innocent, by sheltering them from the pursuits of calumny and revenge. Never can we too much regard an institution which so admirably protects the quiet and happiness of every individual, while it secures the peace and welfare of society!

You will no doubt, therefore, cautiously examine the evidence which may be offered to you, and while actuated by a laudable zeal to avenge public wrongs, you will guard against the malevolent designs of those who may be wicked enough to seek the gratification of personal resentment under the sanction of law, and make the sacred hand of justice the instrument of their private revenge. On this account, you ought to be thoroughly persuaded of the truth of an indictment, as far as the evidence goes, before you assent to it; and ought not to send a person to his trial upon probable grounds only and the mere presumption of criminality. In doubtful cases, nothing should be presumed but innocence; and this should always be done until the contrary is proved. It is a rule founded both in reason and humanity, and there is no injury done to society by rejecting a bill for want of proof, for the not finding it does not amount to an acquittal, but another bill may at any time afterwards be preferred, when better evidence may be had to substantiate the charge—whereas the finding a bill upon probable evidence may sometimes be subjecting an innocent man to unmerited disgrace, and be made to answer the most oppressive purposes. In considering, therefore, such bills as may come before you, let this rule (as often as it may apply) govern your determinations. When, indeed, you recollect that you are sworn "to present nothing but the truth," you will indeed require something more than

probability to support every charge, and will take care that your own consciences are satisfied as well as the demands of public justice.

You are further sworn, gentlemen, "to present nothing for malice, lucre, or ill will, nor to leave anything unpresented for love, favor, affection or reward." What an important engagement is this! and I may add, how difficult to perform always with strictness! But I trust that the solemnity of the oath you have taken, and your regard for the honor and interest of your district, will determine you to execute it with firmness and impartiality. A very little reflection must convince you that you cannot more effectually serve your country than by distributing justice to all men indifferently, and by making the laws operate on all alike, without favor and without ill-will. The impartial administration of justice is indeed the corner-stone of political happiness, and on this depends the only true and substantial enjoyment of all those advantages which belong to us as freemen. It is this which so eminently characterizes a free government, and distinguishes it from every other; for where else are the rights of the poor equally respected with those of the rich?—and where else can the meanest man in the community say to the most powerful, you cannot injure me with impunity? It is not, therefore, without reason that the trial by jury has always been regarded as the best which human wisdom ever contrived for securing the political equality of men in society. Nor need we wonder that the people of England, throughout the various revolutions and convulsions of their government, in times when almost every liberty they had was devoured by prerogative, should hold fast to this as their greatest barrier against arbitrary power, and at this day rank it as the most transcendent privilege they possess.

As it is uncertain, gentlemen, what bills will be preferred to you for examination, I shall not take up your time unnecessarily in going into a general definition of crimes of which it is not known what may come before you. It is not probable, indeed, that you will be at any loss in this respect, for the Attorney General (as I before remarked) will take care to

frame the indictments agreeably to the evidence which appears in support of them; and as you are only to hear such partial evidence, you will seldom have it in your power to make those discriminations which are made by the construction of law on hearing both sides of a question. It will only, therefore, be necessary for you to determine whether there is a sufficient proof of guilt to justify you in sending the person accused to another Jury, who are appointed to hear his defence, and before whom he must satisfactorily prove the circumstances which he may allege by way of justification or excuse. Upon this trial he will have the full benefit of any favorable circumstances that may appear, and will also be entitled to every advantage which can be derived from the nicety or caution of the law.

When you have heard the evidence on any bills, if you should be of opinion that it is sufficient to support the charge, you will endorse on it "a true bill." If, on the contrary, the facts alleged are not proved, or you should have reason to be dissatisfied with the credibility of the witnesses, you will then endorse on it "no bill." After having thus decided on any bill, (in which it is proper to mention, at least twelve of you must agree,) you will deliver it into court.

These, gentlemen of the Grand Jury, are the principal duties you are now met to discharge. Before, however, I conclude, I cannot forbear taking notice to you of some others which are closely connected with these, and which your country has also a right to demand of you.

The bringing to punishment those who have violated the laws, is without doubt doing a most important service to society; but to render the occasions of punishing less frequent, by reducing as much as possible the number of crimes, is a more benevolent office, and is productive of a still greater public benefit. To prevent crimes altogether is not to be expected, for the imperfection of human nature will not permit it; but their number and degrees may be considerably lessened by a strict attention to the morals of the people, and a certain and regular execution of the laws. As Grand Jurors, and particularly as Magistrates, (which many of you are,) it is

incumbent on you to watch over the conduct of all around you, and to exert your utmost endeavors in expelling from the country those vices which lead to the commission of crimes. Of these, there is none so prevalent, and perhaps none more pernicious to society, *than that of idleness.* This is indeed a fruitful source of crime, and the nurse of horse thieves, robbers, and almost every disorder which tends to make men bad citizens, and to lead them into criminal courses of life. It should therefore be your concern to banish idleness, and to take care that every man about you has a visible and honest means of subsistence. This is in the power of every one; for in no country upon earth can he find a greater facility than in this, of employing himself in an advantageous manner; there can be no excuse, therefore, for idleness. But, gentlemen, as the cause of this and most other vices too often originates in a total want of an early education, it is particularly incumbent on you to promote as much as possible the establishment of schools, and the maintenance of places of public worship. The improvement of the mind brings with it a knowledge of our various duties, and naturally excites an emulation of being useful and respected. The importance also of religion in forming the manners of a people, and in making them good citizens, is every where felt and acknowledged. It is indeed the best of all guards for keeping men within their duty, and without it all others have no force. Christianity (says the great and good Lord Hale) is a part of the common law; as such, then, you are further bound to advance and support it.

But another, and perhaps the most efficacious means of preventing crimes, is to attend vigilantly to the execution of the laws. Let me, then, earnestly recommend to you, and especially to those among you who are magistrates, to be particularly careful that the laws are never in the least relaxed. When the best regulations remain without vigor, they become frequently a grievance; for the hope of impunity, which the uncertain execution of them naturally inspires, only increases the number of offenders, and tends to the multiplication both of crimes and punishments. It is the sentiment of an excel-

lent writer, that crimes are more effectually prevented by the certainty than by the severity of punishment; and the truth of this must be evident to every man of any observation or reflection. Many on their first outset in vice have been reclaimed by an early check and slight correction; but when flattered and emboldened by frequent impunity, many more have been induced to commit still greater crimes, until at length they have fallen a sacrifice to the laws, because they were suffered to despise them. A strict execution of the laws is therefore performing the office of humanity.

I hope, gentlemen, I shall not be thought digressing from the subject of your duties, when I recommend these things to your attention. Let it not be said that they are solely the concern of those who are appointed to carry the laws into execution, and to superintend the morals of the people. The slightest consideration of the nature of our Government will shew that they are duties owing from every individual in the State, and that without the assistance of the people themselves the laws will never be sufficient alone to carry into effect the ends they propose. Formed by the people's own hands, derived wholly from their authority, not yet made venerable by age, and without any independent means of enforcing obedience and respect, how can such a Government have strength, efficiency, or stability, unless every good citizen will give his support, and will make the execution of the laws his own particular concern? The freedom of our Constitution may indeed flourish in speculation, and we may boast of having the peculiar power of governing ourselves, but we shall realize only a small part of those advantages which we looked for from the revolution, unless the spirit of the laws possesses all those who are charged with the execution of them, and unless public virtue (which is a love of the laws) has at least a predominant influence in the community. Happy indeed would that country be, where every man in it felt the obligations he owed to it, and would voluntarily discharge them! But such a perfect society has never yet existed, nor ever will. Disorderly passions and mistaken self-interests will too often prevail over the weaker influence of duty, and nothing but the force

of penal laws can effectually protect society from the wickedness and profligacy of bad men. How indispensably necessary is it, therefore, for all good citizens to assist the laws, and give efficacy to them by their example, their influence, and their authority!

I trust, gentlemen, that your own sense of these duties renders any admonition on the subject superfluous; but allow me to recommend to you, when you return to your respective neighborhoods, to endeavor to impress the same sense of them on all around you, and to inculcate this important truth, that the maintenance of our Government in its just vigor and authority can alone secure our liberties, and make that independence, which has cost so many lives and so much property to obtain, a real benefit to ourselves and posterity.

South Carolina:

To the Honorable the Judges of the Court of Common Pleas of the State aforesaid:

The Petition of Thomas Waties sheweth, That your petitioner, having constantly studied the Law for four years and upwards, and during the greatest part of that time been employed in the practical part, presumes that he is qualified to act as an Attorney.

He therefore prays your Honors that he may be admitted an Attorney of this honorable Court.

And he will ever pray, &c.

THOS. WATIES.

Charleston, 14th August, 1785.

I certify the truth of the above petition.

JOHN J. PRINGLE.

Messrs. Judges Burke and Hayward agree to the prayer of the petition.

Mr. Judge Grimké also gives his assent thereto.

August Term, 1785.

The prayer of the within petition granted, and the within named Thos. Waties sworn in open Court this 16th August, 1785. WM. MASON, C. C. P.

ELIHU HALL BAY.

Judge Bay was born at Havre de Grace, Maryland, about 1754. He was intended and studied for the ministry, but an impediment in his speech induced him to abandon that purpose and devote himself to the law. He was an "orthodox Christian;" he often said he had not a doubt from "Genesis to Revelations." "He was as profoundly versed in the Bible (which he read daily when not devoted to business) as in the law." "The law was his element which he studied in British times." From Maryland he removed when young to Pensacola, West Florida, where he was honored by the confidence of Sir William Duncan, who had the supervision of Florida. The tradition is, he was the King's attorney in that province during the Revolutionary war. He was presented by Chester, then the Governor of Floridas, with two silver waiters for services rendered to him. After or in the Revolution, he came to Charleston, South Carolina. On the 10th of April, 1733, he took and subscribed the "oath of allegiance, abjuration and fidelity to the State of South Carolina," as required by the Act 13th February, 1777, establishing an oath of abjuration and allegiance, 1st stat. 135. On the 28th February, 1784, Judge Edanus Burke gave him a certificate of citizenship. It seems that Judge Bay's father and grandfather were Presbyterian ministers.

He was married to his wife, "who was a young widow, in Dr. Ramsay's house, Broad street, Charleston;" eight children were the issue of that marriage. From the youngest, Miss Gracia Bay, of Charleston, I have derived many particulars of the excellent man and judge, her venerable father.

He was elected an Associate Judge on the 17th February, 1791.* In December, 1817, in consequence of his great age,

*I append herewith his commission, which I have thought worth preserving as a relic of the past. It was recorded, as appears by the records of the courts of Charleston, Georgetown, Cheraw, Camden, Pinckney, and Washington. The custom then, and even since, so far as my own knowledge extends, was the first time a judge presided to read his commission and record it in the minutes. So also I annex his certificate of citizenship.

his infirmities, and numerous public services, he was exempted from circuit and appeal duty, and assigned to chamber business. In the discharge of this less burdensome duty, he spent the evening of his life, which was closed on the 10th of November, 1838. For forty-seven years this venerable man was a judge of South Carolina. Few of the profession now remain who knew him. He was our first reporter; he first aided in bringing justice to abide by rule arising from precedents. Before his reports, all was chaos in our legal world. His two volumes are still of great value. He had prepared a third, which I have no doubt would have been also of great service, if it had been published, as it should have been.

Judge Bay was a good common law lawyer, as will be seen by his reports and decisions. Beyond all doubt he was often mistaken, both on the circuit and in the Constitutional Court: but his purposes were just. His respect for female character often led him into error, where a woman was a party. Such a mistake in favor of the weak and lovely never soiled *deeply* the ermine of justice. He stuttered badly, and hence was the subject of many a hearty laugh at the bar. So, too, his kindness was often played upon for the same purpose. Before he left the circuit he became very deaf, and this infirmity added to the others, made it often difficult to get along.* Many anecdotes might be stated. I may be perhaps pardoned in narrating three or four. In the case of Caldwell *vs.* Julien, reported in 2d Cons. Rep. by Mill, pp. 376, the venerable judge was carried away captive by the beauty and intelligence of the two sisters, Elizabeth and Matilda Ennis, daughters and witnesses of the plaintiff. The defence was an alibi, which he characterized as "*the desperate effort of every desperate desperado in the whole community.*"

In another case tried at Newberry, on a wager that a horse, at the end of a wagon tongue, would within a given time in a four-horse wagon, haul fifty bushels of corn along a public highway, one mile, the owner aiding him by his own skill

* This began about 1816, and continued until '21, when after exhausting every remedy prescribed by physicians, he was fortunately cured by the persevering application of goose grease poured into his ears by one of his daughters.

and exertions all he could, the wager was won, and the delighted judge characterized it as a *prodigious feat of a prodigious fine animal.*

At Laurens, he was called on to sentence a man for an assault and battery. The prisoner pleaded guilty, and submitted affidavits showing that the prosecutor was the aggressor. The Judge was following the reading, exclaiming: "Well, well, that is not so bad." At last, the solicitor, Mr. Saxon, who had the third-day fever and ague, which added much to the vinegar of his disposition, rose to his feet, looking perfectly savage, and said: "Why, may it please your Honor, he bit off the whole of the man's lip," making with his finger a semi-circle on his lower lip. "Did he?" exclaimed the judge, throwing up his hands, "send him round to me," and when he got him fairly before him, he literally scathed the poor wretch, with his vehemence. He told him he was a fit associate for Tecumseh: "none but a Creek Indian would be guilty of such a barbarity." The frightened prisoner began to cry, and the Judge, much as he hated biting, could not bear tears, said to him in a subdued tone, "I will lay you in jail one month." Another bearing the same name (Brown) was called up for sentence. *He had bit off a man's ear.* The judge, looking at him with perfect scorn, said to him: "I will lay you in jail alongside of your brother one month, and you may *bite one another as much as you please.*"

In a case at Laurens, of trespass to try title, (I think Melicent Colcock *vs.* John Robertson,) the plaintiff's paper title was indisputable, and that of the defendant under possession, with color of title equally indisputable, if it were to be now decided; but a majority of the judges then held that an adverse possession of part of the land for five years, under color of title, did not give title to the whole; some holding that it only gave title to the actual *pedis possessio;* others, that it carried that and as much more of the wood-land as was necessary for fire and fence *bote.* This last absurdity was *then* what the judge announced to be the law. I was for the defence, and lawyers such as Benjamin C. Yancey, Esq., and

others, in whom I had great confidence, pointed me to the Act of 1712, P. L., 101, and urged me, young as I was, to claim the privilege of arguing the matter. This was done and allowed; and the Judge, after complimenting the eloquence of the young lawyer, said that the construction of the Act was as fixed as the laws of the Medes and Persians; and that, therefore, all that the defendant could hold was as much land as he had enclosed, and an equal quantity of wood-land for fire and fence *bote*. Yet, in less than a year, came the great case of Read *vs.* Eifer, (1 N. & Mc. note 374,) which affirmed the very doctrine for which I had contended, and reversed the Median and Persian rule of the venerable Judge. *Quando bonus judex dormitat*, at law, as well as old Homer in poetic lines.*

I give the following from the pen of a friend in Charleston:

"On one occasion, while I was under age and yet a lad, I recollect being in the Court House when a case was being tried against an individual for cruelly beating his wife. A member of the Bar, a native of Pennsylvania, I think, who had been a *priest, then a Reformed* Lutheran minister, and afterwards a lawyer, was conducting the case for the defence. In the course of his argument, he contended that it was a common law right of the husband to correct the wife. The venerable Judge from the high seat he then occupied opposite the middle door, with some emphasis, and in his slight stuttering voice, said, 'there is no such law.' The advocate went on, having some fluency, and ingeniously came back to the same point at which he was stopped by the venerable Judge; and pursuing the same idea in the midst of an ardent course of argument, the advocate said: 'Suppose, may it please your Honor, when you went home, you should find your wife in an unruly mood, and she should make an attack

* An anecdote communicated by a friend in Charleston. I had often heard from other quarters. Judge Bay abhorred drunkenness and rabid democracy. His son Andrew, was a violent democrat. Having attended a great republican mass meeting, about 1812, he mingled too much of the intoxicating element with his other viands. He was carried home drunk, and laid in the piazza. The Judge finding him *thus*, walked up, and looking upon the sleeping democrat, said, *"legal, drunk, and a democrat."*

on you.' 'Sir,' said the Judge with impassioned feeling, which rendered his voice more stammering than usual, 'if y—you make that th—that sup—po—sition a—again, I—I w—will co—commit you for a—a con—tempt.' The noble bearing of the old Judge caused the eloquent advocate to desist from the further defence, and the defendant was of course convicted under the charge of the Judge, who told the jury that the common law was the perfection of reason, and notwithstanding the loose remarks of writers, there was no such principle in that law."

I perceive indorsed on the commission of the venerable Judge, the oath prescribed by the Act of the Legislature, 1st stat. 275, concerning the oath required by the fourth section of the Ordinance of Nullification, 1st stat. 320. It will be seen by reference to the Act that the Judge was never required to take that oath. Why that good citizen and excellent magistrate, Gov. Robert Y. Hayne administered such an oath is to me inexplicable.

It is possible that that circumstance, and the oath, which was administered to the Judge in 1783, when he became a citizen, led to the mistake which he committed in *exparte* Granstein, 1st Hill, 141.

I take up now Miss Bay's eloquent and filial notice of her father:

"His mind was clear, though bodily infirmities increased upon him with his old age; being over eighty-four when he passed the confines of both worlds without long illness or suffering."

"A better man never lived or died."

"Although seeing so much of the dark side of human nature, he was the most unsuspicious of others doing him wrong, and was greatly cheated in his dealings with men in money matters. *He was never paid for his Reports printed at the North.* His urbanity of manner made him popular all through the State, and the good country folks (at that day more primitive than now) always obliged him when they were more rough to others. And in after life, his family in traveling through the upper country had the gratification of hearing

him spoken of with affection; and on arriving at a stopping place late in the evening, about thirty or forty miles from Greenville, they were turned away much fatigued, but on pressing to be taken in, and the name catching the host's ear, he altered his manner, took them in, treated them kindly, and gave many comforts for the night."

"I don't know," says Miss Bay, "whether my father had ever been to college; but his education was a superior one, and Latin was an easy language with him. He was particular in the education of his family, always correcting them, when young, if they made mistakes, and by word of mouth gave them much instruction."

"He was one of the best of masters, and affectionate and domestic in his habits; easily pleased as to non-essentials, but would frown down light and frivolous conversations on religious subjects by young men and those of a more mature age visiting the house. He was cheerful and fond of a fireside circle, and took a great interest in the politics of the times."

I append notices of the death of Judge Bay by the Charleston Courier, the Bar, and the City Council of Charleston, and the Bar at Columbia, of all which he was eminently worthy. For, indeed, he was a good man and a just Judge, who after being long permitted to sojourn among and serve men, was in the fullness of time called home to his Father's mansion of everlasting rest and glory.

[Charleston Courier, Wednesday, November 21, 1838.]

DEATH OF JUDGE BAY.

The venerable Elihu Hall Bay is no more. He departed this life on Monday night without a struggle, in the eighty-fifth year of his age. For near half a century he filled the office of Associate Justice of the Court of General Sessions and Common Pleas of this State, having been appointed on the 19th February, 1791, and having held the office until the day of his death. In consequence of his infirmities of body, however, he was exempted by the Legislature for about twenty years past from the performance of circuit duty, but he never-

theless for a number of years after, voluntarily held the Law Courts of Charleston, in the absence of other judges, and continued up to the period of his decease to discharge the duties of a Judge at Chambers. His usefulness was much impaired for a long time by great difficulty of hearing, but during his latter years he exhibited the rare phenomenon of a partial recovery from deafness in extreme old age. In his two volumes of Reports of the earlier decisions of our Courts, in his published decisions as a Judge of the Constitutional Court, and in his numerous manuscript decisions on an infinite variety of points of practice, and other matters, he has left enduring monuments of his talents, industry and usefulness. During the several latter years of his life, his mental faculties had evidently undergone considerable decay, but there continued to be occasions, almost to the last, when even amid the intellectual wreck would be found the elements of former eminence. He was profoundly versed in common law, of which he had an unbounded admiration as a system of jurisprudence, and he will live in the recollection of our community as a humane, upright and learned Judge.

TRIBUTE TO THE MEMORY OF JUDGE BAY.

At a meeting of the members of the Charleston Bar, held at the City Hall, yesterday, Henry A. DeSaussure, Esq., was called to the chair, and R. Yeadon, Jr., Esq., appointed Secretary.

The Chairman introduced the subject of the meeting with a few appropriate remarks. The Attorney General, Henry Bailey, Esq., then rose, and after a brief address, offered the following preamble and resolutions:

The character of individuals eminent for their virtues is the property of the community; and a long life of honorable usefulness affords an example, of priceless value, for forming the character and guiding the ambition of the present and future generations. It is due, therefore, not only to the memory of departed worth, but to the cause of virtue itself, and to the highest interests of society, to seal with the expression of our approbation, the termination of the career of one, whose

life has afforded an example worthy of imitation. Impressed with these sentiments, the Charleston Bar have assembled to offer a well merited tribute to the memory of the Honorable Elihu Hall Bay, who has just been removed from amongst us by the hand of death. For nearly half a century has he occupied a distinguished station in the judiciary of this State, —a post, which until broken down by the weight of years, he has filled with honor to himself, and distinguished usefulness to the public; and though, from the very nature of the duties to be performed, it was impossible to escape from the prejudices of interested and unsuccessful litigants, never in a single instance has his integrity been impeached, or the purity of his conduct or motives been called in question. To him are we indebted for the first published Reports of the decisions of our Courts; a work, the value of which cannot now be so fully appreciated, as when they constituted the only accessible record of the points of law and practice settled by the solemn adjudications of our highest tribunal; yet it would not, perhaps, be too much to say, that not only by demonstrating the utility of the system of reporting, but by their intrinsic merit, and direct value in closing up litigation on questions previously decided, and their effect upon the decisions of the bench, as also by the influence of his own judgments, when his faculties were in their full vigor, he has contributed more than any other single individual towards building up, and giving stability and consistency to our system of jurisprudence. On the Bench he was at once dignified and conciliating in his deportment; patient in hearing, and cautious in deciding; and although, during the last few years of his life, his usefulness was impaired by the infirmities of a very advanced age, yet, to the very last, he was untiring, persevering, and faithful in performing the duties of his high office. In all the relations of life he was distinguished by every virtue which can do honor to the man and the citizen; and all were illustrated by the sincere and undeviating, although unobtrusive devotion of the Christian; and during the entire course of a long and consistent life, in which he secured the love, the esteem, and the veneration of all who knew him, he has

not left one moral stain, or blemish, to be regretted by his friends. Therefore,

Resolved, That we will cherish the memory of the late Judge Bay, with veneration for his character and esteem for his virtues, and with gratitude as well for his public services as for the useful and noble example which his life affords, of every virtue which should form the character, and direct the conduct of the citizen.

Resolved, That we deeply sympathize with his family in their bereavement, and tender to them our condolence in their affliction.

Resolved, That as a mark of our respect we will wear the usual mourning for the space of thirty days.

Resolved, That a copy of the foregoing preamble and resolutions be transmitted to his family, and that they also be published in the several gazettes of this city.

The preamble and resolutions were seconded by A. Mazyck, Esq., and unanimously adopted by the meeting.

The meeting then adjourned.

HENRY A. DESAUSSURE, *Chairman.*

R. YEADON, Jr., *Secretary.*

PROCEEDINGS OF COUNCIL—SPECIAL MEETING.

Wednesday, November 21, 1838.

Present—The Mayor, Aldermen Cogdell, Kinloch, Yeadon, Reynolds, Holmes, Seymour.

The Mayor stated that he had convened Council, to inform them of the death of the late venerable Judge BAY, to whose memory he paid a brief tribute of respect, and suggested the propriety of attending his funeral, in testimony of the high respect entertained by Council, in common with the whole community, for the able, faithful and meritorious public services, and eminent private virtues, displayed by the deceased through the whole of his long and valuable life.

Whereupon, on motion of Alderman Yeadon, it was

Resolved, unanimously, That Council will attend in their official capacity, the funeral of the late Hon. Elihu Hall Bay,

one of the associate Justices of this State, as a tribute of respect, on the part of this body, to the eminent public services and private virtues of that venerable patriot and judge.

On motion of Alderman Seymour, Council then adjourned.

JOHN R. ROGERS, *Clerk of Council.*

At a meeting of the Bar of South Carolina, in attendance upon the Court of Appeals, held at Court House in Columbia on Tuesday, the 27th November, 1838, James E. Henry, Esq. was called to the chair, and Wm. R. Hill, Esq., appointed Secretary.

Whereupon the Attorney General, H. Bailey, Esq., moved the following Preamble and Resolutions, which, being seconded by R. W. Seymour, Esq., were unanimously adopted.

Whereas intelligence has been received of the recent death of the Hon. Elihu Hall Bay, Senior Associate Justice of this State, the members of the Bar feel it to be due, not less to the services and virtues of his long and well spent life than to the distinguished station which he filled, to offer to his memory that tribute of respect which is the just meed of departed worth. The venerable Judge Bay has occupied a seat upon the Bench of this State for nearly half a century, and however towards the close of his life his usefulness may have been impaired by the infirmities of a very advanced age, yet it has fallen to the lot of few to have filled so arduous and responsible an office for so long a period of substantial and permanent usefulness to the public, and of distinguished honor to himself. Called to the Bench at a very early age, he devoted to its services the active zeal of vigorous manhood and the ripe wisdom of his mature years. He was possessed of an intimate acquaintance with, and of profound veneration for, the principles of the Common Law, and he applied them to the new cases which were produced by the circumstances and exigencies of a young country and a novel state of society, with a wise discrimination which insured to an infant jurisprudence the advantage of resting on the broad and solid foundations which had been settled and approved by the experience and wisdom of ages. To this result he greatly

contributed by his own judgments when in the vigor of his faculties and by the early publication of his Reports, which could not but produce a vast influence upon the current decisions of the Bench, and the mode of treating and discussing legal questions by the Bar, he gave consistency and a fixed character to our jurisprudence, almost from the very instant when the State first acquired an independent judiciary. His example was too valuable to be neglected, and the course which he pointed out, too obviously led to useful results, not to be pursued: and to him are we in a great measure indebted for the form and character—systematic, but flexible, and applicable to the varying wants of an improved civilization—which our jurisprudence has gradually assumed. Of unwearied zeal and patient industry, he was indefatigable in the performance of his public duties, and all his time, and all his energies were devoted to them. On the Bench, his deportment was at all times dignified, and although stern in dispensing the awards of justice and the law, he was ever kind and conciliating in his demeanor to all who appeared before him. As a Magistrate he was of integrity incorruptible and beyond suspicion, and to the last hour of his life, when borne down and oppressed by the weight of years, he was untiring, persevering and faithful in performing the functions of his high office. As a man he was exemplary and spotless in all the relations of life, and in every character and in every relation has left behind him an example worthy of all imitation.

1. *Therefore Resolved*, That the learning, the ability and the untiring industry and fidelity of the late Judge Bay in the performing the duties of his arduous and responsible office, and his long and consistent life of virtuous and honorable usefulness, entitle him to our veneration, respect and esteem, and that we will cherish his memory with a grateful recollection of his services and his public and private virtues.

2. *Resolved*, That as a token of respect to his memory, we will wear the usual badge of mourning during the present term.

3. *Resolved*, That the foregoing Preamble and Resolutions be communicated to his bereaved family by the Chairman of

this meeting, together with the expression of our deep sympathy in their affliction.

4. *Resolved*, That they be also presented to the Court of Law Appeals, and that the said Court be respectfully moved that they may be entered on the minutes.

On motion, ordered that the Preamble and Resolutions be presented to the Court by the Attorney General.

J. E. HENRY, Chairman.

W. R. HILL, Secretary.

CHARLESTON, April 10th, 1783.

I do hereby certify that Mr. Elihu Hall Bay, hath this day taken and subscribed the oath of allegiance, abjuration and fidelity to the State of South Carolina.

PHIL. PRIOLEAU, Secretary.

CHARLESTON, S. C., Feb. 28th, 1784.

I do hereby certify that Elihu Hall Bay has been admitted, and is a citizen of this State.

ÆDANUS BURKE.

THE STATE OF SOUTH CAROLINA.

To the Honorable Elihu Hall Bay, Greeting:

We, reposing special trust and confidence in your abilities, care, prudence and integrity, have commissioned, constituted and appointed, and by these presents do commission, constitute and appoint you, the said Elihu Hall Bay, to be one of our Associate Judges of our Courts of Session and Common Pleas in and for the said State. To have, hold, exercise and enjoy the said office of Associate Judge of the said State, together with all rights, privileges, profits and emoluments whatsoever thereunto belonging, or in any wise appertaining.

This commission to continue in force during good behaviour.

Given under the seal of the said State.

Witness, His Excellency Charles Pinckney, our Governor and Commander-in-Chief, at Columbia, this, sixteenth day of

February, in the year of our Lord one thousand seven hundred and ninety-one, and of the sovereignty and independence of the United States of America, the fifteenth.

Secretary's Office.

Certified and recorded by

PETER FRENEAU, Secretary.

STATE OF SOUTH CAROLINA.

I do hereby certify that the within named Elihu Hall Bay, Esquire, took the oath of office and allegiance to the State, and also an oath for the due observance of the Jury Law, before His Excellency the Governor, on the day of the date of the within Commission.

Given under my hand, at Columbia, this, 16th February, 1791.

———————— Secretary.

I do solemnly swear that I will well and truly obey, execute and enforce the ordinance to nullify certain Acts of the Congress of the United States purporting to be laws, laying duties and imposts upon the importation of foreign commodities, passed in convention of this State, at Columbia, on the 24th day of November, in the year of our Lord one thousand eight hundred and thirty-two, and all such Acts or Act of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same. So help me God.

E. H. BAY.

Sworn to before me this, 29th Dec. 1832.

ROBT. Y. HAYNE,
Governor of South Carolina.

EPHRAIM RAMSAY.

Judge Ramsay, who was an eloquent and distinguished lawyer, residing at Cambridge, (old 96,) on the 19th December, 1799, was elected a Judge of the Courts of Law.

Of this gentleman I have sought information in vain. He died in 1801, less than two years after his election. He is buried at Silver Bluff, the plantation which he and Charles Goodwyn, Esq., once owned. Governor Hammond, the present owner, says, "I wish I could write you something more satisfactory than I can about Judge Ramsay. He certainly died, and was buried at Silver Bluff. He and Major Charles Goodwyn, whom you have in your 'Annals,' married sisters, daughters of General Williamson, of the Revolution. Somewhere about 1800, they purchased the Silver Bluff property from Thomas Galphin, the son of the celebrated George Galphin,* the Indian trader, now immortalized by having introduced the word 'Galphinism' into our language with opprobium *most unjustly* added. Silver Bluff was his great trading station—he lived and died there. He built *there* the

*George Galphin, here mentioned, was one of the parties in an anecdote much like that which is stated in Lossing's Pictorial History of the Revolution, as occurring between Sir William Johnson and Hendrick, the great Sachem of the Six Nations.

It seems that Galphin was visited by one of the great Indian Chiefs beyond the Savannah. In the morning, after his arrival, he said, "me dreamed last night." "Ah," said Galphin, "what did my red brother dream?" "Me dream you give me a finely mounted Rifle," in the possession of Galphin, who instantly replied, "If you dreamed it you must have it," and the Rifle was handed to the Chief. Next morning Galphin said to the Chief, "I dreamed last night." "What you dream?" was the inquiry. Galphin said, "I dreamed you gave me the Chickasaw Stallion," which the Chief was riding. "If you dream um you must have um," and the horse was delivered to Galphin. The next morning the Chief said, "I dream last night." "What did my red brother dream?" was the inquiry. "I dream," said the Indian, "you gave me the red coat you wear, and much calico." "If you dream it you must have it," was Galphin's reply, and the Indian had the red coat and the calico. Next morning was Galphin's turn. He said to the Indian, "I dreamed last night." "What you dream?" was the Indian's inquiry. "I dreamed," said Galphin, "you gave me ten miles around the Ogeeche old town." "Wugh," said the Indian, "if you dream um, you must have um, but I dream with you no more."

first brick house built in the back country. It was a fort in the Revolution, alternately in the hands of both parties, and its gables now show the holes of a cannon ball, shot clear through. I had the partition plank, through which the ball went, carefully preserved, until during my late absence at Washington some one stole or burnt it."

"Judge Ramsay lived and died in that house, and was buried in the grave-yard near it, as was Galphin. When I first came to Silver Bluff Mrs. Ramsay was still living on a part of the property reserved for her, but in a year or two she moved away.

"I do not remember that I ever visited the grave-yard with Mrs. Ramsay. But many years ago I cleared and fenced it. After I had buried a son there (since another) I conceived the idea of erecting monuments to Judge Ramsay and George Galphin. I applied to Mrs. Biggs, a daughter of Major Goodwyn, who died only this year, and had lived near for fifty years, and was present at the death and burial of Judge Ramsay, but on going to the grave-yard several times she could not designate the spot. Nor could Dr. Galphin, who lived at this place (Redcliffe) make out where his grand-father was buried."

LEWIS C. TREZEVANT.

Judge Lewis C. Trezevant was born in the city of Charleston, on the 14th Dec., 1770. Of his education and early life I have no means of being informed. He studied law with Gen. Charles Cotesworth Pinckney: he was admitted to the Bar, in the city of Charleston, on the 17th of November, 1791, twenty-seven days before he was of full age. His name on the roll of attorneys in Charleston is Lewis Trezevant. The name above is that given by his nephew, Dr. Trezevant, of Columbia. He was, I presume, an eminent and successful lawyer. This is shown by his early election to the Bench. In less than nine years from his admission to the Bar, and in the thirtieth year of his life, he was placed upon the Bench. On the 10th of February, 1800, he attained to that highest legal distinction.

In traveling in the upper country on a law circuit, in company with Richard Gantt, (afterwards Judge Gantt,) he was thrown out of a gig and injured in one of his knees, which produced permanent lameness, and was by him regarded as the cause of his subsequent diseased and debilitated condition of body. It induced him to seek, at so early a period of his life, a place on the Bench.

He was a stern, inflexible, conscientious and upright Judge. I have no doubt that the vast amount of labor performed by him contributed much to shorten his days.

His nephew, Dr. Trezevant, of Columbia, informs me that his custom was in Court "never to adjourn when a case was before him, if it could possibly be completed in the day." That he frequently remained in the Court House until twelve at night, and sometimes until two and three o'clock. He says, "I have known him, after coming from the Court House, after a session of the whole day, and prolonged into the night, to have his desk drawn to his bed, and sit there and write until day, and then just throw himself back in his clothes and sleep until Court time, and then rise and attend to his duties."

Such labor is more than human nature can endure. Night was designed by God as the period of rest. This law of nature cannot be habitually infringed without injury to health, mental power, strength, and length of days. I once, like Trezevant, sat in Court until I trenched deeply on the night. I found it was doing me injury, and that it was not a satisfactory manner of administering justice. For years I have left the Court House about sundown, unless some important matter made it necessary to vary from the rule.

Judge Trezevant was remarkable for order in his private and public business; "his papers were so arranged that he could place his hands" upon any one he needed, even in the dark.

In the Court House every thing was done decently and in order. He came on the Bench just at the close of the County Court system, and it became therefore his duty to correct the *misrule* of that system. I have been told he examined every paper in Court; if a writ, declaration or plea, was not written lengthwise, on a half sheet or sheet of propatria paper, or was not folded properly, he instantly threw the papers and the case out of Court. This would not now be tolerated by the Bar; it would be called by them tyranny to thus correct *their slovenly habits*. But Judge Trezevant thus educated the Bar to precision, neatness, and a compliance with the rules of Court, which made the old lawyers stern and inflexible in their practice, and has left the little remembrance of regular practice which now remains at the Bar.

So, too, he entered on the Process every decree which he pronounced in the summary jurisdiction. This was great labor, and unnecessary where the decree was by default. But in every case tried or proved in Court, his practice was wholesome, and of late years has been generally conformed to by the Judges.

It is very probable, as his nephew supposes, that Judge Trezevant's mind was not quick: but he made up in industry what he wanted in quickness. His opinions, briefly reported, may be found in 1st and 2d Brevard Rep. I think they indicate a careful consideration and preparation. He had the reputa-

tion of being rather cross in the administration of justice; this might have arisen from his want of health.

His nephew says, "he was one to whom we (his, the Judge's brother's children,) were all taught to look up to as a being of more than ordinary character, and the reputation which he had abroad for stern uprightness of character, tended still more to keep him in my memory." "Though I never knew him to speak harshly to a child, or censure, or interrupt one in amusements, yet there was about him a certain appearance of inflexibility, which made us careful as to what we did or asked in his presence; for we never approached where he was but with a feeling of awe, and always moved about in his presence with the utmost care. This originated, partly, from the fact of his always being a valetudinarian, and we were cautioned not to make a noise, or intrude on his privacy. This caution was increased by the deference which we always saw paid to him by our father, (who, though his elder brother, yet seemed to view him as a parental counsellor.) The same respect was shown to him by every grandmother and mother, and hence we came to view him as a person whose conduct was never wrong, and who had not the usual faults of nature." These sentences, the recollection of his nephew not twelve years old at his death, show the wonderful influence which he had and exercised in his own family. Judge Trezevant was a bachelor, and I presume his mother, brother, and his family, lived with him. For his nephew says, "he was a warm friend, an exemplary *son and brother*; he was fond of having those he valued with him, *and his house* was generally the headquarters of his brethren the Judges."

Judge Trezevant "was essentially a religious man."

His views about his funeral were singular. He directed that he "should be buried in a plain pine coffin, as he thought it useless to spend upon the dead what could be of more use to the living. He wished no one to follow his corpse." He directed the notice of his death in the city papers should be in the following words: "Judge Trezevant died yesterday."

He died 15th February, 1808: he had been just eight years

and five days a Judge. He was in the thirty-eighth year of his life. Few men, as young as he was, both as a man and a Judge, have ever attained to so much character and reputation.

He was, I think, universally feared for the sternness with which he administered justice, but no one ever intimated that he exceeded the bounds of right. His nephew says, "he was tall and thin, with a keen eye and very sharp features, the latter caused by indisposition."

I never saw Judge Trezevant but once, and that was in April, 1807, at Newberry, where he sentenced John Turner to stand in the pillory on the next Friday for two hours, for a shameful assault and battery, and to be hung on the Friday, three weeks next afterwards, for stealing a negro slave. He was then in wretched health, and, as I have already stated, closed his life the February following.

WILLIAM JOHNSON.

William Johnson, one of the Judges of the Court of Common Pleas of the State of South Carolina, and afterwards Associate Justice of the Supreme Court of the United States, was the eldest son of William Johnson, and was born in Charleston on the 27th of December, 1771. His father was a well known and universally respected citizen of Charleston, who descended from one of the old German families who first settled in the State of New York, but emigrated to South Carolina in his early manhood. He possessed great vigor of character, decided ability, and his life was characterized by an inflexible uprightness, which won and preserved the public confidence. He belonged to a small class of men, whose names and patriotism are familiar to the students of the Revolutionary history of Charleston—men who enjoying neither the advantages of hereditary social position, nor liberal education, nor great wealth, yet wielded a large influence among the people, and contributed not only to the success but to the character of the Revolution, by the manly and beautiful simplicity, the unselfish and uncalculating devotion, and the dignified self-respect with which they discharged the duties which devolved upon them as simple citizens in those trying times. Mr. Johnson was among the earliest patriots in the State; was one of those who, under the lead of Gen. Gadsden, prepared the commencement of an active agitation, and among those citizens whom the British authorities selected as the most dangerous and important of the rebels, and transported to St. Augustine. He enjoyed, until his death, long after the Revolution, the affection and respect of his fellow citizens, but declined all honors that were tendered to him, except his regular election to the State Legislature, in which he sat until increasing years compelled him to retire. His son, William Johnson, the subject of this sketch, was sent to Princeton College, at that time under the presidency of the celebrated Dr. Witherspoon, and graduated about 1790, with the highest

honors of that institution. Upon his return home, he commenced the study of the law in the office of Gen. Charles Cotesworth Pinckney, and was admitted to the Bar, in January, 1793. His professional life was one of signal and almost unparalleled success. He was elected to the Legislature of the State as a representative from Charleston in 1794, 1796 and 1798, having attached himself warmly to that republican party which, under the lead of Mr. Jefferson, was growing fast and strong throughout the Union, and which in South Carolina was headed by Gov. Charles Pinckney, and sustained by most of the youthful talent of the State. In 1798, upon his third election, William Johnson was chosen Speaker of the House of Representatives. During his legislative career, he had given much time and attention to the organization of the State Judiciary; and one of his objects, in which, however, he unfortunately failed, but the importance of which every day has rendered more manifest, was the creation of a special Judge for Charleston. In 1799, the bill organizing our judiciary system, a system which with some modifications still exists, was passed by the Legislature, and in consequence of its provisions several Judges were appointed. Among these, William Johnson, then Speaker, and but twenty-eight years of age, was elected to the Court of Common Pleas, along with Lewis Trezevant and Ephraim Ramsay. He did not remain long upon the State Bench, for a vacancy having occurred upon the Supreme Bench of the United States, Mr. Jefferson, who was then President, and one of whose chief public anxieties was to relieve the Supreme Court of the federal character which he thought so dangerous to republican government, tendered the appointment to Judge Johnson, governed, it may fairly be supposed, by the happy association of a high judicial reputation and a sound political creed. Thus on the 6th March, 1804, when only thirty-two years of age, Judge Johnson had risen to the highest official position open to the Bar of the Union, and which is generally and properly the last reward of a widely extended reputation and long laborious years. His judicial life scarcely affords field for biography, but it is enough for any man's fame to

say, as can be said of him with truth, that for thirty years he sat upon the judgment seat of a great national tribunal as supreme and renowned as ever dispensed justice among men, that he was the fit associate of Magistrates as virtuous and venerable as time hath left record of, that his life was passed in the noiseless discharge of great duties, and that in the Courts over which he presided for so many years, his decisions are still quoted as the judgments of an able, upright and independent Judge.

While it is impossible to review with any fullness Judge Johnson's decisions, because such a review would involve a history of the Supreme Bench and the discussion of many large and controverted constitutional questions, there were yet some cases which occurred, during his judicial career, to which special reference should be made, inasmuch as they illustrate one of the striking excellencies of his character. One of those virtues, not only honorable to the Judge, but of the very first importance to the proper administration of justice, especially in the case of tribunals, constituted as are the Courts of the United States, was his inflexible, almost haughty independence of political authority on the one hand, and popular opinion on the other.

Judge Johnson's appointment could not be called a political one in any improper or offensive sense; but unquestionably his political course indicating a concurrence with the views of the party who afterwards came into power, had its influence in his selection. Now, if there was any one portion of his policy to which Mr. Jefferson was attached, it was his Embargo Act. He could scarcely tolerate any difference of opinion on its merits, and watched with the greatest jealousy, not only any attempt, but any disposition to evade it. When that Act was passed, stringent as it was, Mr. Gallatin, then Secretary of the Treasury, sent, under instructions from the President, a letter to all the Collectors, in which the most watchful conduct was prescribed. Soon after Judge Johnson's appointment, a vessel sailing from Charleston to Baltimore, landed her cargo, partly in rice, and under the letter of the Secretary rather than in obedience to the provisions of the Act, the Collector of the

Port refused a clearance. As there was nothing in the Act which forbade a bona fide shipment of rice to Baltimore, and as the Collector was satisfied that the parties concerned were not sending the rice to Baltimore for illegal transhipment thence, he consented that the question should by a motion for a mandamus on behalf of the parties interested, be submitted to the decision of the United States Court for the District of South Carolina. Judge Johnson upon hearing the case ordered a mandamus to issue commanding the Collector to grant the clearance. This decision gave so much offence to the President that he submitted it to the Attorney-General, who pronounced against the decision, and his opinion was then published. Considering this as an improper mode of appealing to public opinion against the decision of a Court of Justice, Judge Johnson very unwillingly, but very ably, reviewed this opinion, stated that he considered the publication of the opinion to be the act of the Executive, and, while he objected to the course pursued, vindicated the correctness of his law.

"That the President," says he, "should have consulted that officer (the Attorney-General,) upon a legal subject, is perfectly consistent with the relation subsisting between their respective stations; and as long as the result of that consultation was confined to the cabinet there had occurred nothing inconsistent with the relation between the executive and judicial departments. But when that opinion is published to the world, under the sanction of the President, an act so unprecedented in the history of executive conduct could be intended for no other purpose than to secure the public opinion on the side of the executive and in opposition to the judiciary. Under this impression I feel myself compelled, as the presiding Judge of the Court, whose decision is the subject of the Attorney-General's animadversions, to attempt a vindication of, or at least an apology for, that decision." And in the course of that reply he used the following manly and independent language:

"The Courts do not pretend to impose any restraint upon any officer of Government, but what results from a just construction of the laws of the United States. Of these laws, the Courts are the constitutional expositors, and every department

of Government must submit to their exposition; for laws have no legal meaning but what is given them by the Courts, to whose exposition they are submitted. It is against the law, therefore, and not the Courts, that the Executive should urge the charge of usurpation and restraint; a restraint which may at times be productive of inconveniences, but which is certainly very consistent with the nature of our government: one which it is very possible the President may have deserved the plaudits of his country for having transcended, in ordering detentions not within the embargo acts, but which, notwithstanding it is the duty of our Courts to encounter the odium of opposing. Let us take this argument together with that which relates to the liability of officers to impeachment, and some others which are used by the Attorney General, into one view, and to what conclusions do they lead us? The President is liable to impeachment: he is therefore not to be restrained by the Courts. The Collector (and every other officer with equal propriety who holds his office at the will of the President) are his agents, mere ministers of his will. Therefore they are not to be restrained by the process of the Courts. The power given to them is power given to him; in subordination to his will they must exercise it. He is charged with the general execution of the laws, and the security of the citizen lies in his liability to impeachment or in an action for damages against the Collector. This would, indeed, be an improvement on Presidential patronage. It would be organizing a band which, in the hands of an unprincipled and intrepid President, (and we may have the misfortune to see such a one elevated to that post) could be directed with an effect but once paralleled in history. If these arguments have any force at all as directed against the correctness of the Circuit Courts issuing the writ of mandamus, they would have equal weight to prove the impropriety of permitting them to issue the writ of habeas corpus, which is but an analogous protection to another class of individual rights, and might be urged to shew that the whole executive department, in all its ramifications, civil, military and naval, should be left absolutely at large in their conduct to individuals. What

benefit results to the ruined citizen from the impeachment of the President, could we suppose it in the power of the individual to effect it? Or what security from an action against a public officer whose circumstances may be desperate? But such is not the genius of our Constitution. The law assigns every one his duty and his rights; and for enforcing the one and maintaining the other, Courts of Justice are instituted." Judge Johnson's conduct in this case is the more remarkable, as it was not difficult to find very plausible reasons for a contrary decision, and some years afterwards, in 1813, the Supreme Court unanimously, but on a technical ground, which does not affect his general reasoning, reviewed the doctrine of this case, and decided that the Circuit Court has not the power to issue a mandamus. McIntyre *vs.* Wood, 7 Cranch, 504.

Another occasion upon which he showed his independence of an authority widely different, was his decision in Elkington's case. In this case he was called upon to pronounce on the constitutionality of the local law of South Carolina, imprisoning free colored seamen entering any of her ports, and although he was well aware that public opinion was not only hostile to, but very sensitive in regard to any interference with what was then as now considered a necessary prerogative of State power, he followed the dictates of his judgment, and decided against the constitutionality of the law.

Beside his judicial labors, Judge Johnson gave cheerfully his time and influence to any and every plan in furtherance of the science, art and literature of the State, and was himself an author of no small labor. For at the request of the family of Gen. Greene, he wrote an elaborate life of that distinguished man, a work which imposed upon him long and laborious research, the careful examination of a large mass of documents and manuscript correspondence, and the personal inspection of all the battle fields on which his hero had earned his reputation. This work is a permanent and valuable addition to the historical literature of the country.

In private life, Judge Johnson was all that the courtesies of

society and the charities of life require. Full of information, eager to learn and anxious to impart, in constant correspondence and personal connection with all the eminent men of the country, the friend of Jefferson, and Marshall, and Madison, his conversation was both instructing and interesting, while a manner in his more genial moments admirably tempering dignity with grace, and in harmony with a person of great manly beauty, gave a softened and attractive charm to the powers of his mind. His leisure was devoted to books, to friends who honored him for his public service and loved him for his private virtues, and he found unceasing pleasure in an enthusiastic devotion to agricultural pursuits, a taste which he had in common with Mr. Jefferson, and their mutual and genuine sympathies were exchanged in a long continued and pleasant correspondence.

When the unfortunate Nullification struggle rose to its height in the State, Judge Johnson, whose nature was earnest and whose opinions were always very decided, found himself in opposition to the sympathies of the majority of his fellow-citizens; and while his interest in the contest was of the warmest, his judicial position, especially on such a question, not only forbade interference, but imperatively commanded the most complete abstinence. He very properly, therefore, while not employed in his official duties, absented himself from the State, and during the summer of 1833 he resided in the Western part of Pennsylvania. Here, unfortunately, he contracted a bilious remittant fever, from which he never entirely recovered. A caries of the jaw-bone ensued, and he sought in New York the ablest medical advice. An operation of great suffering was successfully performed, but although borne with the most heroic fortitude, he sunk rapidly after its completion, and died in Brooklyn on the 16th August, 1834, surrounded and soothed by those whom he dearly loved, and sustained by that Christian faith which taught him that in the Supreme and Final Court before which he was summoned he would find an all-powerful advocate.

Judge Johnson was married early in life to Miss Sarah

Bennett, the eldest daughter of Thomas Bennett, of Charleston, and sister of Thomas Bennett, Governor of South Carolina. Of a numerous family but two daughters survived him, of whom the elder married Hon. Romulus M. Saunders, for many years a member of Congress from North Carolina and Minister to Spain during Mr. Polk's administration; the younger married Mr. James G. Rowe, a planter in Alabama.

JOSEPH BREVARD.

Judge Brevard was born 19th July, 1766, in Mecklenburgh County, North Carolina. His father, John Brevard, was a grandson of a French Protestant refugee. The mother of Joseph was Jane McWhorter, of a Scotch-Irish family. He was the youngest of seven sons.

What was his early education we have no means of knowing; he wrote a beautiful hand, and quoted Latin with such facility that, it is presumed, he had as good an education as the Revolutionary times permitted.

He was a lieutenant in the North Carolina line in the Revolution; he was commissioned in 1782, at the age of 16, and served to the end of the war.

Immediately after the close of the Revolutionary war, he settled in Camden, and was elected Sheriff of Camden District by the Senate and House of Representatives, on the 1st January, 1789, to serve for two years under the Constitution of 1778. On the 14th October, 1791, he was appointed Commissioner in Equity for the Northern District of South Carolina. He was admitted to the Bar 11th February, 1792, and on the 17th March, 1793, he was married to Rebecca Kershaw, who was the daughter of Col. Eli Kershaw, an officer of the Revolution, who, with his brother, Col. Joseph Kershaw, was sent to Nassau, New Providence, and to Bermuda, as prisoners of war, by the British. Col. Eli Kershaw died on shipboard off Bermuda.

Judge Brevard must have had a fine practice from his admission to the Bar. It appears that he was, soon after his admission, associated with Mr. Falconer, who was then the most eminent lawyer in the Northern part of the State. His Reports begin in '93 and are generally confined to the Northern part of the State, until he was elected a Judge on the 17th of December, 1801.

His wife died in 1802, (in less than a year after he was elected a Judge) leaving him a very young and helpless fam-

ily. Yet with this sad deprivation and the heavy incumbrance, he showed himself able and capable for the great duties of his station. No Judge had a better reputation or was looked to with more confidence. I first saw Judge Brevard to know, and be known by him, in May, 1814, when Mr. McDuffie and myself visited Camden to obtain his signature to the fiats of our admission to the Bar. His health was then so much undermined that he had not been able to attend the Spring Session of the Court of Appeals at Columbia. He most cheerfully heard our application, asked our course of reading, (we had already the signatures of five of the Judges, Grimké, Bay, Smith, Nott and Colcock,) and said, as you have satisfied my brethren, I will sign the facts for your admission. I never saw Judge Brevard as a Judge, but once afterwards, that was the Spring of 1818; he presided then at Laurens. At that term John Drury Mitchusson was tried for murder. Yancy, 3 Brevard 142, had been shortly before executed for murder. He was a mere boy; this had produced a revulsion of public opinion and favored a more moderate result for Mitchusson. He secured the services of nine lawyers.

Yancy and Gantt were the leaders of that body guard. The Judge was known to be in very infirm health. Mr. Saxon, the Solicitor, had the third day fever and ague. Four of the prisoner's lawyers, Clendenin, O'Neall, Gantt and Yancy, were selected to argue his case, and were instructed to so speak as to bring on Saxon's tertian, and to make the Judge so sick that he could not minutely charge. This was done, at least so far as Saxon was concerned. His ague showed itself so soon as Yancy closed. His argument was very brief. Gantt said it would not do to let the case go then under the Judge's charge; he is not yet sick enough, was his notion. He got up and claimed, as Saxon had not in his opening stated his law, that he might have the privilege of replying to it. The Judge yielded, and Gantt took up and read and commented upon many of the cases in Bevil on Homicide. He took his seat. The Judge charged about fifteen minutes, and retired instantly to his lodgings. In a short time the

Jury came in, and found the prisoner guilty of manslaughter. The Judge told him, when he sentenced him, that he was guilty of murder.

Judge Brevard rode the Middle Circuit the succeeding fall, and resigned on account of his health, December, 1815.

In two years his health had improved so much as to induce him to offer himself as a candidate for Congress. He was elected in 1817, and being re-elected, he declined in March, 1821, to be any longer a candidate. He died at Camden, 11th October, 1821, leaving four children, Alfred Brevard, Edward Brevard, Eugene Brevard and Sarah Aurora, who afterwards intermarried with Benj. T. Elmore, Esq. She is now the only surviving child of the Judge. Alfred Brevard was my class mate in the South Carolina College; he was a beautiful, interesting boy; he graduated in 1812, very young, and without distinction. He afterwards studied medicine, became an M. D. and married Harriet Chesnut, daughter of Duncan McRae. Dr. Brevard died in 1836, leaving four daughters, who now reside in Camden. His brothers, Edward and Eugene, died childless.

Judge Brevard's opinions and notes upon cases scattered all through the three volumes of his Reports, show that he was a man of untiring industry, learning and taste. They, with his admirable Digest of the Statute Law to 1814, now and forever constitute a better memorial of him than any thing which can now be offered.

He did much to give character to the Judiciary. While he was on the Bench, each of the Judges gave separate opinions. In almost every case, therefore, from 1802 to 1815, when he was in the Constitution Courts, is to be found in first, second or third Brevard, his opinion, and which shows the industry and learning with which he investigated the case and the judicial eloquence with which he pronounced his opinions.

In every situation and office of life he did his duty, and did it well. What more can or ought to be said, unless it be to say that he feared God, and kept his commandments, which is declared in the inspired volume to be "the whole duty of man."

THOMAS LEE.

The perusal of the funeral discourse, by the Rev. Dr. Gilman, on the life and character of Judge Lee, has filled my heart with so much delight that I am fain to say in reference to it, this is the true and just picture of a great and good man. Read it, and you will need nothing further to inform you. But I cannot thus avoid the task which is before me. I must write, too, even if I should fail.

Thomas Lee, the son of a watchmaker in the city of Charleston, an ardent friend of his country, and a colonel of one of the regiments of South Carolina, was born 1st December, 1769. His infancy was in the storm of the Revolution, and, as Dr. Gilman beautifully says, "he may be said to have been born along with his country, and felt his way with her, up to fame and fortune, through various developments of intellectual and moral character." His father was one of the Charleston prisoners sent to St. Augustine; his family was sent by himself, for better safety, to Philadelphia. After this return of the family, 1780, he was about thirteen years of age, and was sent to the best classical school in the city of Charleston; there he acquired at least Latin enough to enable him to understand legal maxims. At fifteen or sixteen he was a student at law, under the most celebrated lawyer in the city, John Julius Pringle, Esq., and while so studying, a debating society gave him the opportunity of cultivating those unrivalled powers of eloquence which he subsequently perfected and displayed. In 1789, when the news of the destruction of the Bastile reached Charleston, Lee, then in his twentieth year, bore a part in the public celebration, and delighted old and young with that first rich treat of declamatory powers to which they often afterwards had the privilege of listening. While studying law he acquired such a perfect knowledge of the French language as enabled him to address his French fellow-citizens in their own language. As soon as he was of age, he was admitted to the Bar, probably in 1790, or early in

1791. His name does not appear on the roll of attornies furnished to me, and hence I cannot be more accurate. Mr. Lee practiced successfully, both in Charleston and in the country. He was married in 1792. Soon after his admission to the Bar, he was elected to the Legislature, and served for several years, and advocated with enthusiasm the Republican measures. Yet he never was a partisan: he did that which he believed to be right, whether it met with the approbation of his party or not. In 1794, he was elected Solicitor, (and I doubt not from the language of the fee bill of '91, 1 Faust, 4, that he might have been styled Solicitor General, as his appointment is called in Dr. Gilman's discourse,) but, in fact, in 1794, he was appointed one of three Circuit Solicitors, who were directed by the 11 § of the Act of '91 (1 Faust, 165) to be appointed. He continued in that office until he was elected Clerk of the House of Representatives, November, 1798; he probably retained that office until May, 1804, when he was elected one of the Associate Judges. This office he held only till December of the same year, when, owing to some "constitutional maladies," which were increased by sedentary employments, he resigned, and was immediately elected the successor of Paul Hamilton, the first Comptroller General, who succeeded in bringing the finances of the State into great order and prosperity. Mr. Lee pursued the same course, and as Dr. Ramsay (2 vol. Ram. So. Ca., 194) says, "from their exertions a chaos of public accounts has been reduced to order, energy and decision infused into every department of finance, and the fiscal concerns of the State recovered from disorder, are now in a flourishing and healthy condition."

The office of Comptroller General he held until 1816. By the Act of 1812, it was provided that the Comptroller General "shall be elected, as heretofore, for two years, but after having served four years in succession shall not be re-eligible to that office till after the expiration of two years." Under this provision Mr. Lee vacated the office of Comptroller General, and never sought it any more. Although I was young when he ceased to be Comptroller General, yet I had had the opportunity to see Mr. Lee in his official character frequently, and he

seemed to me the most perfect man, in that department, who has ever since filled it. I know, too, that the public opinion was, that his retirement was a great loss to the State.

In 1817 Mr. Lee was elected President of the State Bank, and filled that office most satisfactorily for the last twenty years of his life. In 1822 Mr. Lee was a member of the House of Representatives, from St. Phillip's and St. Michael's, and Chairman of the Committee of Ways and Means. His fine person, powerful voice, and elegant elocution, filled me (then for a second time a member of the House) with admiration. He always spoke without effort, and yet his voice, as Judge Huger said to me on a former occasion, seemed to fill perfectly the Representatives Hall. In 1823 he was appointed by President Monroe, by and with the advice and consent of the Senate, Judge of the District Court of the United States for the State of South Carolina, and in this office he closed his valuable life. He was as a Judge as successful as he was in all other stations. Long removed from the former, he returned to preside in it with as much dignity as if he had been absent only a day. He gave universal satisfaction. He met all the responsibility of the great "Bond Case for Duties under the Tariff," and in which it was intended to give a triumph to Nullification, by overriding the Act of Congress, in the verdict of a jury. Judge Lee ruled out the defence, and thus defeated the project, and prevented the effect of Mr. McDuffie's powers of argumentation and eloquence on a Jury.

In addition to all the eminent services of Judge Lee, to which allusion has been made, it must not be forgotten, that he aided in the Temperance Reform. His beautiful example, in this respect, as he stood by the side of the never enough admired Gilman, had a powerful and just effect in giving Temperance the ascendancy, which, subsequent to his death, it attained and maintained for years in Charleston.

Judge Lee, in 1817, with his pastor, Mr. Foster, and other members, seceded from the Congregational Church in Meeting-street, and constituted the Unitarian Church, to the care of which Dr. Gilman was subsequently called. I do not pretend to inquire into forms of faith, either to commend or con-

demn. Liberty of conscience and freedom to worship, as he pleases, belongs to every one under our free and happy Constitution. And Judge Lee and Dr. Gilman worshipped God as they believed to be right: and if the true test be to "judge a tree by its fruits," then indeed the lives of both these eminent men entitle them, so far as men can see, to "the well done good and faithful servant;" on the part of their Master, "enter thou into the joy of thy Lord."

He died on the 23d of October, 1839, in his seventieth year, leaving a large family. His eldest son, John Miles Lee, graduated in the class of 1813 in the South Carolina College. He was one of my most intimate and endeared friends. Like his noble, gifted father, he was a bright light, which, if it had not early been extinguished, would have been seen and known of all men. I last saw him when I was admitted to the Bar in Charleston in 1814. He soon after died.

Judge Lee needs no commendation from me: *his life is his praise.* But I would not do him full justice without citing the eloquent tribute of that great and good man, Dr. Gilman, with which he so happily closes his funeral discourse.

"Judge Lee," he says, "may be said to have died an *enviable* death. The very time that has taken him away was almost as felicitous as the many happy points about his own character. He has died in the fullness of a ripe and good reputation. He has not outlived his friends and admirers. He was almost borne away like Elijah in a chariot of glory—for surely the affectionate admiration of a whole community may be compared to the Tishite's ascending car. He died before the infirmities of age had dimmed his faculties, or made it a question with the succeeding generation whether his fame was so well founded as his cotemporaries represent. The young have known and heard him. The middle aged have been stirred by the tones of his manly and melodious voice, and have been prompted to high and virtuous action by his persuasion and example. The aged have witnessed his long, consistent, and honorable career. Could happier circumstances and coincidences have attended his death? Yes, one thing is happier than even these. He died the death of a righteous

man. "Let me die *the death of the righteous*, and let my last end be like his."

A Discourse on the Life and Character of the Honorable Thomas Lee, late Judge in the District Court of the United States. Pronounced in the Unitarian Church, Charleston, S. C., on Sunday Evening, Nov. 3, 1839, *by Samuel Gilman, D. D.*

PROVERBS. x. 7.—"The memory of the just is blessed."

Refreshing indeed is the recollection of departed excellence. Death seems to consecrate and fix an unalterable seal on the virtues which we love and admire. They have now become our inviolable inheritance. We know that nothing henceforward can tarnish or impair them. So long as we beheld these virtues connected with a mortal, fallible man, we might feel a sense of their precariousness and insecurity. We could not predict, with certainty, their continued strength and lustre. But now—they are beyond the reach of accident. Neither time, nor earth, nor change, can affect them. They are as fixed as the stars of heaven. They have taken their place among the imperishable treasures of our souls. *The memory of the just is blessed.*

Penetrated, no doubt, with this profound and affecting sentiment of inspiration, you, my hearers, have requested me to appropriate a portion of the religious services of this evening, to a delineation of the life and character of one, who has long worshipped among you—whom you have tenderly loved and revered—and whose place in this sanctuary will know him no more.

The true and proper object of eulogy, I conceive, is neither to flatter the dead, nor gratify the living. Why should we lavish praises on the unconscious dead? Far are they now beyond the reach either of our applauses or reproaches. Almost equally futile is it, to trace out their biographies, or to dwell on their extraordinary qualities, for the mere purpose of satisfying a busy curiosity, or to indulge the fond vanity of surviving friends and admirers. No. We must not be led to

our interesting subject, this evening, through any such man-worshipping, or man-admiring motives. It is not to exalt, or blazon forth, an *individual*, that I interpret your recent resolutions and request. To us, *the memory of the just is blessed*, not because *we* happened to know him, and to be thrown into the same limited sphere of action with him—but because *he, himself*, was a noble representative of *what is excellent and enduring in human nature.* The memory of the just is blessed, not because *we* can call him by name, and remember the graces of his person, the energies of his intellect, or the virtues of his mighty heart, but because we see in him a new manifestation, a glorious revelation, of the Deity—an illustration of the power of Christianity—an animating encouragement amidst the trials and toils, the darkness, embarrassments, and contradictions of life—a type of what we might, and ought to be—a specimen of what man may yet be—a blazing light, to call forth, sustain and direct, the pure and undying aspirations of our souls. Such, as I apprehend, were the legitimate objects which you had in view, in requesting me to present to you, at this time, some fitting memorial of the late Honorable Thomas Lee.

He was born in the city of Charleston, on the 1st of Dec. 1769: a year which happened to be prolific of so many distinguished men who adorned the past and present centuries. He was thus near the verge of seventy years, at the time of his decease, on the 23d of the last month. It may be worthy of remark, that about one year ago, when he appeared to be in possession of perfect health and vigor, he calmly stated to me, in confidential conversation, the very strong presentiment he felt, that he should not live much beyond the limits of three-score years and ten. I state the circumstance as at least an interesting coincidence, and undertake not to decide how far the presentiment might have been casual, or how far it was an instance of his usual practical sagacity.

His infancy and youth were exposed to the well known vicissitudes which marked the progress of the Revolutionary war, and the early struggles of our republic. He may be said to have been born along with his country, and felt his way

together with her, up to fame and fortune, through various developments of intellectual and moral character. Thus he was an American in grain; and the lover of our institutions might fairly and proudly point to him, as an indigenous specimen of what they were intended to produce. His father, who pursued the industrious and skilful occupation of a watchmaker in Charleston, entered among the foremost into the conflicts, exposures and sacrifices, encountered by the inhabitants of the colonies. This gentleman must have been distinguished for considerable energy of mind and character, since he was for some time a Commissioner in the American army, and was afterwards appointed colonel of one of the regiments of South Carolina. We also find his name in the list of that honorable band, who, for purposes of intimidation, were exiled to St. Augustine by the enemy when in possession of Charleston. The subject of our memoir was at this period about eleven years of age. His father had transported his whole rising family for safety to Philadelphia. To what influences the youthful Lee was exposed at that very observing and impressible age,—whether he saw anything of the excellent society which then abounded in Philadelphia, or was engaged in pursuing such an elementary education as the times would permit, or felt the pinching grasp of privation and poverty, I have no materials whatever to determine.

The next incident which I have been able to trace in his juvenile biography, is his attendance at the respectable classical school of Messrs. Thompson and Baldwin, in this city. This must have occurred not long before and after the peace of 1783, when he was about thirteen years old. Here it is certain, that he made sufficient proficiency at least in the Latin language, to serve as an auspicious foundation to his attainments in legal science, for which it appears he had an early instinctive propensity; for we find him only two or three years after, at the age of fifteen or sixteen, already a student in the office of an eminent lawyer, who still survives at a very advanced and most honored decline, and who well remembers his youthful pupil, as one of the most promising and interesting of his time. He belonged about this period to a Moot, or

Debating Society, which numbered among its members the flower of the city, many of whom subsequently obtained high distinction in the race of honorable renown. It was in this society, no doubt, that Judge Lee first developed and cultivated the elements of that fluent, persuasive, and commanding eloquence, which afterwards so frequently enlisted all hearts in its favor, prompted as it ever was, by a conscientious love of right, and clothed in the most captivating gifts of voice, language, and manner. Even in his early life, an opportunity was not wanting for its public exercise and display. The French Revolution, in its preliminary stages, had commanded the best sympathies of the whole world; and when intelligence in the year 1789 arrived, at Charleston, of the destruction of that stronghold of oppression and tyranny, the Bastile, a meeting of the citizens was summoned to express their congratulations on the event. Although but in his twentieth year, young Lee appeared with characteristic ardor, on this congenial occasion, before his fellow-citizens, and won the first leaf of that public chaplet, which continued to increase and strengthen for fifty years, and which was even on the point of acquiring new and verdant honors, when the venerable wearer was summoned, we trust, to receive an infinitely more precious crown, that fadeth not away.

The six or seven years which he devoted to the study of the Law, at a period of comparative boyhood, sufficiently evince the original decision of his character, together with a deep-seated consciousness of his appropriate destination in life. Among his other accomplishments, he acquired so perfect a knowledge of the French language, that he could, at any time afterwards, address with his accustomed ease and happy effect, a body of his French fellow-citizens, or examine a French witness at the Bar, without an interpreter.

In 1790, as soon as he arrived at age, he commenced the practice of his profession under the most favorable auspices. The general difficulties and embarrassments of the country had been now surmounted; the new Government had acquired a stability which secured universal confidence; commercial activity and prosperity every where revived: and Charleston

partook largely of the happy renovation. Mr. Lee continued several years in very successful practice, at the same time riding an extensive circuit, in company with a few ardently attached friends, some of whom yet survive to bear witness to the delights of a connexion, which grew stronger and dearer through every subsequent and strange vicissitude, preserving even its genial fires amidst the storms of party abroad, and beneath the whitening hair at home, until the hand of death brought about the irrevocable parting, and the warm tears of long tried friendship were poured into his closing grave.

In the mean time, his imposing talents and fine qualities attracted the attention of his fellow-citizens, who, shortly after he commenced the practice of the law, elected him a member of the State Legislature. In this capacity he served for several years, advocating, with especial enthusiasm and effect, every measure which leaned to what is called the popular side. Yet I am assured by those whose opportunities and penetration well qualify them to decide, that even in times of the greatest political agitation, he never was properly a party-man; he never surrendered himself as the slave of any faction—but always preserved his independence untrammeled, and refrained from pushing his favorite principles to a reckless extreme.* He was married in the year 1792, and afterwards passed a few years in the country, but has generally resided in Charleston with his large and interesting family, on whom he conferred the most enlightened education that his opportunities allowed.

In the year 1794, he was appointed, at the age of twenty-five, Solicitor General of the State, an office which he discharged to universal satisfaction for about ten years, when he was appointed one of the Judges of the Court of General Sessions and Common Pleas. This office he held but a very short time, being induced to resign it by some constitutional maladies,

* During the highest excitement of the recent conflict between South Carolina and the General Government, when many even of the most honorable members of both the opposing parties contributed to separate funds, for the purpose of purchasing votes, Judge Lee, although surpassed by none for a deep interest in the great questions at issue, nor for a readiness to incur pecuniary sacrifices in the promotion of what he deemed the righteous cause, resolutely refused to encourage a proceeding which he considered so unjustifiable.

incompatible with the sedentary duties which it required. He was soon after appointed Comptroller General of the State, and continued to discharge that office for twelve or fourteen years. Respecting his services in this department of public duty, perhaps no authority more satisfactory could be adduced than the late Dr. Ramsay, who rendered him, while living, the following testimony in his excellent History of South Carolina—a testimony, the full truth of which I am not aware was ever in the slightest degree questioned. When speaking of the recovery of the State from her financial embarrassments and difficulties at the commencement of the present century, Dr. Ramsay remarks: "After five years faithful service, in which Paul Hamilton introduced the same order into the finances of the State which had been done by his illustrious namesake for the United States, he was honored by his grateful country with the highest State office in its gift. Thomas Lee was appointed his successor, who with *equal firmness and ability*, prosecutes the same good work. From *their exertions*," he continues, thus evidently including Judge Lee in the same encomium with his meritorious predecessor, "from their exertions, a chaos of public account has been reduced to order; energy and decision infused into every department of finance; and the fiscal concerns of the State, recovered from disorder, are now in a flourishing and healthy condition." Dr. Ramsay also remarks afterwards, that the very delicate and difficult measure of adjusting the legislative representation of the people to their property and numbers, was effected by the preliminary exertions of Comptroller Lee, who reduced to one view the whole property of the State from numerous and complicated returns. The Legislature then adopted a new principle of distributing the representation, introduced and ably supported by Abraham Blanding. Thus, he concludes, "a real difficulty, which threatened the peace of the State, was compromised to general satisfaction, and the reform of the fiscal department essentially contributed to a reform of the Constitution, and the stability of the Government."

In 1817, Judge Lee was elected President of the State Bank in this city, an office which he faithfully and satisfactorily

filled for the last twenty-two years of his life. A sense of his services to that institution has been publicly expressed by the directors, precluding any farther reference to the subject here.

In 1823, he was commissioned by President Munroe, as Judge of the District Court of the United States for South Carolina District. His connexion with this office also ceased only with his death, after a punctual and assiduous performance of its duties for almost seventeen years. Those who were best acquainted with his merits in this department, and best qualified to judge of them, have in a public manner already conferred on him the beautiful and comprehensive eulogy, that his "decisions were characterized by a love of truth, and his judgments were given in mercy; that he administered justice without respect to persons, and did equal right to the poor and the rich." In addition to this high testimonial, it has been privately remarked by a competent observer, that Judge Lee exhibited a striking flexibility of talent in adapting himself immediately to the forms and phraseology and spirit of his juridical function, after the long disuse of legal habits to which his other duties had previously subjected him. Another, eminently qualified, assures me, that no Judge ever sat on the Bench, who was more patient in listening to Counsel, or more candid and open to every just impression, or who made up his judgments with more calm deliberation, or who would more gracefully surrender his deeply fixed opinions and prepossessions, before the light of reason and argument. And if I might venture, myself, another train of remark on a subject so alien from my sphere, I would diffidently observe, without presuming to pronounce on his legal merits either one way or another, that the published decisions of Judge Lee exhibited a most commendable perspicuity of style; that he did something to free the profession from the usual charge of being technical and pedantic: that there was a happy neatness and point about his explanations and reasonings, avoiding both the extremes of saying too much and too little; and that in one respect at least, he followed at no large distance the steps of the great legal luminary of our country and day, himself

so lately extinct, by popularizing and rendering intelligible to ordinary capacities the science and mysteries of the law.

While enumerating the public services of Judge Lee, it will by no means be out of place to allude to his exertions in the cause of the Temperance Reform. The time will come, when South Carolina, and his whole country, will more vividly remember and recognise his merits in this department of action, than even his fiscal and juridical services. In fact, the Temperance Association may now be regarded as one of the settled institutions of our country, although no legislature has sanctioned it, and no political convention has enforced its paramount authority. And he, who takes a leading part in it, as did our deceased friend, without the least tincture of fanatical ultraism on the one hand, or of shrinking timidity and indecision on the other, may be as emphatically pronounced a *public man*, as if he acted by the unanimous vote of a legislature, or could show on his warrant, the Great Seal of the United States. For he has God for his authority—his conscience for his charter,—and the advancement, good order, happiness, both spiritual and temporal, of the community, as much his object and guide, as if he were the author of a whole code of engrossed laws. It was therefore, I conceive, with peculiar propriety, that in your resolutions of the last Sabbath, you gave this feature of his public history a prominent place. Truly, also, might the Managers of the Young Men's Temperance Society, while recently bewailing his decease, observe, that if his departure is a source of affliction to other associations, it is profoundly and emphatically so to them; Judge Lee having been identified with the rise and progress of the Temperance movements in South Carolina. Yes, to his lasting honour be it said, that with that far-reaching instinct of benevolence and usefulness, which was one of the constituent elements of his character, he perceived from the very beginning, the vital importance of this cause to families and to States—to fathers, mothers, children, neighbours, communities and nations. It was about ten years ago that he stepped forth with a little band—long before the cause began

to be in any way popular,—nay, when it was decidedly unpopular,—when it was thought the most legitimate object of wit, sarcasm and reproach. All this he cheerfully and calmly bore, both from high quarters and low, moving steadfastly onward to the end with an unshaken and devoted faith.

The next circumstance in his history, to which I shall advert, although still less of a public nature, can yet scarcely be classed among the transactions of his private life. I mean his connection with this Church. In the resolutions at your late meeting, it was declared, with equal truth and simplicity, that to Judge Lee we "owe a debt of gratitude." Perhaps few among us are aware of the full extent and bearing of that remark. It may be known to many, that in the year 1817, this Church had been long united with another in the city, so as to form with it one legal corporation and one ecclesiastical body, even to the regular interchange of pulpits every Sabbath by the two acting pastors. Few persons acquainted with religious history, would antecedently predict that a connection like this could be indefinitely permanent. It must have been foreseen that in the lapse of time, the harmony of the association, however complete at first, would at length be disturbed by personal partialities and prepossessions in favor of different pastors, or by differences in theological opinions. Accordingly with the year just mentioned, the period had arrived for both these causes of disturbance to operate with uncontrollable power. The two Churches were rent into an irreconcilable division, one party embracing the ancient Calvinistic creed of the corporation, and the other adopting those principles of scriptural interpretation denominated Unitarian. The breach was still further widened by the fact, that one of the officiating ministers for the time being, Mr. Forster, was an earnest advocate of the last mentioned system, and had, in a short time, acquired a large number of adherents, being particularly acceptable as a preacher and a man. It thus became a desirable object of the Calvinistic party to exchange him for a clergyman of a different description, and secure, if possible, the continued adherence of both the Churches to their ancient creed. At this crisis, Judge Lee was found among

the friends and followers of Mr. Forster, who proposed to the other party the terms of an amicable separation, and the future appropriation of each Church edifice to the use of the denominations, respectively. The proposition was for some time strenuously resisted. Various discussions and meetings took place, at which Judge Lee was almost the only prominent advocate of the side which he had espoused. Single-handed, he encountered four or five very able and active opponents, until at length both parties became convinced that there was no hope of future harmony and reconciliation, except by a voluntary and absolute separation. Our departed friend was Chairman of the Joint Committee of Ten, who drew up and reported the articles of separation. "Impressed," say the Committee in their Report, "with the solemnity and importance of the subject confided to them, and anxiously solicitous to meet the wishes of their constituents, they frequently and freely interchanged their sentiments, and now recommend the above measures as the most likely to tranquilize the Church, and unite in brotherly love and affection all its worshippers." Upon this recommendation the whole body acted, and the result may be perceived in the following extract from their minutes: "Charleston, 24th June, 1817. At a Church meeting held this afternoon in the Circular Church, present one hundred members and supporters; on the above Report of the Joint Committee being read, it was *unanimously agreed* to adopt the same without any alteration whatever." Thus terminated this severe struggle, and they who have since enjoyed the advantage of an edifice here, where they could celebrate the worship of Jehovah, and observe the ordinances and institutions of Christianity, according to the principles then contended for, and which they have been led conscientiously to adopt, may estimate the truth and force of the declaration, that we *owe a debt of gratitude* to Judge Lee.

But this was but the beginning of our debt of gratitude to him. For twenty-two years he has continued one of the firmest and most efficient supporters that ever blessed and upheld a Church. Truly may we say that a fair pillar has

been removed from our temple. Unstintedly and unshrinkingly did he throw his reputation, his influence, his exertions, his time, his voice, his good wishes and his prayers into the ark where he believed the truth was enshrined, and the best interests of himself and mankind enclosed. Never doubting, never desponding, always conciliatory, always forbearing, he entered with zeal into every project which the exigencies of the Church, or the defence and maintenance of its principles required. A prominent and beautiful feature of his character was, to surrender peacefully and gracefully to the will of the majority, in matters where his conscience was not absolutely concerned. For instance, when it was proposed several years ago to procure an organ for the improvement and assistance of the choir, his private taste preferred the ancient practice of vocal music; but as soon as he learned that an organ was desired by the congregation at large, his generous subscription was immediately ready for the purpose. Nor did his interest in the Church rest simply in externals. He was as far as any man living from employing religion as an instrument of policy, or for the promotion of good order in society. He would have scorned so low a motive for its support. His religion, too, was infinitely removed from the mere negation, of which his views are sometimes thought to consist. His zeal was never inspired by the fact that he had made a party-matter of the cause, and that he must now support it at all hazards. He had repeatedly and seriously examined his religious tenets. They had entered into his heart and soul. They had become a part of the very man, moulding him to the will of an all-present God, and assimilating him to his meek and spotless Redeemer. Their influence seemed almost to overcome in him the few infirmities inherited from our common imperfect nature, causing him to forget, like a child, the quick resentments of the moment, to forgive the injuries which he may have incurred, to bear with peculiar and unexpected patience the attacks of the last oppressive disease, and to encounter the approaches of death with a firm, unwavering, and even triumphant faith. In some published remarks which he delivered a few years ago, at a public

meeting of the Tract Society in this church, he expressed himself in the following words: "The creed of my fathers, Mr. Chairman, was Trinitarian; and I had every motive to attach myself to and love that religion which they professed. I was brought up in that faith, and worshipped in it long after the period of manhood. I then found its mysteries perplexing and incomprehensible. The demands which it made upon my mind to yield implicitly and blindly to doctrines, as fundamental, which I could not understand, led me to calm and deliberate investigation, which resulted in their rejection as not warranted by Scripture. I considered myself, sir, as an accountable being; and believing that it was my sacred duty to use the reasoning faculties with which God has endowed me, for the discovery of truth, and in a more especial manner of religious truth, I rejected the authority of men and councils, and sought for light and direction, where alone it could be found, in the records of Revelation. My mind, sir, is completely satisfied; and I thank God I have no longer any doubts or misgivings."

Such was the state of his mind and belief, yet combined with the most tender regard and the most entire respect for the conscientious views of all other denominations, when he became, in the year 1824, almost sixteen years ago, a regular attendant on the administration of the Lord's Supper in this church. His interest in religion has seemed to increase with every succeeding year. Not long after the event just mentioned, his eldest son, a most pious and worthy member of this church, died and was buried in the family cemetery in the country. One of his surviving sons informed me, that on the return of the family from the interment to the mansion, his father addressed them all in an impressive and instructive strain of remark, which he trusted they never could forget. During the absence of the pastor of this church a few summers ago, our friend took the lead in conducting the usual services of the congregation, and his impressive manner in devotion and reading, heightened as it was by his exemplary character, will long be remembered. About a year since, when it was announced that our Sunday School required a

few more teachers, he was, in his sixty-ninth year, among the first to offer his services; and when a sufficient supply prevented them from being accepted, it still seemed to be his pleasure to enter his pew every Sabbath morning at an early hour, and listen to the lessons and hymns of the children. When, a few months since, a vacancy occurred in the Deaconship of the church, he cheerfully accepted the office, notwithstanding his advancing age and probable infirmities. To his pastor he was ever an invaluable friend, soothing his mind and sustaining his labors by frequent notes and letters of sympathy and kindly counsel, or by visits snatched from the hours of business.

Shortly before his death, as if in near anticipation of the event, while standing with a dearly beloved relative in the cemetery of our church, he pointed to a spot which he had recently purchased, and said, "when I die, let me be laid in the centre of that square. It is the next square to my friend ———'s," whom he at the same time named. "We have never quarreled in life," said he, "and we shall slumber peaceably by each other's side in death."

Does not this church owe him a "*debt of gratitude?*" *Shall* not the memory of the just be cherished as peculiarly *blessed* and *precious*, by every heart of sensibility among us?

I had intended to close this discourse with a general summary or estimate of Judge Lee's intellectual and moral qualities; but the materials of his biography have so swollen under my hands, that I shall leave this unvarnished statement of his personal history, to make its own impressions; to enforce its own conclusions on your minds. There were one or two points, however, about his character, so very prominent, yet so very intrinsic, that I may be permitted to dwell on my subject for a few moments more.

The first was his intense and deep *conscientiousness*. He had as strong a love of right and abhorrence of wrong as any man who ever lived. One of his most frequent inquiries was, *is* such a policy or course of conduct right? He would meet you in the streets with this question. He would discuss it with you at home. It haunted him like a messenger from

heaven. It was indeed the voice of God. Would that individual and social man might more and more earnestly listen to it, like our departed friend!

The second of his characteristics which I cannot help noticing, was his open-handed and overflowing *benevolence.* His life was a series of benefactions. He seemed to know no value in money, but the good it might do to others. It was this quality that led him many years since to adopt the orphan child of a perfect stranger who died by the fever of our climate, and that at a time when his own numerous and increasing family made no slight demand upon his means. It was the same quality which prompted him to place considerable sums of money on the severely cold days of every winter in the hands of his pastor, with a request that it might immediately be distributed to the suffering poor. At other times he would deposit amounts of money in the same hands for any general purposes of charity whatever that might occur. And again he would appropriate sums in the same manner, under a feigned hand, but which was detected to be his, by inadvertent resemblances of manuscript, paper and other circumstances. Doubtless many are equally acquainted with other instances of a benevolence which appeared thus habitual and spontaneous.

It has been said of him that he was of an indolent, or more properly speaking, an inactive temperament, unless roused to exertion by a strong sense of moral obligation. Much of this infirmity is unquestionably to be ascribed to the long periods of suffering and disease which he endured in middle life. But if he *were* constitutionally inactive, it only heightens his merit, that he so often and so effectually overcame the propensity, and was ready to act at every call, even of hopeless duty. Heaven bestow on society as many indolent members as it may please, like Judge Lee!

But at last the period drew near when he was to be called to a more solemn, yet at the same time a more merciful tribunal than the admiring or caviling judgments of his fellow-mortals here. On the Sabbath before the last, he sent from his sick chamber to ask for the prayers of his church in his

behalf. On the following morning he desired to see his pastor, who immediately repaired to his abode and visited him every day till his decease. He found him calm, collected, firm as ever in all his religious views, though not disposed to dwell on speculative points of doctrine. Repeatedly did he express his confidence in God as his merciful Friend and Father. He professed to receive infinite comfort from the language of sympathy and prayer. When informed that his numerous friends were anxious for his safety, "tell them," said he, "that I am patient; and be assured, that if ever man felt *humble*, such is my feeling now."

Judge Lee may be said to have died an *enviable* death. The very *time* that has taken him away was almost as felicitous as the many happy points about his own character. He has died in the fulness of a ripe and good reputation. He has not outlived his friends and admirers. He was almost borne away like Elijah in a chariot of glory—for surely the affectionate admiration of a whole community may be compared to the Tishbite's ascending car. He died before the infirmities of age had dimmed his faculties, or rendered it a matter of question with the succeeding generation whether his fame were so well founded as his contemporaries represent. The young have known and heard him, and learned from him. The middle-aged have been stirred by the tones of his manly and melodious voice, and have been prompted to high and virtuous action by his persuasion and example. The aged have witnessed his long, consistent and honorable career. Could happier circumstances and coincidences have attended his death? Yes, *one thing* is happier than even these. He died the death of a righteous man. "Let me die *the death of the righteous*, and let my last end be like his."

SAMUEL WILDS.

Samuel Wilds is a name which challenges respect even after he has rested in the silence of the grave for nearly fifty years. He was born (I presume in Darlington District,) on 4th of March, 1775. His love of learning is shown by an anecdote narrated to me by a friend. He was about engaging in a pitched battle with other boys. They were dissuaded, and a foot race was proposed as a substitute, for a wager. The race was run, and Wilds was the victor; the money thus won he applied for the purchase of a Latin grammar. He married in 1798, or 1799, Elizabeth De Witt, daughter of Captain William De Witt, a gentleman occupying a high position, in the country, for his active services in the war of the Revolution as well as for his domestic virtues and stern integrity. At the age of twenty-six, Mr. Wilds was elected a member of the Legislature; two years afterwards he was elected Solicitor of the Northern, now the Eastern Circuit, without a dissenting vote. He was elected a Judge the 11th December, 1804, in his thirtieth year. Judge Waties was the youngest man ever elected to that office; he wanted a few days of being twenty-nine years old. Judge Wilds was twenty-nine years, nine months and seven days old, when he attained to that highest legal distinction. John Garlington, Esq., of Laurens, stated to me that he heard Judge Wilds narrate his early poverty, which was so extreme that he had not a pair of shoes until he was eighteen years of age. He also said that Judge Wilds, with great good humor, told his auditors on the same occasion—an entertainment given to him by Robert Creswell, Esq., at Laurens—that Judge Grimké was much displeased, on account of his youth, at his election to the Bench: the venerable Judge, in reference to his election, said, "the boys will be coming over the Bench." Judge Wilds died 9th March, 1810. He was, therefore, upon the Bench a little more than five years. In that time he obtained the reputation which a long life seldom earns.

Young, eloquent, learned, polite, and energetic, he held the scales of justice to the admiration of all. His sentence upon Slater, in the Court of Sessions for Charleston District, for the murder of his own slave, will be read and admired wherever truth and eloquence can be understood.* His opinion in

* The following is the sentence on Slater. It is taken from a work intended to pervert and misrepresent Southern institutions—Mrs. Stowe's Key to Uncle Tom's Cabin. The friends of Judge Wilds are indebted to her for preserving this beautiful and eloquent specimen of his powers: "John Slater, you have been convicted by a jury of your country of the wilful murder of your own slave; and I am sorry to say the short, impressive, uncontradicted testimony, on which that conviction was founded, leaves but too little room to doubt its propriety.

The annals of human depravity might be safely challenged for a parallel to this unfeeling, bloody, and diabolical transaction.

You caused your unoffending, unresisting slave, to be bound hand and foot, and by a refinement in cruelty, compelled his companion, perhaps the friend of his heart, to chop his head with an axe, and to cast his body, yet convulsing with the agonies of death, into the water! And this deed you dared to perpetrate in the very harbor of Charleston, within a few yards of the shore, unblushingly, in the face of open day. Had your murderous arm been raised against your equals, whom the laws of self-defence and the more efficacious laws of the land unite to protect, your crime would not have been without precedent and would have seemed less horrid. Your personal risk would at least have proved, that though a murderer you were not a coward. But you too well knew that this unfortunate man, whom chance had subjected to your caprices, had not, like yourself, chartered to him by the laws of the land the same rights of nature; and that a stern but necessary policy had disarmed him of the rights of self-defence. Too well you knew that to you alone he could look for protection, and that your arm alone could shield him from oppression or avenge his wrongs; yet that arm you cruelly stretched out for his destruction.

The counsel who generously volunteered his services in your behalf, shocked at the enormity of your offence, endeavored to find a refuge, as well for his own feelings as for those of all who heard your trial, in a derangement of your intellect. Several witnesses were examined to establish this fact; but the result of their testimony, it is apprehended, was as little satisfactory to his mind as to those of the jury to whom it was addressed. I sincerely wish this defence had proved successful, not from any desire to save you from the punishment which awaits you, and which you so richly merit, but from the desire of saving my country from the foul reproach of having, in its bosom, so great a monster.

From the peculiar situation of this country, our fathers felt themselves justified in subjecting to a very slight punishment him who murders a slave. Whether the present state of society require a continuation of this policy, so opposite to the apparent rights of humanity, it remains for a subsequent Legislature to decide. Their attention would ere this have been directed to this subject, but for the honor of human nature, such hardened sinners as yourself are rarely found to disturb the repose of society. The Grand Jury of this country, deeply impressed with your daring outrages against the laws of both God and man, have made a very strong expression of their feelings on the subject to the Legislature; and

Gourdin *vs.* Thurs, (3 Brevard, 153,) will be, as it deserves to be, praised by lawyers for its clearness and legal acumen. His early death made South Carolina weep from her mountains to her seaboard. But God's purposes, dark to us, are always just and right: and while we weep as individuals, or as a

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from the wisdom and justice of that body the friends of humanity may confidently hope to see *this blackest* in the catalogue of human crimes pursued by appropriate punishment.*

In proceeding to pass the sentence which the law provides for your offence, I confess I never felt more forcibly the want of power to make respected the laws of my country, whose minister I am.

You have already violated the majesty of those laws. You have properly pleaded the local law under which you stand convicted as a justification of your crime. You have held that law in one hand and brandished your axe in the other, impiously contending that the *one* gave a license to the unrestrained use of the *other*.

But though you will go off unhurt in person, by the present sentence, expect not to escape with impunity. Your bloody deed has set a mark upon you which I fear the good actions of your future life will not efface. You will be held in abhorrence by an impartial world, and shunned as a monster by every honest man. Your unoffending posterity will be visited for your iniquity, by the stigma of deriving their origin from an unfeeling murderer. Your days, which will be but few, will be spent in wretchedness, and if your conscience be not steeled against every virtuous emotion—if you be not entirely abandoned to hardness of heart—the mangled, mutilated corpse of your murdered slave will ever be present in your imagination, obtrude itself into all your amusements, and haunt you in the hours of silence and repose.

But should you disregard the reproaches of an offended world—should you hear with callous insensibility the gnawings of a guilty conscience—yet remember that an awful period is fast approaching, and with you it is close at hand, when you must appear before a tribunal whose want of power can afford you no prospect of impunity—when you must raise your bloody hands at the bar of an impartial, omniscient judge. Remember, I pray you remember, whilst you yet have time, that God is just, and that his vengeance will not sleep forever.

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* The punishment under the Act of 1740, 38½, under which Slater was convicted and sentenced, was a fine of £700, currency equal to 100*l.* sterling—which at 4s. 8d. to the dollar is $428 57-100—and incapacity to enjoy or receive the profits of any office, place or employment, civil or military, and if unable to pay this fine then imprisonment for seven years. The Act of 1821 changed this trifling punishment for what Judge Wilds justly called the "blackest in the catalogue of human crimes," *to death*. His eloquent tongue had been silent in death nearly eleven years, when "the wisdom and justice" of the Legislature yielded to the "hopes" of the "friends of humanity." At my instance, my friend Daniel Horlbeck, Esq., caused the records to be examined, to ascertain when the above sentence was pronounced, and strange to say, nothing can be found. There is no Sessions Docket or Journal, until 1833, now extant. No indictment against Slater can be found. I presume the sentence was pronounced in 1807.

nation, it is our duty to submit. He was a follower of Temperance, when it was not known or recognized as a duty. He drank neither wine nor strong drink. He usually kept colored water before him, when in fashionable company; this he drank in reply to their glasses of wine.

He left at his death an only daughter, Caroline Simons Wilds, who married, in 1821, Dr. R. W. McIver, and died in 1837, leaving five daughters and one son. A posthumous son was born to Judge Wilds not long after his death, and was called Samuel De Witt Wilds: he died in 1822.

His excellent widow, after mourning the death of her young and gifted husband many years, married Dr. Thomas Smith, whose head and heart alike make him an honor to his name and profession. She lived for many years enjoying the blessings of a kind and indulgent husband and an abundant home. She was a pious and honored member of the Baptist Church at Society Hill, and died on the 24th day of March, 1855, full of years, and abounding in everlasting hope.

WILLIAM SMITH.

Judge Smith was elected to the Bench the 28th of June, 1808, in the place of Judge Trezevant, who had died the February preceding. He was President of the Senate when elected, and was a lawyer in the full tide of successful practice on the Middle, now called the Northern Circuit.

He was born in North Carolina, but when or where, I have been unable to ascertain. He migrated to South Carolina, and settled in York District, when very young and poor.

He was educated in part, probably by the Rev. Mr. Alexander, the able teacher, and minister of the Presbyterian faith, at Bullock's Creek, and finished his course at the Mount Zion College, Winnsboro'. While at Mr. Alexander's school, he met with Gen. Jackson as a school-mate, and no doubt, when the two noble Romans met at Washington, as President of the United States and Senator from South Carolina, they met as friends in early life, and friends in all the fierce political strifes to which our country had been and was then subjected. The Hon. Wm. H. Crawford was also his school-mate. Hence, perhaps, began his devotion to him, which was perfected by their principles and politics being the same.

At thirty years of age, Mr. Smith began the study of the law, and as three years was then the prescribed term of study for the graduate of a College, he must have been thirty-three years of age, when admitted to the Bar. I have scrutinized this matter, and think his grand-daughter, Mrs. Calhoun, is nigher right in her statement that he was admitted at twenty-one. In the Roll of Attorneys admitted at Charleston, Wm. Smith is put down as admitted 6th January, 1784. Judge Smith was a member of the Legislature of South Carolina for many years. In 1805, he was elected a member of the Board of Trustees of the South Carolina College. In 1806, he was elected President of the Senate.

He represented his early life to an intimate friend—Col. Thomas Williams, formerly of York, now of Montgomery,

Alabama—"as wild, reckless, intemperate, rude and boisterous, yet resolute and determined."

He had the rare blessing to win the love of one of the purest, mildest and best of women, whose character has ever been presented to the writer. He married Margaret Duff. "In his worst days, she never upbraided him by word, look or gesture, but always met him as if he was one of the kindest and best of husbands. This course on her part humbled him, and made him weep like a child." This sentence, it is hoped, will be remembered, was the language of Judge Smith to the friend already named, and to those who knew the stern, unbending public character of the Judge, it will teach a lesson of how much a patient woman's love can accomplish. He was at last reformed by an instance of her patient love and devotion, as he himself told it:

"The evening before the Return Day of the Court of Common Pleas for York District, a client called with fifty notes to be put in suit. Mr. Smith was not in his office—he was on what is now fashionably called a *spree*, then a frolic. Mrs. Smith received the notes, and sat down in the office to the work of issuing the Writs and Processes. She spent the night at work—Mr. Smith "in riotous living." At daylight, on his way home from his carousals, he saw a light in his office, and stepped in, and to his great surprise saw his amiable wife, who had just completed what ought to have been his work, with her head on the table and asleep. His entry awoke her. She told him what she had done, and showed him her night's work—*fifty Writs and Processes.* This bowed the strong man, "he fell on his knees, implored her pardon, and then and there faithfully promised her *never to drink another drop while he lived.*" "This promise," says my friend Col. Williams, "he faithfully kept," and said the Judge to him, "from that day, everything which I touched turned to gold." "His entire success in life," says Col. Williams, "he sat down to his faithful observance of this noble promise."

No better eulogy could be pronounced on Mrs. Smith than what has just been given in the words of her distinguished husband. The reformation of such a man as William Smith is a

chaplet of glory, which few women have been permitted to wear. To the people of South Carolina, and especially of York District, certainly no stronger argument in favor of *temperance and total abstinence*, need be given.

Judge Smith was an able, but rather tyrannical Judge. All stood in awe of him. He committed the Captain of a volunteer company in Charleston for disturbing the Court, by persisting to cause his drum to be beat after he had been ordered to desist. At the Spring Term of 1814, he quashed every *venire* around the Southern Circuit, because new Jury lists had not been made out within three years, and from them the Jurors drawn and summoned. This was a great legal blunder, and worked great delay in the administration of justice. Still no one doubted the purity of the Judge, although Bench and Bar condemned the act as high-handed and uncalled for.

Judge Smith possessed a wonderful memory; and I have often heard it said that he reported to the Constitutional Court the case of the State *vs.* Fley and Rochelle, without referring to his notes. "He never forgot the faces of men or their peculiar traits of character." If he knew a man once, he knew him ever after, and neither the lapse of time, nor the place where he might meet him, however little expected, misled or deceived him. As an illustration, the following incident may be noted. He had been employed, many years before, to defend a man at Pinckney or Spartanburg, for killing a horse in the night time, which, by our Statute, is a clergyable felony. His client did not meet his trial—he fled the State. If the case occurred during the existence of the Court at Pinckney, at least twenty years must have come and gone; and if at Spartanburg, at least ten years must have elapsed, before Judge Smith entered Congress as a Senator from South Carolina. Walking into the Hall of the House of Representatives, soon after he had taken his seat as Senator, he discovered his client in the person of John Alexander, commonly called the "Buffalo of the West," sitting as a member from Ohio. In Spartanburg, the name was usually called Elchinor, and so the Judge addressed him. The member professed not to know him. The Judge, with one of his bitterest oaths, swore he

should know him, telling him he had his note at home for $100, and that he should pay it. He wrote to his wife to send the note, and by the return mail it came, and Mr. Alexander *admitted the acquaintance by paying the note.*

The speeches of his political opponents he never forgot; and often, to their dismay, the Judge, from the bottom of his old trunk, fished up some speech, or speeches, entirely at war with their present views. What a terrible basting he gave to Mr. De Wolf, the Senator from Rhode Island, when he arrayed before him the evidence of his participation in the slave-trade before 1808, will be recollected by some, even at this late day!

His ability as a Judge will be seen by referring to the case of Read and Eifert (1 N. & McC., 374, note.) His opinion in that case settled the vexed question of adverse possession, and gave, for the first time in our Court, a plain, sensible, and just construction of the Act of Limitation.

At the session of the Legislature in December, 1816, Judge Smith was elected to the Senate of the United States, and thus vacated his place on the Bench. From March, 1817, to March, 1823, he served, and most faithfully and ably discharged his duties in the United States Senate. In December, 1822, the talented and accomplished Attorney-General of the State, Robert Y. Hayne, was elected Senator in preference to Judge Smith. He was returned to the House of Representatives of South Carolina in 1824, and in 1825 he led the party which reversed Mr. Calhoun's previous policy in the State. The doctrine of a strict construction of the Constitution was adopted with singular unanimity. In December, 1826, Judge Smith was elected Senator in Congress, for the unexpired term of John Gaillard. In 1830, his former friend, Stephen D. Miller, superseded him. The doctrine of Nullification was then beginning to gain the ascendancy in the State. In 1831, Judge Smith was one of those who signed the appeal to the Union party of South Carolina. Throughout the struggle to which Nullification gave rise, Judge Smith remained true to the Union; but the violent divisions and party strife

which then pervaded the State, drove Judge Smith and many other valuable men from it.

Judge Smith was remarkable for the "indomitable energy of his character." He turned not aside for obstacles—what he thought right to be done, *he did*. His opinion he surrendered to no man, and of consequence, he was led by no one. To this unbending will, is to be attributed his opposition to Mr. Calhoun. He felt that he was much his senior; that he belonged to the old, radical school, when Mr. Calhoun, Mr. McDuffie, Generals Hayne and Hamilton, belonged to the party in favor of a liberal construction of the Constitution; that he had a larger experience as a Republican than any of them, and that his former position as a Judge placed him far above Mr. Calhoun, and that, therefore, if deference ought to be paid to any one, it ought to be paid to him. His love of truth made him defend, in the strongest terms, his opinions political or otherwise.

"As a friend or neighbor," says Col. Williams, "no one could equal Judge Smith. No kinder hearted man ever lived, and none could be found who sympathized with the distressed more sincerely." But his sympathies could only be elicited by and for virtue in distress. "He had no sympathy," as he said, "with vagabonds." While he loved his friends, *he hated his enemies*. "He could not bless the man that cursed, nor pray for the him who despitefully used and persecuted him." He was a total stranger to the idea of conciliating an enemy; his course towards such an one was *defiance*.

His intercourse with his friends was unrestrained freedom and pleasantness. He abounded in anecdotes of the Bench and Bar, and of his varied life; these he poured out for the entertainment of his friends. But to those whom he disliked, or who he supposed disliked him, he was reserved, but courteous.

He and his wife were blessed with an only child, a daughter, She became the wife of John Taylor, Esq. of Pendleton, and died soon after the birth of her only child, a daughter, who was raised and educated by her grand-parents.

The Western land mania seized the Judge while in his first

term in the United States Senate. He bought largely in Alabama, but without any purpose of removing. It was left, however, to the unfortunate Nullification difficulty to drive him from the State. He left soon after his last term in the United States Senate, and became a Louisiana planter.

His idolized wife preceded him to the tomb. He died at Huntsville, Alabama, on the 26th day of June, 1840, full of years and almost a millionaire in wealth.

He was of the common height, rather square built, and of great physical powers. His face rather pale, exhibiting unflinching firmness. His voice was peculiar—rather shrill in his intonations, and calculated by its sharpness to add much to his withering sarcasm.

On the whole, he was a remarkable man, with the iron will of Jackson, and like him utterly ignorant of the word, FAIL.*

I have sought information in reference to Judge Smith in every way I could, to do justice to a great South Carolinian.

Mr. Calhoun, the husband of his grand-daughter, promised materials which I have never received.

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*The following anecdote has been communicated to me by a friend, to whom I am under very many obligations for aid in Sketches of the Bench and Bar: Just after the first defeat of Judge Smith for the United States Senate, a gentleman of the bar and only a little younger than the Judge, said to my informant: "The old Judge will not stand beaten by the dominant party: he will go into the Legislature, present a Jeffersonian platform, and revolutionize the State." Mr. Horlbeck remarked, "The weight of talent and ambition was on the other side, and it would be hard to break down the party." The reply was: "I tell you, though Judge Smith is old, he never forgets anything." He was in the habit of standing with his hands in his pockets when talking, and it was said by the "knowing ones," he *had a piece of white pasteboard* in his pocket, on which when conversing he would write the name of a person and a word, so as to enable him at a retired hour to write down and not forget an important matter. This prediction was verified in '24 and '25.

Query. Was Judge Smith a member of Congress in 1796? In the report of the Committee of Ways and Means of the House of Representatives of South Carolina, is the following sentence: "But your Committee learn from a communication of William Smith, Esq. member of Congress from this State, that on his application to the Treasury for information," (relative to a demand of $18,425, 25-100 which had been audited and allowed to the State,) "he was told that no money had been appropriated by Congress to the discharge of this debt."

From Judge Porter, of Alabama, I have received a most interesting reminiscence of Judge Smith, which I append after an article from the Huntsville (Ala.) Democrat, which seems to have been taken from statements of his grand-daughter; and also after an article from Major Perry, of Greenville. Taking these altogether, with the preceding memoir, I have no doubt we have about as correct an account of Judge Smith as can be obtained.

I think his grand-daughter is right as to his birth; he was born in 1762.

We publish to-day a biographical sketch of Judge Smith, which, we think, will prove interesting to many of our readers, particularly his old neighbors and constituents of this county. There are, however, sundry errors of fact, which require correction, and we now propose to correct them, after consulting his grand-daughter, Mrs. Calhoun, who is, at this time, occupying the house in our town in which Judge Smith last resided and died. She informs us that her grand-father always spoke of himself as a South Carolinian, and he was always (since her recollection) regarded by his family as a native of that State, but she is not certain as to his birth-place. She has a vague impression that, by a re-adjustment of the boundary lines between North and South Carolina, his birth-place, formerly in the jurisdiction of South Carolina, was thrown into North Carolina.

Judge Smith's father was, at one time, a man of considerable property, but his fortune was greatly impaired by the depreciation of the continental money. He, however, was able to give his sons as good classical educations as the academies of those days afforded.

Judge Smith was a good Latin and Greek scholar. General Jackson and William H. Crawford, both, were his schoolmates, and he was a devoted friend of both of them to the end of his days. His father started him in the world with only one negro, Priam, well known here as a foreman, and now living on the farm, adjacent to the town of Huntsville, which Judge Smith left to Mrs. Calhoun.

There must be some mistake (Mrs. Calhoun thinks) about

Judge Smith's youth—intemperance, and spending his nights "in riotous living." At one time he used tobacco immoderately, but was not addicted to the use of ardent spirits; indeed, he refused everything of the kind, and was a miracle of abstinence and sobriety. For, perhaps, the last forty years of his life, he would not drink even tea or coffee. He would, sometimes, take a little spruce beer, of his own make, or sweet cider, or milk and cider mixed, but nothing stronger. We have ourselves seen him decline coffee, tea and wine. Colonel Williams has, probably, confounded Judge Smith with a brother of his, who was a lawyer also, and, unfortunately, intemperate.

Judge Smith married at 19 years of age, his wife being only 14; and was admitted to the Bar at 21, and was in the full tide of successful practice at 30, according to Mrs. Calhoun's recollection from conversations with her grand-parents. It is true, that Mrs. Smith aided him greatly by writing for him. They had only one child, a daughter, who became the wife of John Taylor, (who at one time, represented Pendleton District, S. C., in Congress,) and had three daughters, only one of whom lived. She was raised by her grand-parents, and married Mr. Meredith Calhoun. Such was Judge Smith's devotion to his daughter, that, after her death, wherever he moved he carried her bones with him, and they never found a permanent resting place until after his death, when they were buried near his remains.

While in the United States Senate, Judge Smith purchased a sugar plantation on Lafourche, Louisiana, and a cotton plantation in Alabama. Subsequently, he sold out the former and bought plantations on Red River. The Nullification excitement drove him from South Carolina, and he settled in the vicinity of Huntsville, Alabama, and afterwards built a palatial dwelling-house in the town, and lived there until his death on the 16th of June, 1840; and Mrs. Smith died there about fifteen months after.

Judge Smith repeatedly represented this (Madison) County in the Alabama Legislature, and was an able, influential, efficient member. He was at one time looked upon as a

prominent candidate to represent this District in Congress, and, if he had run, he would probably have been elected, but a strong disposition being manifested to ask of Congress an appropriation, for the improvement of the Muscle Shoals, which was inconsistent with his ideas of strict construction, and anti-internal improvement by the General Government, he declined the canvass. Judge Smith never would tell his age. His family think that he was born in 1762, which would make him about 78 at his death. He was very active, energetic, vigorous, with great powers of endurance to the last, often tiring down young men of half or a third of his age in riding on horseback during his political canvasses, or when traveling. Nor was there any apparent deterioration of memory or intellect; but all was unclouded, clear, strong and vigorous. This wonderful retention of his mental and physical powers, was, doubtless, due to the great sobriety and regularity of his life.

We understand that Mr. Meredith Calhoun has in his possession many valuable and interesting papers of Judge Smith's, which we hope he will see fit to give to the public. He would be the proper person for Judge O'Neall to apply to for aid in perfecting their proposed biographical sketch.—*Huntsville (Ala.) Democrat.*

SYDNEY, MARSHALL CO., ALA., Sept. 25, 1858.

My Dear Sir:—I have just read, with much interest, your graphic sketch of Judge Smith, in the Courier. I hope you will continue these notices, for I know of no reading more beneficial to the younger members of the profession, aside from their law books, of course. Will you excuse a few additions from my own reminiscences; not only with regard to Judge Smith, but other members of the bar, with whom it has been my fortune to be intimate?

At the period when I first began the practice of law, I settled at Chester Court House. There I saw Judge Smith. A very large assemblage was gathered to meet Stephen D. Miller, then a candidate for Governor. The anti-tariff excitement was as its height, and Mr. Miller appeared in a full suit

of domestic jeans. Mr. McWillie took ground against the resolution, and made a speech, so plain, so full of historic fact, so persuasive, that its effect was powerful on my young mind, and carried away every vestige of the anti-tariff notions, which, like most of the youth of the time, I had adopted. In vain an answer was attempted by the Committee. I think Col. Thomas Williams, now of Montgomery, made a speech, as well as Col. Wm. F. Davie, and others. To carry the resolutions, Judge Smith left the chair, and made a most violent declamatory effort. I remember he compared South Carolina to the condition of the worm, that would not turn, if tread upon, if she failed to resist the action of the United States Congress in respect to the tariff. The profound wisdom, perfect good temper, clear thought, and admirable expression of Mr. McWillie's effort have ever stood in my recollection, as the finest model of a speech I ever heard.

After most of Judge Smith's property had been removed to Alabama and Louisiana, he still continued to exert an influence in politics. On one occasion he came from York to Chester to exercise his power in an election in which Mr. John McKee was either a candidate or greatly interested in the candidate to whom Judge Smith was opposed. In Mr. McKee he met an opponent of much greater power than many of higher name, whom he had easily conquered. Mr. McKee boldly raised on him a question of absenteeism. This Smith denied, and called for proof, which McKee, who had followed Smith's example of always having proof ready, produced, by showing certified copies of the tax lists, exhibiting the relative amounts paid by Smith in South Carolina and the West. This, I am sure, weakened Judge Smith more with the people than many efforts of much greater men.

When I again met Judge Smith, it was in the Legislature of Alabama, where we served together; he being returned from Madison County. There existed at this period much excitement on the Bank question. We served on a Committee to examine the State Bank, which was accused of corruption, having been elected by the House. Judge Smith entered

into this field of contest against the Bank, with the zeal of an old hunter. He and myself, day after day, and night after night, explored the accounts until we became thorough Anti-State Bank men, and made a report, which was the basis of all action taken afterwards by the Legislature. I then proposed a re-charter of the United States Bank, with General Jackson's modifications. On this question Judge Smith became the champion against me, and made one of his usual fiery, but convincing, logical and popular speeches. In the course of it, he alluded to Mr. Calhoun and quoted him extensively. In my reply, I produced and read his denunciations of Mr. Calhoun in previous times, and expressed my wonder that the man whom Judge Smith once thought the vilest of traitors, should be taken to his bosom and made his oracle. I never saw a man so infuriated. He walked across the house and approaching me, said, "by —— Porter, do not throw up Mr. Calhoun to me again."

During this session he became greatly prejudiced against the Commission Merchants of Mobile, and introduced severely restrictive measures, regulating their business. His speeches were naturally criticised by the Mobile editors and members, among whom Charles C. Langdon, of the Advertizer, was the most prominent. He entered the list with Judge Smith, and held him a most gallant fight, in which, if Judge Smith did not fall, he certainly was not conqueror.

At the time of which I last spoke, Judge Smith had lost little of his energy of mind. But his irritability had naturally increased with age, and he was less capable of that calm reflection which had previously regulated his action. He was still, however, the courteous, polished gentleman.

During the debate on my United States Bank resolutions, he had been replied to by Col. Young, of Greene, a very fresh looking old man, with a very bald head. The gallery was crowded with ladies, and Col. Young was exceedingly emulous of their good opinions. He spoke of the difference between new and old times, and said that the age of the last war must not control the present times. That time had been working longer on the head of his venerable friend,

(Judge Smith's) than on his own; and while he respected his age, he could not his opinion. At this point Judge Smith rose and said, he asked no favors on that point, for every one must observe, that while time had not interfered at all with his bushy head, it had not left a solitary hair on that of his not less venerable friend, Col. Young. The effect was irresistible; but Col. Young, who was quite an eloquent gentleman, bowed to the house, and said, he admitted he had been struck down by a blow pat on the head.

Very respectfully, your obt. servt.,

BENJ. F. PORTER.

Hon. J. B. O'Neall.

Messrs Editors: I have read, with great pleasure, the very interesting biographical sketch of Judge Smith, by our friend, Judge O'Neall, and am much gratified to learn that he intends publishing sketches of the Bench and Bar of South Carolina. I hope you will republish his sketch of the life of Judge Smith in the *Patriot and Mountaineer*, herewith sent you. I will suggest one or two omissions, which Judge O'Neall has made, and which he will, no doubt, include in his second edition of Judge Smith. After his removal to Alabama, Judge Smith was appointed, by General Jackson, one of the Judges of the Supreme Court of the United States, which appointment was declined by the judge. This very high honor, in his old age from his old school-mate, President Jackson, should not be omitted in a sketch of his life.

Judge William Smith was also elected a member of the Alabama Legislature, from Blountsville, I think, and served several sessions after his removal to Alabama. His last political act was not, therefore, his address to the people of South Carolina, as stated by the editor of the *Charleston Courier*. Whilst in the Legislature of Alabama, he was a very active member of that body, and as true to his political principles as steel. Never was there a more consistent statesman or politician than Judge Smith. He was a States Rights man of the strictest sect, opposing Nullification as a new-fangled heresy of that latitudinarian school, which had reviled and

scorned his States Rights doctrine in former years when they were unpopular in South Carolina. He was one of the first to break ground against a tariff for protection, which was favored by Mr. Calhoun, after the close of the war with England, for the special benefit of the Northern manufactories, which had sprung up during that war. One of his first and last political acts was to expose the folly and unconstitutionality of a national system of internal improvements, which, for many years, was a favorite hobby of the leading politicians of South Carolina.

I remember well, seeing an elaborate argument of Judge Smith, after his removal to Alabama, against the power of Congress to carry on a system of internal improvements, and against an appropriation for Alabama by Congress on this subject.

Judge Smith was, too, one of the earliest and most able opponents of the Northern abolition movement in the Senate of the United States. It is refreshing, in times like the present, when our statesmen and politicians are changing with every political breeze, to review the life and political course of such a statesman as Judge William Smith, who had the wisdom to start right, and the Roman firmness to adhere to his principles at the sacrifice of himself as a senator, and his ostracism as a citizen of the State.

Judge O'Neall is mistaken, however, in saying that he removed *with his property* to Alabama, in consequence of our political excitement. He had long before his removal transferred his property to Alabama. I remember hearing it stated when he was last defeated for the United States Senate, that his taxes in South Carolina were only twelve dollars. He had purchased large bodies of lands in Alabama, and found it much more profitable working his negroes there than in South Carolina; but it was not his purpose to move there.

After his second defeat in the Senate of the United States, Judge Smith was returned to the State Senate from York District, as he had been to the House of Representatives after his first defeat for the Senate.

Judge Smith was not only kind, as is stated by Judge

O'Neall, but he was particularly so to young men of promising talents, and we have understood that he has educated, at his own expense, more than one distinguished gentleman of South Carolina.

Judge Smith was a most uncompromising man. The following anecdote has been told us by a distinguished member of the Bench, and is in character with the Judge. He and one of his brothers had a difference in early life, and did not speak or recognize each other. Twelve years passed over their heads, and they had not seen each other. After his election to the Bench, Judge Smith went to hold Court in one of the middle districts, and there found this brother, Foreman of the Jury. They both served the week out, one as Judge and the other as Juror, without the slightest recognition of kindred or acquaintance!

Judge Smith's feelings towards Mr. Calhoun were bitter and implacable. I once heard him say to Governor Taylor "You know that Calhoun sold the State twice; once for the tariff, and again for internal improvements." It is said that during the administration of Mr. Monroe, Judge Smith was about being appointed to a foreign embassy, and the appointment defeated by Mr. Calhoun, who was then a member of the Cabinet. But the Judge had other reasons for feeling unkind towards Mr. Calhoun. He was turned out of the Senate of the United States twice by Mr. Calhoun and his friends; once by General Hayne, because he was a States Rights man, and then by Governor Miller, because he was not a States Rights man! and yet his principles were all the time the same! His opponents had changed from one extreme to the other—from the extreme of national republicanism and the "general welfare doctrine" to ultra States Rights and Nullification.

Judge Smith was a true Democrat of the Jefferson school, equally opposed to consolidation and disunion. He was determined to hold on to the Federal Constitution, and maintain our rights under it in the Union. He had confidence in the American people; and although they might for a time be

led astray, he knew that they would ultimately rally to the true principles of the Federal Government. Like Mr. Jefferson, he regarded disunion as no remedy for our evils, but an unmitigated curse, and not to be thought of by the patriot and statesman.

B. F. PERRY.

Greenville, Sept. 3d, 1858.

ABRAHAM NOTT.

Abraham Nott was born in Saybook, Connecticut, in 1767. "He was educated for the ministry, and graduated at Yale College; but feeling within himself no decided religious convictions, he felt it would be sacrilege to desecrate the pulpit with his services, and being in somewhat delicate health, he determined to seek his fortune at the South. After standing his final examination, without even waiting for his diploma, (which was, however, afterwards forwarded to him by Dr. Stiles, the President of Yale,) he left his home (with only sixty dollars in his pocket) and arrived in Georgia about 1788, where he found employment as a tutor in the family of Gov. Troupe's father, the Governor being one of his pupils. He remained in Georgia one year, and then removed to Camden, So. Ca., where he studied law with Daniel Brown, and was admitted to the Bar, in Charleston, 27th May, 1791. He settled first at Union Court House, where he practised three years. In August, 1794, he married Angelica Mitchell, after which he removed to his plantation on Pacolett River, where he continued his practice."

In 1800, he was elected to Congress. He was a Federalist, and for a time aided in casting the vote of South Carolina in favor of Aaron Burr, in the memorable ballotings between him and Jefferson; his good sense and purity of purpose at length triumphed over the trammels of party, he withdrew, and on the thirty-sixth ballot, the Representatives from South Carolina being equally divided, the State voted blank, and Mr. Jefferson was elected.

In the Fall of 1804, he removed to Columbia; and there practised law with eminent success until 1810, when he was elected a Judge.

In 1805 he was elected a Trustee of the South Carolina College. He remained constantly a member of that cherished Institution, by election or ex-officio, till his death.

On the 5th of December, 1810, in the place of South Caro-

lina's gifted son, Samuel Wilds, deceased, Abraham Nott was elected a Law Judge. Never did the judicial mantle fall more worthily from the shoulders of a greatly distinguished man upon the shoulders of another than did that of Judge Wilds upon Judge Nott. He was the first Judge elected from the town of Columbia.

From December, 1810, to June, 1830, Judge Nott, in all the duties of a Judge, was found fully equal to their discharge. His clear, prompt, ready mind, and his uniform courteous manner in Court, made it a pleasure to practise before him. Like most great men, he was, however, subjected to occasional unpopularity. In 1816 was passed the Constitutional amendment, which enabled the Legislature to fix the time and place of the meeting of the Constitutional Court. At the same time was passed the Act requiring the Judges to clear the dockets of the Constitutional Court in Charleston and Columbia. This Act being passed *pari passu*, with the amendment of the Constitution, which authorized it, was held to be unconstitutional by a majority of the Court. Of this majority Judge Nott was one, and in illustrating the defect of the enactment, and to show that that which was begun, before the authority to enact it was completed, could not legally exist, he said "that which was conceived in sin must be brought forth in iniquity." This unfortunate expression, although originating in the Bible, raised a storm of indignation against him, which it was difficult to allay; for in December, 1817, when the Judges' salaries were increased, and he, with the other Judges, resigned to obtain this benefit, he was elected by a very lean majority.

In 1824, the country had recovered from its frenzy, and when the Court of Appeals was organized, he was placed at its head by an overwhelming vote. His popularity, in that trying position, remained unchanged to his death.

He certainly abridged his useful life by his untiring industry, in the discharge of his duties as President of the Court.

His opinions in the Court of Appeals, both at Law and in Equity, will compare favorably with those of any Judge in the State. The case of Carr *vs.* Porter, 1 McC. C. R. 60,

which over-ruled Judge Waties' elaborate judgment in Carr *vs.* Green, may be read as an example of Judge Nott's judicial powers.

He fell a victim to consumption, which fastened upon him in Charleston, in January, 1830. He died at the residence of Dr. David H. Means, in Fairfield District, on his way to his plantation, in Union District, on the 19th of June, 1830, leaving his widow, two daughters and six sons surviving him. His widow, who was a most extraordinary woman, endowed with great intelligence, industry, benevolence, and firmness, survived him many, very many years. The latter part of her life she mainly spent at the Limestone Springs, a spot which she knew in her youth, and which she often declared to the writer to be the healthiest spot in the State.

With Judge Nott the writer had the good fortune to have an intimate acquaintance, beginning in 1814 and ending with his life. When in the Spring of 1814, Mr. McDuffie, the writer, and others, were applying for admission to the Bar, at Columbia, a singular rule had been adopted that all the Judges must sign the fiat. Only three Judges out of six—Bay, Smith, and Nott—were present. Judge Smith insisted the applicants should go to Charleston. Money was a scarce commodity with the writer; he rose and said "if he could not satisfy those then present that he was worthy to be admitted, he did not wish to go further." Judge Nott, smiling, said, "You shall be examined." After being examined, the three signed the fiats. Mr. McDuffie, and the writer went to Charleston and Camden, were examined by Judges Grimké, Colcock and Brevard, who signed the fiats, and they received their licenses. It is believed that they alone of their class took the trouble to obtain the signatures of the absent Judges. Whether any of the others ever practised, the writer is not apprised.

Judge Nott was full of life and anecdote, and was one of the most pleasant companions with whom the writer ever associated. The habit of the Bench then was to ask the counsel questions, as the argument progressed in the Court of Appeals. Judge Nott's quick and ready mind caused him to ask many such questions, and frequently thus pointed to the conclusions

of his own mind. The practice fortunately has grown very much out of use. The writer well knows, that such a course is calculated to disconcert the most practised lawyers, and frequently deranges an argument.

On some of these occasions, Judge Nott broke the tedium of an argument by some playful witty question.

The writer saw him a few days before his death. He was a mere skeleton, but his mind remained in all its splendor. Like the sitting sun, it was more luminous as it approached the horizon.

The character of Judge Nott may be drawn in a few words. In all the relations of private life, he lived to be loved, and died to be lamented by each and all. As a public man, he was fearless and wise.

In person, he was small, his face was highly intellectual. The print of C. J. Jay, in the Federalist, is very much like him, when he was presiding in the Court of Appeals.

CHARLES JONES COLCOCK.

Judge Charles Jones Colcock was born in Charleston on the 11th August, 1771, and died in the same place on the 26th January, 1839, aged sixty-seven years five months and fifteen days. He was the son of John and Mellescent Colcock. His father was a lawyer by profession, and served in the revolutionary war. He was the counsel of Col. Isaac Hayne, and his opinion on the unlawfulness of the proceedings and sentence in the case of that illustrious martyr, may be found in "Gibbes' Documentary History of the American Revolution, in 1781 and 1782," page 114. He died at Jacksonboro', leaving a widow, two daughters, and the subject of this memoir, at that time a youth about twelve years of age.

At the early age of fourteen, Judge Colcock was sent by his mother to Princeton College, at that time under the presidency of the celebrated Dr. Witherspoon. He remained at that institution until his graduation about the year 1788 or '9. (Sixty years afterwards his son, W. F. Colcock, whilst a member of Congress, met one of his classmates, Mr. John Talliaferro, of Virginia, in Washington.) On his return from college, Judge Colcock commenced the study of law under Chancellor De Saussure. He was admitted to the Bar in Charleston 23d January, 1792. After his admission to the Bar, he removed to Cambridge (old "Ninety Six") and practised law there with great reputation and success. He there commanded a fine troop of cavalry. In December, 1798, he was elected Solicitor of the Southern Circuit, which office he held until 1806. His duties, on a part of the Circuit, were often performed by Robert Stark, Esq.

Having married about the year 1794, Judge Colcock removed from Cambridge to Beaufort District, and there pursued his profession with great distinction, and was the leading member of the Bar at Coosawhatchie and Beaufort.

He resigned the office of Solicitor in 1806, and was returned

to the House of Representatives, on the Republican ticket, in October, 1806, as a member from St. Helena: and was again returned in 1808. He was one of the members of the House of Representatives who voted, in 1809, against the General Suffrage Bill, which in 1810 became a part of our Constitution. This vote, unpopular when given, was, as time and subsequent experience showed, *a wise one.* For nothing is better calculated to ruin the government than the flood of voters who are poured at every biennial election upon the polls, without anything to bind them to the country or to interest them in the legislation thereof.

On the 9th December, 1811, he was elected an Associate Judge in the place of Judge Waties, who was transferred to the Equity bench. In 1816 was passed the constitutional amendments to authorize the Legislature to fix the time and place of the meeting of the Constitutional Court. At the same time was passed an Act requiring the Judges to clear the Appeal dockets in Charleston and Columbia. That Act was ruled by a majority of the Constitutional Court to be unconstitutional. Judges Colcock, Gantt and Cheves, were in the minority. In December, 1817, the salaries of the Judges were increased, and Judge Colcock, who had resigned to meet the contingency, was re-elected by an almost unanimous vote. After the death of Judge Grimké, in consequence of receiving in 1817 a larger vote than Judge Nott, who was his senior, he presided in the Constitutional Court. In December, 1824, on the re-organization of the judiciary system, an Appeal Court of Law and Equity was established, consisting of three Judges. From the whole number of Judges and Chancellors, Judges Nott, Colcock and Johnson, were elected members of this Appeal Court. Judge Colcock continued a member of this Court until 1830, when his health becoming impaired by his long and arduous duties on the bench, he resigned and was elected President of the Bank of the State, which office he held until his death.

Judge Colcock married Mary Woodward Hutson, daughter of Col. Thomas Hutson, by which marriage he had one

daughter and five sons, four of whom survived him. After his election to the Bench, he removed from the town of Beaufort, in St. Helena Parish, to the upper part of Prince Williams' Parish, where he continued to reside until his election to the Presidency of the Bank, when he removed to Charleston. Judge Colcock was for thirty years a consistent and exemplary member of the Episcopal Church. Among the last acts of his life was his active and leading participation in the building of St. Peter's Church in Charleston, under the shadow of which sacred edifice his remains repose.

I knew Judge Colcock well, and certainly entertained for him the most friendly feelings. I was delighted to witness, as I did, his rapid improvement, as a Judge, and the strong-hold which he acquired in a few years on the affections of the Bar. His opinions in the Constitutional Court and Court of Appeals extend from 3d Brevard to the close of 1st Bailey, and from 1st McCord's to Bailey's Equity Rep. It is impossible, in a sketch like this, to point out all the cases which would commend themselves to a reader's attention, to form a just estimate of Judge Colcock. In Faysoux *vs.* Prather, 1 N. and McC., 296, he measured swords with Judge Cheves, and I think his dissenting opinion will bear comparison with that of the Court pronounced by Cheves. His opinion in Lemasters *vs.* Collins and Lee, 1st Bail, 348, is an able exposition of a difficult subject. In Henry *vs.* Felder, 2 McC. R. Ch. R., 323, he gave a lucid exposition of the doctrine in Limitations over.

The Judge once said to me: "In deciding a case I always look for the justice of it, and having ascertained that, I am very sure that I can find the law to sustain it." He closed his useful life, as has been already said, 26th January, 1839, rejoicing in his escape from pain, under which he had suffered with a martyr's fortitude for years, and looking forward with a Christian hope to everlasting life and eternal glory.

He was a stern, uncompromising man, when what he considered duty was at stake. That, like the best of men, he was fallible and sometimes mistaken, cannot be denied; but I am persuaded that his mistakes were never intentional. He wore

unstained by passion or prejudice the ermine of South Carolina, and is entitled to that highest praise, "he was *a just Judge.*"

Of Judge Colcock it may be truly said—

> "Justum et tenacem propositi virum
> Non civium ardor prava jubentium!
> Non vultus instantis tyranni
> Mente quatit solida, neque Auster.',
> [*Horace's Odes, Book 3d, Ode 3d.*

RICHARD GANTT.

In December, 1815, to fill the place of Judge Brevard, who had resigned, and an additional Judgeship, created by the Act of that session, Richard Gantt and David Johnson were elected. Knowing these two gentlemen intimately, I may be permitted to speak a little more particularly of them both. Judge Gantt was a native of Prince George County, Maryland; he was born 2d August, 1767, and died 18th October, 1850, having thus filled the large measure of eighty-three years. He came to Georgia in 1792 or 1793. He was married to Sarah Allen, in Augusta, Georgia, about 1794. Mrs. Gantt died 17th November, 1848. Judge Gantt removed from Augusta to Edgefield in 1794. He was admitted to the Bar in Charleston in 1794. His oldest child, Thomas J., was born in Edgefield in 1795. He practiced law with great success, although he was in competition with such men as Peter Carnes, Ephraim Ramsay, and Charles Jones Colcock. He was a tetotaller many years in advance of the oldest follower of it now in the State; but strange to say, he would never take the pledge, or labor in the vineyard, where he was so well fitted by practice and talent to earn his "penny-a-day." As a lawyer, Judge Gantt, was one of the most successful advocates who ever addressed a Jury. He ought to have made a princely fortune; and would, had it not been for his continued habit of change. He lived in many parts of the State, until finally, after he was a Judge, he secluded himself in the woods of Greenville.

He was elected in May, 1804, Clerk of the House of Representatives, in the place of Thomas Lee, who was elected a Judge. He was continued to December, 1818, when he was elected a Judge. To hear him call the roll or read the minutes, was in itself a great gratification. His fine, clear, musical voice, charmed every hearer.

As a Judge, he ought to have been, and he would have been, *primus inter pares*, if he had not neglected the cultivation of

the great gifts with which God had blessed him. When roused and brought to a dissent, I believe I never heard one, while at the Bar, without saying, he is right. His opinion in Ramsay *vs.* Marsh, 2d McC. 252, beyond all doubt discussed learnedly and settled satisfactorily a very difficult and abstract question of law.

His sentences upon criminals were remarkable for their eloquence and pathos. Indeed, I regarded him as unsurpassed in this portion of duty. He resigned in December, 1841, and the Legislature presented him with a year's salary, and the late Mr. Albert Rhett moved in the House of Representatives very complimentary resolutions, which were unanimously agreed to in both Houses.

His greatest defect, as a Judge, was his merciful disposition to stand between the accused and conviction. Occasionally, however, he took the side of condemnation. Whenever there was a homicide, with any circumstances of cruelty, his whole nature revolted at it, and carried him strongly against the prisoner. In Liles' and Nixon's cases I encountered this strange anomaly in the Judge's character. But generally, he was on the side of the prisoner, and after I became a Judge, and could speak to him, as a friend and brother, I have had occasion to tell him "That he made himself the advocate of rascality," without perhaps seeing *that* which was apparent to everybody else. He abhored being worried with a little knotty case. In Summers *vs.* Tidmore, 1 McC. 270, which was an action by way of summary process on a judgment against an administrator, the proof was tedious, the argument legal and technical, the sum not more than $16. The Judge utterly disgusted with the case said to one of the lawyers, "I wish I may die, if I don't think it would be a good notion for the Judge to carry a little change *around* with him and pay off all such cases," rather than be plagued with them, and as an illustration told the story of Judge Waties paying for the hog, at Sumter, rather than try the case.

He was an eccentric, honest, good man. He was a most witty and entertaining companion. A gentleman* who met

*Judge Cheves.

him when both were young, said he found him so fascinating that he sought and prized his company more than that of any man with whom he was ever acquainted. Many of his supposed oddities were indeed the mere extravagancies of his tendency to humor.

His arrangement of a criminal defence after he was a Judge, may be properly ascribed, first to his pity for the prisoner, and next to his love of fun. In the State *vs.* Daniel Goodman, the prisoner was charged with stealing a horse; when put to the Bar he exhibited all the wildness of an insane man. The Judge beckoned to McDuffie, who was one of the Attornies for the prisoner, and said to him, "I wish I may die, if he is not crazy!" Said he, "I'll tell you what we will do; let Bacon lead off in one of his grand flourishes; do you lay down the law, and leave the Solicitor to me." All this was done, and of course the prisoner was acquitted. His description of the Appeal Judges, Nott, Colcock, and Johnson, making the pilgrimage of law was excellent. He represented Colcock as walking on very confidently, when suddenly he came bluff up against a mountain. "Halloo, Johnson!" he exclaims, "I believe we are at the end of the world;" thereupon Johnson pulls off his coat, and axe in hand begins to cut it down; in the meantime, Judge Nott has been seeking a path whereby he can ascend; having found it he is represented as rapidly ascending, putting out his tracks as he mounts up, and when he attains the summit he calls, "*Come up here, Johnson, I am at the top.*" The Judge had a great fondness for mills; he is represented on one occasion as desiring to have a mill dam built, knowing little about the cost, he sent for a Baptist preacher, who worked in that way, and, to avoid being cheated, he proposed that they should join in prayer, that the Lord would so instruct them as to make them deal fairly with one another. Accordingly they knelt down and prayer was made; rising, the Judge said, "Now, brother M., what is the lowest sum for which you will put in the dam?" "Well, brother Gantt, the lowest sum is $500," was the slow, well-measured reply. "Five hundred dollars!!!

I am not to be prayed, brother M., out of that sum," was the Judge's indignant answer.

On one occasion, when I was at the Bar, he had started to ride to my house; I met him midway, and proposed to turn back; he said, "No, it will be time for Court by the time we can reach the Court House." He turned and we rode on. He said to me, "Did you hear the quarrel between two lawyers yesterday?" I said, "No." He then said, "Such a thing had taken place, and if it ever occurs again, I will do as Carnes proposed to the County Judges at Winton." "How was that, Judge?" was the inquiry. He said that when the County Court first assembled at Winton, Carnes rose in his place and said, "May it please your worships, Courts were established not only to administer justice, but also to enable people to see rare sights. I understand, said he, that two horses are to fight here to-day, and to enable all to see the fight, I move your worships to adjourn." The Court accordingly adjourned. "Now," said the Judge, "When two lawyers again quarrel before me, I will make the Sheriff go to the door and proclaim that two lawyers wish to fight, and that the Court will adjourn to give them the opportunity!" Looking very shrewdly at me, he said, "I wish I may die, if I don't think that would end it!"

LANGDON CHEVES.

Langdon Cheves was born on the 17th of September, 1776, in a small log fort (called, I presume, a block house) on Rocky River, Abbeville District. He was the only child of his parents, Alexander Cheves, a native of Scotland, and Mary Langdon, a Virginian. His father, I have always understood, was an Indian trader, and possessed all the acumen necessary to give success to such a business. His extraordinary powers are, however, to be ascribed to his mother. For *that* I believe is the general law of nature, *sons are mentally and physically like their mothers.* His earlier years, as Mr. Petigru remarked, "were spent in rural life." "The first ten years of his life were passed," says the same accomplished gentleman, among the small farms of Rocky River, whom Mr. Petigru termed "a primitive people." When he left the place of his birth, he accompanied his father to Charleston: his mother had died in his infancy, and a second marriage on the part of his father soon forced him to rely mainly on *himself.* He first became a merchant's clerk, and at sixteen held the highly honorable position of confidential clerk. To this early training is to be attributed the beautiful handwriting which characterized him during life, and his accurate knowledge of accounts. At about the age of eighteen, he began the study of the law with that eminently gifted man, William Marshall, afterwards a Judge of the Court of Equity of South Carolina. It seems that his pursuit of the legal profession was against the opinion of his friends; he was advised to stick to the desk, "for," said they, "he is cut out to be a merchant." But he felt that divinity stirring within him which foretold the success and greatness in store for him. How he acquired that education which fitted him to be first among the giants of 1812, we are not informed. He was admitted to the Bar 14th October, 1797, and immediately strode forward to success. The Rev. George Buist, D. D., one of the most distinguished divines of

the city, noticed the high promise of the young lawyer, and was perhaps his first client, by giving him a fee of fifty dollars, which the modesty of Mr. Cheves made him pronounce a great deal too much for the service rendered. In 1806 Mr. Cheves married Miss Mary Dullas, of Charleston. In eleven years, unaided by family influence, Mr. Cheves acquired a business perhaps never equalled by any other in the ity Cof Charleston. He was the partner of Mr. Joseph Peace; and I have heard that at one term they entered up eight hundred judgments, and the income realized annually amounted to $20,000. Mr. Cheves succeeded John Julius Pringle as Attorney General in 1808.

In October, 1810, he was elected to Congress from the Charleston Congressional District. It was the purpose that South Carolina should be represented by four of her greatest men—Wilds, Cheves, Lowndes and Calhoun. Death prevented Wilds from being one of the number. In his place, however, was General Williams, no unworthy associate; and South Carolina may recur to her representation in Washington in 1811 and 1812, consisting of Cheves, Lowndes, Calhoun and Williams, as unsurpassed by any four men who ever honored Congress with their presence. Mr. Cheves' reply to Gaston, Gouveneur, and Webster, was perfectly overwhelming, and crowned the Republican party with that wreath of meritorious patriotism which gave them ever after the ascendancy. His speech on the Merchants' Bonds was remarkable for its accurate knowledge of the subject, and for its clear argument. Washington Irving, who heard it, said it was the first speech he had ever heard which gave him a correct idea of ancient eloquence, of the manner in which the great Greeks and Romans spoke. No higher compliment could have been paid, and certainly no man was more competent to give it.

On the 19th January, 1814, Mr. Cheves was elected Speaker of the House of Representatives in Congress. After the peace of 1815, he declined a re-election to Congress, and returned to the Charleston Bar. He was, however, not permitted to remain there for any time. In December, 1816, in the place of Judge Smith, who had been elected to the United States

Senate, he was elected a Judge of the Court of Law of South Carolina. He entered upon the duties, and set the example of that untiring industry which broke down the dockets throughout the State. He once remarked to the writer (Spring of 1818, riding from Laurens Court,) "I work that I may rest." How terse and true was the remark! Yet how seldom is it practised. In January, 1817, he was one of that minority which upheld the constitutionality of the act requiring the Judges in the Constitutional Court to clear the dockets. His opinion was read with pride and enthusiasm by the Bar and the members of the Legislature, and added much to his popularity.

In December, 1817, he, with most of his brethren, resigned to receive the increased salary. He was re-elected, as I remember, unanimously, if not he received the largest vote of any Judge re-elected. His opinions and industry in the Constitutional Court gave a vitality to that body which it had not known for several years. Nott, Johnson, Colcock and himself were emulous of distinction, and attained it.

Judge Cheves' opinions in Williams *vs.* McGee, 1 Con. Rep. by Mill, 85; McClure *vs.* Hill, 2 Jd. 420; Brandon *ads.* Grimké, 1 N. and McC. 356; Faysoux *vs.* Prother, 1 N. and McC. 296, may be read as illustrative of his judicial style, learning, research and judgment.

During his judicial term, short as it was, not exceeding three years, he was the most popular man in the State, and yet, perhaps, he was as stern a Judge in the administration of justice, as ever presided. Every one knew that he was honest, pure and wise, and therefore there was cheerfully yielded uniform acquiescence.

In the year 1819, (6th March,) he was called to the head of the United States Bank. It will be recollected that this institution was established against his opinion. Before he left Congress, by his vote, as speaker, the charter then proposed was defeated. But notwithstanding his opinion had been against the Bank, he consented, very much from the solicitation of his friend, John Potter, and the fact that his wife's parents had removed to Philadelphia, to assume the respon-

sible duty of President of the United States Bank and to bring order out of the confusion of the past administration, and to restore public confidence to this grossly mismanaged institution.

It may not be amiss to say that I think Judge Cheves made two great mistakes in his life—the first in leaving Congress, and the second in leaving the Bench. If he had remained in Congress he would most assuredly have been the President of the United States, and most probably would have prevented the sad sectional division which we have experienced. When he left the Bench of South Carolina, he was laying broad and wide the foundation of judicial eminence. If he had continued, he must have been for many years the presiding Judge of our Court, the last resort in this State, and very probably might have succeeded Chief Justice Marshall in the Courts of the United States, and certainly would have been, as a Judge, only second to him, who is deservedly considered the greatest Judge who ever presided in America.

As President of the United States Bank, confidence, as was expected, followed his appointment, and in the short term in which he filled that office he crowned the Bank with prosperity and unrivalled popularity. Having succeeded in rescuing it from ruin, he resigned, and left for his successor Nicholas Biddle, an easy seat and the opportunity of acquiring great financial reputation, which for many years he enjoyed, until the removal of the deposites of the government showed the rottenness of the Bank.

He was appointed Chief Commissioner of Claims under the treaty of Ghent, and filled that office until all were adjusted, He resided for a time after his resignation at Philadelphia. and then at Lancaster, Pennsylvania, where he attempted the pursuit of his legal profession. His inclinations were, however, to his Southern home; and accordingly, in the fall of '29 or '30, he returned to South Carolina, and soon became a successful planter on the Savannah River.

In 1836, he lost the companion of his life, the mother of his children, and thus experienced that greatest misfortune to which a man can be subjected. He never married again, and

saw many of his children go down to the grave. These sad chastening blows of God he received without a murmur, and bore with that calm, stern philosophy, which always characterized him.

He lived altogether in retirement from his return to the State. He did not concur in Nullification, and wrote occasional reviews condemning it. He, however, it must be confessed, favored the dangerous doctrine of Secession, and in 1850 threw his great weight into the scale in favor not of separate State action, but of a Southern confederation. He was a member of the Southern Convention of Delegates, at Nashville. His speech there was considered as unsurpassed. He was a member of the Convention assembled at Columbia in 1852, and aided in repudiating the folly of separate State action.

This was his last public appearance. It was manifest to such of his friends as saw him afterwards that his great physical energy, which had heretofore sustained him, was failing.

On the 26th of June, 1857, in the eighty-first year of his life, he died at his residence in the city of Columbia. His funeral obsequies in the city of Charleston were such as he well deserved. Every civic honor was conferred upon his mortal remains, which were deposited in the Magnolia Cemetery.

The Bar of the city of Charleston paid a handsome tribute to the memory of this great lawyer, whom Charleston cherished and honored when young.

Mr. Petigru, in his address on that occasion, drew with a master's hand an admirable likeness of the character of Judge Cheves. "The leading characteristics," he said, "of his mind were power and grandeur. He was not only above vanity, but above the weakness of ambition, and no one ever saw him chuckle with the exultation of triumph. He never lay in wait to say or excite surprise by a brilliant thing, and he had no notion of attempting to shine in conversation or to dazzle his company. He was equally superior to the weakness of ambition. Never was there a man more thoroughly proof against the frowns of power or the clamor of a crowd. Independence

of mind was carried by him with fearless assertion of the rights of private judgment, even at the risk of falling under the condemnation of party. We may form an idea of the qualities of a great man by considering what are the topics which are laid to his charge by unfriendly censure: and in Langdon Cheves those things which were cited as blemishes were in fact the proof of the greatness of his character. He was called *impracticable*, and he was called so because he *worshipped truth*, because he was superior to the *allurements of popularity as well as the fear of opposition*. While other men are willing to make every sacrifice to gain official station, Langdon Cheves, through the whole tenure of his life, showed that he looked on office as subordinate to the approbation of his own mind. In fact, such was the refinement of his sentiments, that he placed no value on office. He preferred his own freedom to the trappings of official station. By the force of his genius and the prestige of his character, he accomplished every thing that he attempted."

This is indeed a highly wrought picture finished by the hand of a master; and as I look upon it, and recur to the remembrance of the great man who is represented, it seems to me to be just and true, and I will not attempt to add to it.

Judge Cheves' person was as remarkable as his mind; his face told every observer of the mighty mind within. His broad forehead was indicative of that power which surmounted the want of an early education, by acquiring one—which placed him first at the Bar, in Congress, on the Bench, and in every other public employment. All his other features were in conformity, and all betokened the firmness and honesty of the man. He was about five feet ten inches high, his frame was muscular and calculated for great endurance; and in the discharge of his duties as a Circuit Judge, he frequently tasked it to the utmost. He often sat in Court from 9 A. M. until 9 P. M., without adjourning.

Judge Cheves, beyond all doubt, was a most extraordinary man. He merited more, much more, than he received. In the scramble for office he was overlooked. What a blessing it would have been to America, if he could have been called

from his retirement to succeed the Hero of the Hermitage, can only now be the subject of conjecture! Yet I may be permitted to say, if any man in this Union more than another resembled George Washington, it was Langdon Cheves—and in the President's chair he would have still more resembled him by holding the sceptre of power, without reference to party.

Judge Huger often said, "Cheves loved truth; and to it he sacrificed every thing." His life was a living emblem of truth; and as "God is truth," we may well be permitted to believe that his blessing here, and hereafter, rested and rests on Langdon Cheves, the disciple of truth.

JUDGE RICHARDSON.

John Smith Richardson was born at his paternal residence which afterwards became his own plantation, in Claremont County, Sumter District, on the 11th of April, 1777. He was educated in Charleston—having received there his primary, academic and collegiate education. He then studied law with John Julius Pringle, for whose great acquirements he always entertained the most profound respect. He was admitted to the Bar on the 30th of October, 1799, and commenced the practice of law in his native district, and soon became a most distinguished lawyer and advocate. He was married in Williamsburgh District by the Rev. Hugh Fraser, 19th June, 1803, to Mrs. Eliza L. Coutrier, the widow of Thos. Coutrier, (deceased,) and the mother of two children, both daughters, but who had died before the second marriage. His wife bore him ten children, the eldest named Thos Coutrier, in honor of the first husband of his wife: all of their children died young, except three, John Smyth Richardson, Francis Deleisliene Richardson, and Susan W. A. Logan. These three survived him, and still live. His son, Maynard D., graduated at the South Carolina College, in the class of 1830, and soon after sickened and died. He was a a gifted young man, calculated, if he had been spared, to have won distinction.

Mr. Richardson was elected to the Legislature from Claremont, and soon became one of the most distinguished leaders of the Republican party. He was the author of the Amendment of the Constitution, called the General Suffrage Bill, and which became a part of the Constitution on the 19th December, 1810. He was elected Speaker of the House of Representatives, at the commencement of that session. Early in December, he was elected Attorney General, and instead of delaying his acceptance to the close of the session, and signing the Acts of that year, on the 6th day of December, he accepted the office and vacated the Speaker's chair. He alludes to this in his Defence of December, 1847. He says, referring to the

Speaker's chair, "I declined to remain in it, for twenty-four hours, notwithstanding the suggestions of friends, that I ought to remain sufficiently long, to append my name to the "General Suffrage Bill," now one of the articles of the Constitution of which I was the mover. I then declined, because I thought it would be a personal act of vain glory."

He was elected a Judge on the 18th December, 1818; in 1820, he was elected to Congress from the Congressional District, including Sumter. This great political honor, he felt himself compelled to decline, first, because his means did not then warrant his acceptance; second, because the whole of his father's estate, and the entire patrimony of his younger brothers and sisters, was then involved in litigation by a suit commenced by some foreign claimants. He had charge of his father's estate, and felt it to be his duty to attend to the defence *personally*. He, therefore, having assigned publicly this as his reason, respectfully declined the unsolicited honor, which had been tendered to him with singular unanimity. Upon the resignation of Judge Gantt in 1841, he became President of the Law Court of Appeals. In December, 1846, when Chancellor David Johnson was elected Governor, he, (Judge Richardson,) became the President of the Court of Errors. He died on Wednesday, 8th of May, 1850, at half-past 4, A. M., at lodgings in the City of Charleston. He had then been nearly twenty-two years on the Bench. He was seventy-three years and twenty-eight days old. His wife survived him seven years, two months and twelve days, and died on the 20th July, 1859, in her eighty-fourth year.

Judge Richardson possessed eminent talents, as an advocate, and a public speaker. I never had the pleasure to hear him at the Bar; but I have often heard him in the debates, in the stormy period of Nullification, and I think, he far exceeded all whom I then heard speak. My most esteemed friend, Col. Gregg, said to me in the fall of 1830, after the great barbecue near Columbia, at which Judges Harper and Richardson had spoken, that "Judge Richardson as much exceeded Judge Harper as day did night." This was high

from so competent a Judge. His unrivalled powers were shown in his defence before the House of Representatives in 1847. He was then in his seventh-first year. I append the proceedings and defence.

From 1835 to 1850, my association with him as a member of the same Court enabled me to understand and appreciate him more highly than I had previously done.

Judge Richardson was a clear-headed, honest and just Judge. He had, I believe, as much moral courage as any man with whom I was acquainted. He was firm and immutable in what he believed to be right. He was often in a minority in the Court of which he was a member, and defending his position with as much astuteness. The difficulty he experienced in writing, subjected him to much trouble. Most men would have yielded to the necessity. But the motto of Barnaby Rudge's raven, "never die," was apparent in his overcoming this apparently insurmountable difficulty. His opinions on Bell's will, Archer *vs.* Talbot, Appendix to Bailey's Equity, 554; in Jarvis *vs.* Pinckney and Knight, 3d Hill, 123; The State *vs.* Dawson, 3d Hill, 100; may be read as specimens of his legal research and reasoning. His long and painful illness he bore with Roman fortitude. He was gathered to his fathers in the city of Charleston, and died with that meek and child-like faith, which spoke so plainly that none could doubt that he was exchanging earth and pain for that better country, "where the wicked cease from troubling and the weary be at rest."

PROCEEDINGS, &C.

On the 4th of December, 1847, in the House, Mr. J. M. Allen, of Barnwell, offered the following resolution:

"*Resolved*, Two-thirds of the whole representation in each branch of the Legislature concurring, that the Hon. John S. Richardson, one of the Associate Judges of the Courts of Common Pleas and General Sessions of this State, having become disabled from discharging the duties of his said office, by reason of permanent, bodily, and mental infirmity, that he be removed from his said office, and the same is hereby declared to be vacant."

"On motion of Mr. John L. Wilson, it was ordered that a copy of the resolution be served on the Hon. John S. Richardson."

On the 6th inst., the following letter from Judge Richardson was laid before the House by the Speaker:

COLUMBIA, DEC. 6, 1847.

To the Hon. the Speaker and Members of the House of Representatives:

GENTLEMEN:—Under your order of the 4th instant, I have been served with a copy of a resolution of same date, laid before your House, charging me with "permanent, bodily, and mental infirmity."

Presuming that some answer to this notice may be expected from me, and would be proper, I respectfully reply, that I am not conscious of any rational foundation for the charge contained in that resolution, and hold myself ready, at such time and place as may be designated by your honorable body, to meet any charges preferred against me; reserving in all respects my constitutional, moral and legal rights.

With great respect, I am your obed't serv't,

JOHN S. RICHARDSON.

"On the 11th, Mr. Allen called up No. 218 of the General Orders—the Resolution in reference to Judge Richardson—and moved that the same be made the special order for Saturday next, at 12 o'clock.

On motion of Mr. Northrop, by way of amendment, the following resolution was agreed to:

"*Resolved,* That the Resolution respecting the Hon. John S. Richardson, be made the special order for Saturday, at 11 o'clock, and that a hearing be allowed the Judge before this House, with counsel, if he desire; and that a copy of this resolution be served upon him."

On Saturday, the 12th, the resolution of Mr. Allen having been made the order for 12 o'clock, was taken up, and after some conversational debate, Mr. Carn, of St. Bartholomew's,

Moved, That a Committee be appointed to wait on the Hon. John S. Richardson, and inform him that the House was ready to hear him in defence of the charges contained in the resolution submitted by Mr. Allen.

Messrs. J. M. Carn and J. J. Wilson, being appointed a Committee for the purpose, waited on Judge Richardson, and reported to the House that he was ready, and would forthwith appear to make his defence.

As the venerable, and no less venerated Judge, entered the Hall, the Speaker, W. F. Colcock, rose to receive him, and with a grace as proper as it was elegant, remained in that posture until Judge Richardson was seated.

On the right of the accused sat his two counsel, H. C. Young, Esq., of Laurens, and Edmund Bellinger, Esq., of Barnwell; on his left were his son, F. D. Richardson, Esq., of the Charleston delegation, and the Hon. Wm. C. Preston.

Mr. J. J. Wilson, of Barnwell, said his duty was a delicate one; he had nothing to do with bringing forward the charges against Judge Richardson; but acting in behalf of his colleague, who had done so, he thought it required no specification of charges to enable the House to proceed with the trial. He read from the State Constitution as follows:

Amendment, Ratified Dec. 19–20, 1828.

Sec. 5. If any civil officer shall become disabled from discharging the duties of his office, by reason of any permanent, bodily or mental infirmity, his office may be declared to be vacant, by joint resolution agreed to by two-thirds of the whole representation in each branch of the Legislature; *Provided*, That such resolution shall contain the grounds for the proposed removal, and before it shall pass either House, a copy of it shall be served on the officer, and a hearing be allowed him.

Under this clause, Mr. Wilson urged, that no specification of charges was necessary—no requirement of *time*, *place*, or *circumstance*, as in other trials. Common rumor was sufficient, and *that* he would urge as existing against the accused.

Mr. Elliott, of Charleston, thought that the same rules which governed judicial tribunals should obtain here. There should be an issue made up. Allegations on one side and denials on the other. If facts were not stated—if time, place and circumstances were not regarded, how was the accused to answer? What was he to answer?

Mr. Tradewell, of Richland, agreeing with the views of the last gentleman, moved to *lay* the resolution of accusal on the table.

Mr. Huger, of Charleston, wanted to know upon what the House was going to act. If there was anything substantial to be urged against the Judge he wanted to hear it, because he knew it could be most triumphantly met. He wanted nothing concealed. He knew that to be the desire of Judge Richardson.

Mr. Davie, of Chester, said he was no lawyer, and was not acquainted with legal forms; but if specifications be necessary, let the consideration of the resolution be postponed, and appoint a committee to prepare the charges in proper form. He was indisposed to shun an investigation on a technical ground. It was due to the State, and to the Judge, that the allegation should be inquired into, and if witnesses be necessary, let them be examined. He deprecated collateral issues, and protested against any vote but a direct one on the charge of incapacity from bodily and mental infirmity. He had frequently heard it asserted in the upper districts, that the Judge was incompetent from infirmity. The House has instituted proceedings, and is bound to receive, examine and decide the case; otherwise we should be recreant to the duty which we owe to the people, and to the accused. If the charge rest on rumor alone, the Judge has nothing to fear, and he would rejoice at his acquittal.

Mr. Harllee said that the amendment of 1828 was sufficiently specific, and that it is unnecessary to go beyond the terms of the amendment, which are fully stated in the resolution before the House. Nothing beyond that is required. He was not, on this occasion, an accuser, nor would he extenuate if there be good reason for the allegation of infirmity either of body or mind. It was only to the form of the proceeding that he would speak and desired to confine his remarks. The accuser is bound to establish his charge by proof, and witnesses should be examined, and the evidence to support the accusation required, if it can be produced. It is proper, he said, that we should meet the question. It is due to the State,

to this House, and to the Judge, that the want of form should be no obstacle to a full and fair examination of the charge preferred. If necessary, let a committee be appointed to put the allegation in such form as may be regarded proper for the investigation. The discharge of circuit duty by the Judge has not been altogether satisfactory to the public. On questions of constitutional law, and on those depending on the application of the principles of the common law, his opinions are sound and able. Judge Richardson is not disabled from discharging his official duties from any mental infirmity, and although there may be physical debility, it is not such as constitutes the infirmity of body which the Constitution contemplates, or which disables the incumbent to perform his duties.

Judge Richardson now inquired of the Speaker whether it was expected he should then address the House.

The Speaker replied that the House had made no order on the subject.

Mr. Northrop then addressed the Speaker, and said:

The resolution now before the House for its consideration, affects the personal rights and official station of the learned Judge at our Bar. It contains a general charge of "permanent, bodily, and mental infirmity," disabling that gentleman from "discharging the duties of his office."

The Constitution provides, that the resolution in such a case contain "grounds of the proposed removal;" and that "a copy of it shall be served on the officer, and a hearing be allowed him." In the present instance, this body has proceeded no further than to notify the venerable gentleman, that it is *about to consider* a resolution, in which he is personally concerned, and of which a copy has been served upon him.

The purpose of that resolution is to vacate the office of a Judge, and to pronounce an individual who has long and honorably served the State, incompetent to perform the duties of his station.

It was, therefore, just, that Judge Richardson should be present, that he may become informed of the allegations against him, and the proofs adduced; and, that he may have an

opportunity of vindicating himself. It was also proper, that this House should not decide so serious a question without such a precaution.

The Hon. gentleman is accordingly in attendance.

The members of the House who are to vote upon the resolution proposed by the gentleman from Barnwell, are now prepared to hear its advocates. It seems irregular, however, *for them* to expect that the party charged should be put on his defence, *before* he is served with a copy of "the grounds of the proposed removal," as the Constitution directs, or until the evidence of those grounds shall have been submitted by the movers of the resolution.

If the resolution be defective in itself, the House should refuse to pass upon it, and the Judge should not be required to go into any defence, until *after* his accusers shall have made out their case. The present proceeding is, in form and substance, a *trial*, and the actors should conclude and ask judgment *before* the accused be called on even to state his defence. How can this House, or any other reasonable body, propose such an absurdity, as that the accused should prove a negative before he knows what he is to deny?

If the mover of this resolution has not prepared "the grounds of the proposed removal" as the Constitution requires, for the consideration of the House, and for the service of a copy upon the Judge, how can its members be prepared to vote upon a question involving the tenure of a judicial office under the Constitution? Do not the very terms of the amendment of the Constitution, in 1828, show that a trial is intended according to the order of judicial proceedings? Are not some specifications requisite to establish the general charge of disability? Does not the "hearing" allowed presuppose, on the part of the defendant, a knowledge of the *grounds and evidence* of the charges and of their specifiations? If the resolution before the House be esteemed sufficiently regular and explicit, and entitled to the consideration and decision of the House, this is not the stage of the proceeding, when the venerable and honorable gentleman, now in attendance, should be heard. The resolution was vague and indefinite, and there

was no fact yet adduced in evidence. There was nothing for the House to act upon, and nothing for the accused to answer. It was incumbent on the mover, who was the actor in this most novel case, to proceed with its prosecution.

The Judge was ready to make his defence, when the House was ready to hear him. As one of its members, Mr. Northrop was willing to make a proper disposition of the matter before it, however painful the duty might become; but not to perpetrate such an absurdity as to require the Judge to defend himself, when no case had been made against him. Without hearing him, the House could pronounce no judgment. If the predicament were an awkward one, its explanation was to be expected from the gentleman who had introduced the resolution, so imperfect in itself and so destitute of proof. Should the House consider the resolution defective, or unsustained by evidence, the Judge was entitled to his discharge from the present prosecution, whatever further proceedings the mover or its friends might hereafter institute.

Mr. T. Thomson, of Abbeville, said, that the resolution before the House contained a general charge, upon which no conviction could be founded. A charge in this form could not stand investigation in any court of justice in South Carolina. In every indictment the circumstances of the case are set forth particularly, and then the accused is informed of the offence alleged, and can prepare for his defence. Besides, no man can be convicted without evidence; commonly, without the testimony of witnesses. No testimony has been produced, in support of this proceeding, and without proof members cannot understandingly cast their votes. It is admitted that popular clamor only is relied upon as proof of the alleged "incapacity" in this case. The lowest criminal in this State could not be convicted upon a charge so indefinite, and such feeble proof; and certainly the same measure of justice and right should be extended to the highest judicial officer known to the law. This proceeding, though now directed against an aged and enlightened Judge, may be employed, on some future occasion, against some member of the Judiciary in the prime of life, and assails the independence of the Judiciary.

Mr. W. D. Porter, of Charleston, said: This is truly an extraordinary proceeding. A venerable Judge, who has long and faithfully served the State, has been brought to the Bar of the House to have *a hearing*, upon a charge which involves the forfeiture of his high office. He is here, and asks for the *grounds* and the *proofs* upon which his removal is to be founded. The answer is, that the charge is "bodily and mental infirmity," which disables him from the discharge of the duties of his office. But what sort of *mental infirmity* is he charged with? Is it lunacy, insanity, or the loss of memory, or some other intellectual faculty? What is his "bodily infirmity?" Is it the loss of an eye or a limb? The meanest culprit, in a Court of Sessions, is entitled to a precise statement of the charge against him, before he can be called upon to answer. Is a Judge of your Superior Courts, one of the highest officers known to your Constitution and laws, entitled to less consideration, less opportunity of making good his defence. But where is the *proof?* The case must be made out before the respondent can be required to answer. The actors in this proceeding are called upon for their testimony and their witnesses; and their reply is, that they rely upon "public clamor." *Public clamor*—a thing that is everywhere and nowhere—that cannot be met or traced—that has neither home nor paternity—neither credit nor responsibility. Would such testimony as this find an instant toleration in a Court of Justice? Let the respondent, as a citizen, if not as a high functionary, find the same protection here that the humblest individual receives at the Bar of your Court of Sessions. Nothing more is asked for him, and nothing less should be awarded. But even if the charge were sufficiently precise, and the proof perfectly ample and unexceptionable, still the question remains, whether the House can take any jurisdiction of the matter. The Judge was elected under the Constitution of 1790. The tenure of office under that Constitution was, that he should hold his commission during good behaviour, and that he should be subject to removal only by *impeachment* for misdemeanor in office. The amendment of 1828 subjects any civil officer to removal for permanent, bodily or mental infirmity, by a vote

of two-thirds of the whole representation of each branch of the Legislature. So far as regards the judicial office, this is an alienation of the tenure, inasmuch as it subjects the officer to removal upon grounds, and in a manner not contemplated or provided in the original constitution; and when applied (as it is sought to be in this case) to an officer elected before its adoption, it works a clear breach of the obligation of the contract between the State and the officer. A civil office is a contract; it vests valuable rights and privileges; it entitles the incumbent to a certain salary, and devolves upon him the exercise of certain functions, which are an honor as well as a duty. The federal constitution, which is the paramount law of the land, says that "no law shall be passed impairing the obligation of contracts." This is the fundamental law, and all State legislation must conform to it. The people in Convention may override and overrule all law and Constitution, but this is a revolutionary right. So long as we live in obedience to the civil government of the Federal Union, this constitutional provision is obligatory upon us. We cannot alter the tenure of the judicial office by legislation subsequent to the election of the officer, either by a simple enactment, or by an amendment of the Constitution. It may be said that there is a power of amendment in our Constitution, and that the office is taken subject to the exercise of this power. But *in that very constitution*, our own, as well as that of the United States, is, the limitation, that no *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed. This is a special restriction upon the legislative power of amendment. If then, an office be a contract, there is an end of the question; and that it is as much so as a grant or a franchise, rests upon the best judicial authority.

If this view of the constitutional question be correct, it stops this proceeding in the threshhold. The Legislature has no cognizance of the case, and should at once discontinue the whole process. Enough and too much has been already done, and this House will best consult, not only the feelings and rights of the respondent, but its own sense of justice and self-respect, by at once declaring, that it has no juri s

diction of the cause, and will entertain no further cognizance of it.

Mr. Phillips, of Charleston, said: The question before the House is, shall we hear the Judge? We have requested his attendance here, this day, to answer to the charge alleged in the resolution, and instead of hearing him, the attention of the House has been directed to a protracted discussion on the forms of trial. He desired to hear the Judge, and hoped that the House would proceed to do so.

Mr. Hunt, of Charleston, said: This is the first case under this amendment of the constitution; and as it will be drawn into a precedent, it is important that it should be shaped by principle. The constitution has two clauses: the first defines the general grounds—disability "by reason of any permanent, bodily, or mental infirmity." Then comes the proviso, that the resolution to remove the officer, "shall contain the *grounds* for the proposed removal; and before it shall pass either House, a copy of it shall be served on the officer, and a hearing allowed him." Now, it is a settled rule of construction, that every part of a law, especially of a fundamental law, should have its weight, and is supposed to mean something. If the general charge was sufficient, why provide for a statement of "grounds?" What sense was there in securing a hearing to one only accused on common rumor? Who was safe, if put on his defence against such an accusation? rumor is proverbially falsehood; to deny what she says is enough, since you cannot grapple with her. I contend that every principle of justice also requires that the accused be never put to answer vague and intangible charges. The fact and circumstances must be specified to a reasonable certainty. They being denied, put the truth of the charges in issue; and no one questions that "he, who alleges, must prove his allegations." This is the nature of a criminal charge, as it affects the right of the incumbent to a valuable office; and I expressly inquired, "if the mover of the resolution had any proof," and he disavowed any intention of offering any. As to referring it to a committee to take the testimony, it was against common right. This House acts as Judges, and in

all criminal proceedings the accused is entitled to be confronted with his witnesses, and the jury must judge of the veracity of the witnesses by their manner and conduct in Court. The resolution was served on the Judge, and he replied that he knew of no good reason for the allegation it contained. Here was an affirmative and negative, a direct issue affecting the office of the accused; and yet we are about to put him on his defence, upon a vague charge, with no specification, and supported by no evidence. The principles of the common law are so just as to secure a fair trial, on specific accusation, supported by testimony even to the vilest malefactor; and here we are violating all these safeguards to innocence, to one of the highest officers of the State. Mr. Hunt said he utterly repelled the idea that it was the intention of the constitution to confer on the Legislature the arbitrary power, accusing a great officer by popular clamor, and without evidence or even specific charges, and to turn him out of office. There is no instance in any country on earth, where such a course is pursued, unless in the most absolute despotisms. It is a violation of all the principles of Anglo-Saxon liberty; and it would be a reproach to the framers of the constitution to suppose they intended that this portion of it should be so construed. If the movers of the resolution confess that they have no facts to support it, it should be rejected on that ground alone. Individually, Mr. Hunt was glad to hear the venerable Judge scatter this baseless charge to the winds. One gentleman asks what is the opinion of those who know him. As one, said Mr. Hunt, I can say that even within the last five years, his judgments rank among the best delivered by the bench. He is a well trained constitutional lawyer, well versed in all the doctrines of mercantile law; and although time has rendered him less able to endure the exposure of riding the circuits, when in Court few men bring to the discharge of their judicial duties a more vigorous intellect, and none a more upright and independent spirit.

Once establish the precedent contemplated in the resolution to remove a Judge and put him on his defence, from mere rumor, and the Judges will be continually liable to be

harassed, mortified and annoyed by some disappointed suitor, thus degrading those officers, on whose independent and elevated character depends the fearless and pure administration of justice. It will sap the foundation of judicial independence.

Mr. Yancey, of Edgefield, moved to lay the resolution on the table, that he might introduce another, and take the sense of the House on the question of jurisdiction. Judge Richardson was elected before the amendment of 1828, and is not amenable to its provisions. His tenure of office is under the Constitution of 1790, and if removable for any cause, the proceeding should be by impeachment, which is the form prescribed by the Constitution, and not by resolution, which can only apply to such civil officers as have been elected since 1828; and should the House come to this conclusion, it will supersede the further consideration of the resolution, and discharge the proceedings.

Mr. Tradewell, of Richland, contended that the Constitutional amendment contemplates a full statement of the grounds of disability, and that a vague and general allegation is neither a compliance with the provisions of the Constitution, nor just to the accused.

Mr. Desaussure, of Richland said: The resolution before the House presents a subject of grave and important consideration, and whatever difference of opinion may be entertained as to the propriety of the amendment of 1828, the question now before us is, will you give effect to the Constitutional amendment, or treat it as a dead letter. It was intended to supersede the formalities of a trial—possibly a dangerous innovation, which, in evil and high party times, may be perverted to bad purposes, and become dangerous in practice; but there it is the supreme law of the land.

The incapacity intended and contemplated by the Constitution must be gross and flagrant, and whether it has reached that stage, is a question of difficult solution. Infirmity of body and mind is of degree and opinion, and how can articles of impeachment be framed to meet each individual case? The forms of trial are properly applicable to impeachments, but

this is not an impeachment where the trial is ordered and the forms prescribed by the Constitution. No such trial is directed by the amendment. How would you prepare the articles, and how judge of the degrees of impaired faculties? He did not believe that the Judge's case came within the provisions of the amendment to the Constitution under which this resolution is framed. But let us not surround the amendment with difficulties fatal to its letter, and which will render it inoperative.

Mr. Memminger, of Charleston, said, that he had listened to the remarks of the honorable gentleman who had addressed the House, with an earnest desire to learn the proper course to pursue in so novel a case. It would have been wiser for the House to have considered the form of the accusation, and whether it was made for sufficient cause, before they undertook to notify the accused, and summon him before its Bar. The highest judicial functionary now stood before us; a man who, for thirty years, had served the country with distinguished integrity and faithfulness, was brought before us, upon a proceeding which threatened to deprive him of his dearest rights. Certainly, before we entertained the proceeding, we should, at least, have inquired into the *prima facie* testimony. But the House has acted—it has notified the party—it has virtually decided that there is sufficient reason for entertaining the question—it has taken it as established, that the allegation of a member of this House, made upon his responsibility to the country, is sufficiently grave to put the party to answer—that party is now before us, and we must determine how the matter shall proceed. An inquiry of this kind can best be pursued, by examining the previous history of similar proceedings, and the forms required in their conduct.

The English law, from which all our legal and parliamentary forms are derived, allowed three methods of reaching a public functionary. The first was by impeachment. The course pursued was first, a vote of the House of Commons, ordering articles of impeachment upon such probable cause as *that* House should judge sufficient. Thus far, the proceeding was altogether *ex parte*. The accused party was neither

summoned nor heard, and the House satisfied itself as to the propriety of the proceeding, either by taking *ex parte* testimony before a committee, or in any other way which was deemed advisable. Upon the vote being decided in favor of an impeachment, articles were drawn up setting forth particulars, and these were sent up to the House of Lords, under certain managers appointed from their own body by the House of Commons: at this point of the proceedings, the accused was made a party for the first time, and the matter then assumed the form of a cause to be tried upon proof and defence before the Lords as Judges. The House of Commons were virtually the Grand Jury and prosecutors, and the other House united in itself the functions of the Court and Petit Jury to try the cause.

The second mode of proceeding known to the English law was by bill of attainder. Under this form were perpetrated some of the most atrocious acts of injustice of which history speaks. It differed essentially from an impeachment, in that each House of Parliament acted upon the subject as an original matter, and each must concur in its adoption as in any common case of legislation. Each House, therefore, united in itself the character of prosecutor and Judge, and had an equal right to pronounce final judgment upon the accused; but the judgment had no legal existence until the bill had passed through all the forms of legislation. When a bill of attainder was proposed against any one, the House satisfied itself in any way it thought best, as to the propriety of proceeding against the party, and before the bill passed, the party was summoned before the House, and allowed the benefit of counsel, and the evidence on both sides was heard, and the judgment thereon was rendered in deciding upon the passage of the bill.

The same course of proceeding was pursued in the other House, and the party thus had the benefit of two trials, with the ultimate veto of the crown upon both. Strange as it may seem, this course of proceeding, which appears upon its face to offer so much more protection to the accused than a mere impeachment, was in reality the instrument by which the greatest acts of parliamentary tyranny were committed.

And history has shown us, as in the case of the Earl of Strafford, that an impeachment, with its single trial, before one body of responsible Judges, afforded more protection to the accused than a bill of attainder, with its double trial and two-fold defences.

Experience, however, had proved to the English nation that neither mode was sufficiently effectual to reach the case of a Judge, who might be obnoxious to many objections which would destroy his usefulness, and still, either from the nature of the objections, or the difficulty of proof, no removal of him could be effected by either of the above modes. The revival of popular rights, which commenced with the revolution of 1688, which drove the Stuart family from the throne, led gradually to the adoption of a statute in the reign of William the Third, which enacted that the Judges should be removed from office upon the address to the crown of both Houses of Parliament. This produced the third mode by which the judicial office is reached. It will be perceived, that there are essential differences between this last mode and the two first. Among the most obvious are these: 1st. That while the two first affect the person of the accused, and may result in punishing him with pains and penalties, the last merely applies to the particular office, and in no way affects the person of the accused and merely separates him from the office, leaving him uninjured in every other respect. 2d. The mode of removing the Judge upon an address of both Houses, implies no trial, no defence. It is simply an expression of the will of the Legislature, upon matter which they assume to act upon with or without specification, as it may seem expedient. It is rather an administrative than a judicial action.

This was the state of the law when our connection with England was severed by our Revolution. In framing all our Constitutions, our forefathers justly denounced the bill of attainder. The Constitution of 1790 adopted the form of impeachment for the punishment of a breach of high official duty, adding a requirement that two-thirds of each body should concur in its own action; that is to say, that two-thirds of the House should concur before the trial could begin,

and two-thirds of the Senate should concur before there would be a judgment against the accused.

This state of things continued in South Carolina, until the period in which the great popular discontent with our Judiciary overthrew the separate Courts of Appeal in Law and Equity, and brought into review the bad habits of some of our Judges. An impeachment was voted against one of them, followed by a trial before the Senate, the result of which was a very general opinion among our statesmen, that the remedy by impeachment was surrounded with so much difficulty as to be almost nugatory. It was urged, that an officer might be absolutely imbecile, besotted or idiotic, and thus impede, or even altogether obstruct public justice, and remain entirely beyond the reach of articles of impeachment. The remedy proposed, was to fall back upon the English plan of removal upon the address of both Houses, and in place of the action of the crown, to substitute a check upon the action of a mere majority, by requiring a concurrence of two-thirds.

This seems to have been the design of the amendment of our Constitution in 1828. Mr. Memminger said, he would not undertake to pronounce upon the wisdom of this amendment. It seemed to him to be liable to very grave and well founded objections, and he feared it was enacted with too strong a view of a special case. But the men who adopted it were among the most distinguished in our State, wise, considerate and just, and it would be presumptuous in him to condemn their act. Be it wise or unwise, it is the Constitution which we are sworn to administer, and the sole question is, how shall we proceed in this duty?

If the views presented by him, continued Mr. Memminger, are just, it will follow that the amendment of 1828 bears a stronger analogy to removal on the address of both Houses, than to any other form. That form required neither charge nor specification of any kind; and it might happen that an address might be voted, upon the most vague, and even for opposite reasons. Each member voted upon his own motion of mere expediency. To check so wide a latitude of action, and to bring the matter within some acknowledged principle

of justice, the amendment of 1828 added a proviso, that the grounds of removal should be stated, and the accused party should be heard in his defence. Without this proviso, one member may have voted against the party on one ground, and another on a different; and so without a majority on any one, the union of minorities would produce conviction. The object of the proviso was to reverse this state of things and give the accused the benefit of these minorities, and to allow him the same immunity which is enjoyed before a jury. To produce conviction, there must be a concurrence of all upon some one charge.

This result is attained by setting forth the charge in the words of the Constitution; the grounds upon which a removal is asked must be set forth. Does this mean that you must pursue the precision and particulars of an indictment, and that there must be evidence and a full hearing? If so, then the amendment of the Constitution would be a clog instead of a remedy. For it would be, in fact, a recourse to the very same forms required to pass a bill of attainder, with the increased difficulty of requiring a concurrence of two-thirds of both branches. What inducement could there be thus to amend the Constitution? An impeachment would have been far simpler, and much more easily conducted.

It is too plain for argument, that the amendment intended an easier and less complicated remedy, and that it was intended to subject the Judge to removal from office, unobstructed by the forms required to sustain an impeachment. As a reasonable protection to the accused, the grounds of removal are required to be stated, and he is to be heard in his defence. The very use of the word, "grounds," shews a design to avoid technical language, while using a well defined word. No one would understand a rule of Court, which required a statement of the grounds of a motion for a new trial, or in arrest of judgment, as calling for the precision and specifications of an indictment. The term itself implies generality.

It seemed to him then, said Mr. Memminger, that the requisition of the Constitution is pursued in the form of the

resolution, and that the House is bound to decide upon its adoption or rejection. Before it can be adopted, the House must be satisfied of the truth of the grounds asserted, and that, if true, they make a case for the exertion of its power. For it is to be observed, that the removal intended by the Constitution is not a judicial sentence necessarily consequent upon a conviction, but it is an administrative act, which the House, in its discretion, might refuse, even if every fact were proved. Every argument, therefore, which gentlemen have addressed to the House against the nature of the charge, or of the proof, or concerning the injustice of subjecting to this amendment of the Constitution our officer elected before its adoption, every one of these arguments will justly operate against the passage of the Resolution in the minds of those who feel their force. The objections to the vagueness of the charge, and to the insufficiency of the proof, are justly made; and those who have offered the resolution, by relying upon rumor and mere general reputation, must expect to meet the opposition of all those who do not feel themselves sufficiently informed through these means. It is like any other case presented for our legislation. If action is called for in a matter upon which we are all informed, we act upon our general information. If, in a case where specific information is wanted, and it be not given, the result is, that those who are not sufficiently informed to enable them to act, simply vote against the measure, and leave things as they stood before. It seemed to him, said Mr. Memminger, that this is just what the amendment of the Constitution intended; and that the objections which have been urged, are, in fact, objections to the adoption of the resolution, and not to the form of proceeding.

If, then, the forms are sufficient, what prevents the House from proceeding to decide? The accused party has been summoned, he is here before us, and the Constitution requires that he should be heard in his defence. Unless the House is prepared to dismiss the matter without further action, it is our duty forthwith to proceed. Whether the Resolution shall be adopted, is an independent question, upon which I shall reserve my opinion until the case be ready for judgment.

Whether the course appointed by the Constitution be wise or expedient, is also another question, which is at present not before us. If I had been called to vote upon that question, I should not be found among its approvers. But here we are, sworn to support the Constitution, such as it is; we must, therefore, proceed to do our duty, however painful or urgent that duty may be.

Mr. Huger, of Charleston, remarked, he was willing to stigmatize the amendment of '28, by deriving it from bills of attainder and addresses of the two Houses of Parliament. Could he persuade himself that the Constitution of the State had borrowed weapons against its officers from those armories of tyranny and injustice, he would desire much the abrogation of the Constitution. In reality, the amendment of '28 does no more than draw the distinction between an impeachment, the very gist of which is moral delinquency, crime, and a removal from office, upon grounds implying no moral degradation—no moral stain. So far from its being an instrument giving the Legislature a licentious power of destroying the very branch of the Government called upon by the Constitution to resist and restrain the Legislature itself, it offers to the good feeling of the Legislature the mild and merciful expedient of dismissing with honor to himself a servant of the State, that God, in His providence, has seen fit to overwhelm with such mental or physical disability, as unfits him for the discharge of high and important duties of the State. That this inability is from its very nature, developed by facts, and therefore, susceptible of proof, and that the word "hearing," in the amendment, implies that the facts, and the proof of the facts, from which the disability is to be inferred, are to be called for at the wish of the officer subject to trial.

Mr. Sullivan, of Laurens, spoke as to the mode of conducting the proceedings, and this is involved in, and depends upon, the construction of the amendment of 1828. The proceedings are unlike those adopted in cases of impeachment, the preliminary step of presenting articles, appointing managers, and all the ceremony of a trial, are dispensed with. The amendment, under which this resolution is framed, provides

for a different class of cases—the former is intended to reach the case of crimes and misdemeanors; the latter, infirmities of body or mind, not technically an impeachment, but a *quasi* impeachment.

In a proceeding like that before the House, the accused has a right to be heard; this is the language of the amendment, which should be incorporated in a resolution framed under it, embracing the general proposition specified in the amendment, and of which no specifications can be predicated. Whether the infirmity be such as the Constitution contemplates, is a question of evidence, depending upon testimony, which, as in cases when the sanity of the testator is involved, must be proved.

As it is the first case which has occurred under the constitutional amendment, it is proper that the proceedings should be correctly framed, that it may form a precedent for future cases. The accused has been informed of the proceeding, and in obedience to the notice given by the House, has appeared, and if he desire it, let him be heard.

The Constitution has been pursued in the terms of the resolution offered, and if advantage can be taken of any informality in any part of the proceeding, the party can avail himself of it. It was certainly fit and proper that the case should proceed.

Mr. Davie, of Chester, hoped, if Judge Richardson was not ready to proceed, and as himself and counsel must have become wearied at the long debate the House had indulged in, that the trial be postponed until Monday next.

Judge Richardson said: "I thank the gentleman from Chester for his polite suggestion, that I might require further time, before addressing the House, after hearing a protracted discussion of the subject, to which I am called to answer; but I do not deem it necessary to claim any indulgence. True, I might well say, I am fatigued and indisposed. I will not disguise, that I have for some days been sensibly affected by the injurious character of these proceedings—that my feelings and repose have been invaded. Indeed, it is insisted by my friends and my counsel, that I ought not to address

the House to-day; but having decided in my own mind to unfold with candor, as far as in my power, the true state of my 'bodily and mental infirmity,' if such exist, I decline the gentleman's suggestions, because I would present myself as I really happen to be, at the moment when called on by this honorable body.

"If the House will be pleased to hear me, I am ready to proceed."

The House having expressed its readiness to hear Judge Richardson, the Speaker rose, and, in a few words expressive of deep emotion, informed the Judge that he was on his trial before that body, on a charge of "bodily and mental infirmity," and that it was *now* ready to *hear* him.

It was a scene of high moral beauty to behold. The elegant, manly bearing of the Speaker, subdued even to tears, at the feelings elicited by the occasion—the venerable accused on his trial before him—his head sprinkled with the frost of seventy winters—his bodily tenement showing that, though age had come upon the outward man, the mind within was still bright and burning, and ready to illuminate with its eloquence those walls, which years before had been the scene of many of his triumphs.

The speech of the Judge was entirely unpremeditated and extempore. In a manner of calm dignity, though in a voice tremulous with emotion, he proceeded to address the House. His defence was as follows:

JUDGE RICHARDSON'S DEFENCE.

My sentiments upon this occasion, Mr. Speaker, remind me forcibly of the reason why, in the year 1810, when I occupied the chair which you now so faithfully fill, I declined to remain in it for twenty-four hours, notwithstanding the suggestion of friends, that I ought to remain sufficiently long to append my name to the "general suffrage bill," now one of the articles of the Constitution, of which I was the mover. I then declined, because I thought it would be a personal act of vain glory—so, I now decline the favor offered, because I might be conscious, if accepted, of deriving some advantage, which might

seem to derogate from the perfect candor and fairness with which I have resolved to present myself at the moment when called on, whether in health or out of health.

I have said, in my letter to this House, that, in appearing before them, I reserve "my constitutional, moral and legal rights." The constitutional and legal, I leave chiefly to my counsel, to be managed by them, more for the independence of the judiciary and the honor of the State than for myself. The moral rights, I reserve to myself, exclusively, and to my own responsibility. And you will see that I cannot think it a part of a South Carolina Judge to follow the advice I myself would give to a supposed culprit—to shut his mouth and say nothing, if he wished to be acquitted. For myself, I proceed in the very converse of that prudential rule, and freely declare my opinions and lay before you my practical conduct, founded in such opinions. No other manner of defence comports with my own estimate of the position in which I stand, and with my respect for you. Yes, sir, having resolved to *speak*, and not to wait for and require evidence, to be first adduced against me, I shall speak out; and as I have no window in my breast through which you can see my heart, I will present it, as far as my ability will permit, to your eye and observation, as if in my open palm.

It is difficult for me to know to what points to turn attention upon so general a charge as that of "bodily and mental infirmity." No evidence is adduced—no facts have been disclosed—not even an opinion has been expressed, which would point me, with any precision, to the predicate of the resolution, or to the defence which would meet it. I must necessarily be vague and general in what I have to say. A little assistance is, however, afforded me by the observations which have been made by members of this House, in their discussion just concluded. I gather from those observations, "that it is *rumored* that I am slow in the discharge of the circuit business of the Court;" which, I am to conclude, presupposes the bodily infirmity charged, or, possibly, both the "bodily and mental infirmity." I do not understand, sir, that the rumor extends to any suspicion of my integrity, firmness, or

or specifically to my general mental vigor. The objection against me, if I have rightly apprehended the observations made, is the general one, of tardiness in the discharge of circuit business. There may be some foundation, or semblance of reason, for this objection; at least, I will endeavor to assign the true reason of its origin and existence.

It is probably true, that the comparative rapidity with which the six Judges of my Bench discharge the circuit business, may stand in the following order: two, beyond a question, have unrivalled power in despatching that business; a third comes next, "*sed longo intervallo*;" a fourth approaches to him in rapidity; and the fifth, not far behind the fourth; and be it fairly admitted, that I am, probably, behind him again, in the discharge of ordinary circuit business. I do believe this "to be the head and front of my offending—it *hath this extent, and no more*"—even, in the rumor, on which the gentleman from Chester (Mr. Davie) has somewhat dwelt. One further observation, which fell from the gentleman from Richland, (Mr. DeSaussure,) also assists me a little. I understood that gentleman to affirm the fact, that a Judge, who had attained the age of seventy, must necessarily be less competent, mentally, to discharge his judicial duties, than he was at the age of forty or fifty; and added, that the accused himself, or, as he was pleased to say, "the venerable Judge would, if called upon, with candor, admit a deterioration of his former mental vigor."

I feel the observation to be a call upon me for the expression of my own consciousness; and I therefore declare, that I cannot with conscious truth, admit what that gentleman has affirmed; nor can I, through a false modesty, qualify my positive denial of it. As a general assertion, it is not sustained by historical fact, or, an accurate knowledge of mental philosophy. In its *individual* application, I can only deal with it so far as my personal consciousness extends. *I do not believe it, sir*—I have not heard of it, except from the gentleman himself, this day—and I challenge the proof of it.

Mr. Speaker, I am under a confidence, plainly held out, that I will speak "the truth, the whole truth, and nothing but

the truth," while, at the same time, I feel satisfied that this House has assured to me the confidence, that they will "a true verdict render according to the evidence." These are reciprocal assurances; and the party that breaks the confidence so raised, violates the moral law and the sanctions which should be held sacred between us.

Before proceeding to such expositions as I suppose proper, if not called on to make, in further explanation or denial of the justness or truth of the observations to which I have alluded, or of the charge contained in the resolution, let me disabuse your minds of any injurious and unwarrantable impression which might be induced by my appearing in person, to defend myself against the charge which has been made. It is possible, that my appearance in person, and the manner of my defence, may prejudice the minds of some against me. If so, I shall regret it less on my own account, than on theirs. I have appeared here to exercise my constitutional right, to be heard; and to discharge a duty to myself, to the judiciary, and to the State. I am gratified to know, sir, that my friends, and all who know me well, have anticipated, as with one consent, the course I would pursue. Others in a similar situation, might have pursued a different, and, perhaps, proper course for them; but no other than the one I have taken suits *me*. And let me ask this House, would you wish a South Carolina Judge to quail before charges like these? If he did, would you not suspect his indispensible judicial firmness, upon other occasions, more interesting to the public at large? Would you not regard him a prude in assumed virtues, and dispossessed of the essential quality of a high public officer? Ought the very standard bearer of the Bench, the senior presiding Judge, to craven when a hostile lance is levelled personally at him, but which would, if he fled, wound the independence of the whole Judiciary, and strike at the settled principles which actuate and govern the State? I cannot believe that any gentleman of reflection could have *expected* me, or, any one who valued the proper dignity of the Judiciary or of a man, could have *wished* me to have acted otherwise than I have done.

I proceed now, Mr. Speaker, more immediately to the discussion of such topics as seem to be pointed out by the resolution before you, and alluded to by the gentleman to whom I have referred, in the remarks with which they favored the House. I shall speak right on, for I have nothing to conceal, and am fearless of any investigation, individual or moral, political or official. In my own language, my heart shall be in my open hand. I will think audibly, while I, necessarily, speak discursively.

It is in defence of myself as a civil and judicial officer that I appear before this House. As a citizen of the State and of the United States, as a husband, father or master, as a brother, friend or debtor, I can meet investigation with defiance. In these relations, at least, I may be allowed to say, I have some foundation for a moral firmness, which will not permit me to shrink from scrutiny. Nor, sir, can I deny to myself the essential attributes of a judicial officer. What are they?

The indispensible moral attributes are, integrity and firmness. These are necessary moral conditions, precedent to his commission during good behavior. To the attributes are to be added certain intellectual endowments, as very essential.

1st. The faculty to comprehend the case tried before him, as a Judge, in all its facts and bearings, and sufficient legal science, to know the essential principles of the law which apply to the case and spring from the facts.

2d. The faculties of comparison and order, to enable him to arrange and collate the evidence adduced, and to conduct the facts, *pari passu*, with the law applicable to the particular case.

3d. The faculty and power of continued and close reflection, which renders the understanding and conception of the whole clear and strong.

4th. Ratiocination, in order to render secure just conclusions, and finally to pronounce an intrepid judgment upon the case before the Court.

There is, perhaps, a fifth faculty, though not so essential to the judicial mind, nor so common. I mean imagination, or so much imagination as contributes to the impressiveness of

his own conclusions and meaning, upon his auditors. For example, the late Judge Waties was clearly indebted to this faculty: and Lord Mansfield, the ornament of the English bench, owed to it his high distinction above his learned brethren.

Permit me here to observe what may not be known to a majority, at least of young men, that such faculties often distinguish the mind of an aged man, above his younger brethren.

It is matter of common observation, that as the bodily senses become dull—as when the eye has become dim, and the hearing slow and dull, and the other senses have fallen off in proportion, practical observation upon men, and the ordinary occurrences of life become tardy; and hence conclusion is hastily drawn, that the true intellection of the man has partaken of the decay. Whereas, in point of exact and philosophical truth, what may be called the outward mind, which is so dependent upon the mere bodily senses, has, alone, sustained deterioration—while all the great essentials of the true intellectual man, stand not only unimpaired, but may, by laborious reflection and industrious mental habits, still grow in strength, activity and brightness. In illustration of this, I would turn your attention to Chancellor Kent; at more than eighty years of age, his vigorous mind has never lost its power; and he stands to this day, practically, the judicial umpire in the gravest disputes at law. In like manner, the late Chief Justice Marshall, who died at the age of eighty-one, still stood the pride and glory of the Federal Bench. So I could name the late Judge Martin of Louisiana, who, though so stricken in years as to be entirely blind, and requiring to be daily lifted to his seat on the Bench, still remained the distinguished and leading Judge of the State. Lord Mansfield, perhaps the most renowned of the English Judges, retired from the Bench at the age of eighty-three; when no art could help his vision, and while he was yet in the practice of delivering his soundest and most luminous judicial arguments. But I will not tire you with illustrations. Indeed, I have gathered from authority, that the average age

of the English Judges is sixty-eight years. Do not, therefore, hastily imagine, with the gentleman from Richland, that the Judge, who has arrived at the age of seventy, must necessarily, and in candor, concede his own mental deterioration. I am clear, distinct and firm, that this is a mistake; and the candor which that gentleman has kindly bespoken for me, compels me so to say.

But, sir, I beg that you will not do so great injustice to my candor, as to imagine for a moment, that I arrogate to myself any of the essential mental faculties of a Judge, as just defined, beyond the common mediocrity of sound minds. If I have one of them above the common standard, it consists in the single power of long reflection upon one subject. As to other faculties, it may become me to say no more than this: if I have ever given evidence of possessing them, I believe that evidence will be found in my later, not less than in my earlier judicial labor. In this connection, and for a fair illustration, at least to myself, of my own mind, I have used my present perplexities. I was sitting till yesterday in a Court, the most laborious of all Courts to me. Yet, listening, on an average to four or five cases per day, and one day to nine cases, and, although highly sensible to what I deemed injuitice to myself and an alarming example to all civil officers, I omitted no judicial duty, and did not find any unusual difficulty in comprehending any case whatsoever before the Court, or in writing out any usual aliquot part of the final decisions, with the accustomed references to authorities.

Here, too, I would take occasion, if I can do so without an immodest assumption, to point you to my latest decisions, (reported in Strobhart and in Richardson,) upon which I have been more than complimented by gentlemen on this floor, in the discussion to-day—especially by the gentlemen from Charleston, (Mr. Hunt and Mr. Memminger,) and the gentleman from Marion, (Mr. Harllee.) These constitute the latest body of evidence, to which I can refer, as a general answer to the resolution itself; to the vague and irresponsible whispering of "*rumor*;" to the general observations of the member from Richland, and, if need be, its particular application

to myself. I believe, Sir, I can fearlessly ask a comparison between these, my latest decisions, and any former, imputed to the prime of my manhood.

Under the same apology for this necessary reference to myself—a necessity to which I am driven for want of a personal accuser, or a witness against me—and the apparent assumption in the resolution offered by the member from Barnwell, (though coming from *him alone*,) of general undefined infirmities, I would here notice my judicial labors upon my last circuit, when I was taken sick at Laurens, and confined for two days. With the exception of this Court, I did all the business, at each and every other Court, that could be presented to a circuit Judge. I think I fulfilled the very aim of the latter part of my judicial career, rather to do the business well, than rapidly. In proof of this, I have been assured by a very competent Judge, who watched me closely and keenly throughout the circuit, that I committed (it must have been providential, for it is certainly uncommon) but one error in law; and he added, that upon that one point, his friend differed from him, and thought me right; but believed I had erred in another point, upon which they again entirely differed. Upon the case being brought before the Appeal Court, my opinions upon all the points remained uncorrected; but leaving the disputed questions not absolutely decided. Finally, there has not been one question decided by me, on the last circuit, which has been disaffirmed by the appeal Bench. This, assuredly, I must regard as providential, as it scarcely could have occurred at any period of my career, even when my highest mental power was supposed to have been exercised. To conclude upon this head, may I not assume, that my proper intellectual vigor has not been impaired by eight years of public service in the Attorney-General's office, and twenty-nine years in the office of Circuit and Appeal Judge? May I not venture to hope that I stand vindicated, even in the estimation of the gentleman from Richland, from the suspicion of mental deterioration, consequent upon age and long service?

Mr. Speaker, my past history and course of life, have given

assurance to those who knew me, that I would defend myself and the independence of the Judiciary, if the office were assailed through me. I trust there is enough in that history and line of conduct, to give as strong an assurance to my friends and to the State, that I do not love office for its own sake, or for its emolument—that if I believed, or had reasonable grounds furnished by my own reflections, or by those who knowing me well, should speak to me frankly, that I was not competent to the high and severe duties of my office, I should act with promptness, as a conscientious man, in resigning into your hands, the commission I received from you. Such, at least, Sir, has been my way of thinking, as is known to several persons.

Upon this particular subject of voluntary resignations, permit me to remind you, that they are by no means unexampled in this State. Many years ago, Judge Brevard resigned his seat on account of an apparently fixed bodily infirmity. But six years ago, the venerable Judges DeSaussure and Gantt resigned their commissions on similar grounds; but they resigned at the age of seventy-five. I would ask, ought not the same discretion to be left with me, to the same period of life? Why am I thus prematurely forced to resist attack upon my constitutional rights, when possibly, if not probably, if left to an equal discretion to the same period of life, my own convictions might actuate me to a course conformable to the wishes of those who have industriously rumored a suppositious infirmity, which they had hoped would pass for proof, and end in my resignation or expulsion from office. I cannot permit myself to be thus forced; and the blow, which, under present circumstances, would, by my resignation, be given to the independence of the Judiciary, is, in my judgment, conclusive upon my conduct.

I have now, Mr. Speaker, but one other general topic of personal explanation. It relates to my practical and immediate career, as a Circuit Judge. I was elected a Judge on the 18th December, 1818. I took the commission in the place of that of the Attorney-General; which office, together with my professional business, yielded twice the annual salary of a

Judge. The law Bench was, at that time, the strongest I have ever known. It was presided over by Judge Colcock, a man of truly sterling qualities of head and heart. Judge Nott came next, of an uncommonly acute understanding, and a most able Judge. The now venerable Judge Gantt was, then, in the strength of his usefulness. Our present Governor (Johnson) stood fourth; his judicial virtues of the head and of the heart are above my commendation. The fifth, was Langdon Cheves; always the personification of a sound mind, in a sound body, of a pure heart, and of talents, limited only, to the achievement of the occasion which called them into action.

With such Judges, I commenced my career; and endeavored to do an equal portion of judicial duties, and equally well. The Circuit Courts out of Charleston were limited to six days each. The business must be done within that time. Accordingly, I opened my Courts early and sat late. This course continued to the year 1824, when the late Court of three Judges was constituted the appellate tribunal. At this time, our late Senator, Judge Huger, filled well and faithfully the place of Langdon Cheves, who had taken a different office; and the most able and experienced Circuit Judges, namely, Colcock, Nott, and Johnson, were transferred to the appellate tribunal. In their place, three Chancellors were introduced, sorely against their will, namely, Waties, Gaillard and James. The habits which they had acquired on the Chancery Bench, were very unfavorable to the discharge of the ordinary circuit business of the Law Bench. I redoubled my zeal to fill up the deficiences of my friends, and it was said I was successful to some extent in so doing. This course continued to the year 1836, when the Legislature passed the Act, allowing every Circuit Judge to call extra Courts, at his discretion. This was done, evidently, to afford more time for judicial deliberation, than could have been practised when the Court was limited to six days. At least, such was my construction of the Act of '36. It seemed to inculcate upon the Circuit Judge the duty of greater deliberation.

Rapidity in the discharge of business had been practised to

a fault: as, I verily believe it to be, at this time, the error of the Bench. From that epoch in the Judiciary system, be it acknowledged, I began to feel myself in duty bound to conduct the circuit business with much more judicial deliberation. It was, perhaps, the inception of the charge of tardiness now made. For, it so happens, that contrary to my opinion of the necessity and value of extra Courts, they have become distasteful to the Bar and to the people, and are seldom holden; because the Bar, by concerted objection, have generally defeated the call of such Courts by the Judge. I always offer, and generally urge their call, for the purpose of introducing more deliberation on the circuit; but, very often, without avail.

Again—and upon full conviction and observation, I have held it to be the duty of a Circuit Judge to deliberate upon an extensive class of very small cases: I mean appeals from Magistrates and summary process cases, which afford equal points of law with greater cases; but the small amount of which, practically, forbids any appeal to a still higher tribunal, and, of course, the circuit decision usually forms the final law of the case. I could notice such cases on the last circuit, in which I encouraged a second argument, rather than risk a possible error in decisions, which would probably be final.

This view of my duty is, perhaps, another source of my supposed tardiness in the discharge of circuit business.

These sources of apparent tardiness, together with my deliberate conviction, that the unjudicial, but popular rapidity of discharging the circuit business, ought to be corrected, and, also, together with the fact, that I do not sit in Court daily as many hours as I practised when in the zenith of my physical strength, have possibly and naturally led to the charges now made, of a want of despatch in ordinary business; but, all of which, I attribute to a proper and faithful Judicial deliberation, to which I can attach no discredit.

It is not inappropriate here, to state what is the cause of this habitual rapidity (which all deplore) in discharging the Judicial business of the State of South-Carolina. It has clearly arisen from the fact, that the whole law business of the State,

from twenty dollars upwards, besides all appeals from Magistrates, down to two dollars, is required at the hands of six Law Judges, without any auxiliary Court or assistant Judge of any kind; one or both of which are allowed as a help to the Superior Judges, in every other State in the Union. Before 1799, County Courts were allowed throughout the middle and upper country of South Carolina, and four Law Judges did all the other law business of the State. In '99, the County Courts were abolished, and as a fair equivalent, two Judges more added to the four; and, moreover, every Judge on the circuit, in case of his sickness, was allowed to commission a lawyer to the business of the Courts. This constituted, virtually, auxiliary Judges. At this epoch in the Judicial system, the State was divided into four circuits, leaving Judges, of course, at rest. Gradually, the circuits were increased to a fifth, and then to a sixth, as they now stand. The business increased greatly under this system of a Court to every district, and has long since become four-fold of the business which existed in 1900. To illustrate this augmentation, the Appeal Court then sat one week. Now, it sits four weeks, or more, at each Term. In the meantime, in 1817, the auxiliary Judge (that is, the lawyer allowed,) was taken away; and the Term of each circuit Court, out of Charleston, was confined to six days. In this situation, of necessity, the Judges were obliged to break down the greatly increased docket as well as they could. Hence arose the unjudicial rapidity of discharging the business of the Courts.

I have already stated, that in 1836, a remedy was held out, through the means of special Courts. But this means has proved abortive, by their great unpopularity and the distaste of the Bar, to such Courts. This most unjudicial practice has, therefore, continued to be the order of the circuits, until it has become dangerous, as you well know, to struggle against it. I run no risk in stating that in no other State in the Union but South Carolina, and, I believe, no other in Christendom, requires of six Judges, without any assistance whatever, to do all its law business. By way of example, the nine Supreme Judges of the United States, who are very confined in their

jurisdiction, have more than half their real labor done by District Judges, making the whole Federal corps of Judges about forty in number. To give one more instance, the State of Virginia has probably twice the law business of South Carolina; but call it three times: how is this business discharged? Virginia has a County Court in every county, (say one hundred and twenty counties,) holden four times a year; which takes off about one-third of the whole law business; and the remaining business is transacted by twenty-two Circuit Judges, besides a separate Court of Appeals, consisting of five Judges, or twenty-seven superior Judges in all; and the Judicial business of that State is by no means free of arrearage. North Carolina and Georgia have substantially the same system of County Courts and Superior Judges. South Carolina, therefore, stands alone in requiring all her law business, circuit and appellate, to be done exclusively by six Judges.

Rapidity has thus necessarily entered into the law business of this State. Can it then be expected that your Judges will not fall from their former high standing? Every one perceives this, but only some still struggle to follow the proper course of Judicial deliberation. You may, for a while, force and lower your Judges into judicial clerks, to make entries of verdicts, decrees and orders; but the time must come, when you will afford them some rational assistance, and enable them to rise up to judicial deliberation, and to the proper standard of the former Judicial system of so distinguished a State.

Let me, in conclusion of this subject, distinctly admit, that the principle adopted in 1799, of bringing all law cases before a Superior Judge (which evidently arose from our experience of County Courts,) is meritorious and praiseworthy.

In my endeavor, Mr. Speaker, to find out the point of every possible charge against me, I have supposed that it may be intended to charge me with too great a loss of time from sickness at different periods. If I am right in this imagination, I have to answer, that few Judges have, on my average of twenty-nine years, lost less time by bodily indisposition. Yet, in the year 1835, after holding the Charleston Court, I lost, to

a great extent, the holding of the subsequent part of the same circuit at Horry and Georgetown. This was my greatest loss of time at any one period. This arose from a very acute attack of inflammatory rheumatism; but of which I have had no return to prevent the discharge of my duties, before the late short attack at Laurens Court House. But be it fairly admitted, that the suspension of my duties have been more frequent of late years, than prior to the trying and cold winter of 1835. Magnify these as you will, they have not been reprehensibly great, and could not have amounted, I verily believe, to one-fourth of the loss of time, lately, so generously and properly overlooked, in a venerable, and, by me, venerated Chancellor, (Harper) whose loss the State has been so recently called upon to deplore; nor so great as that of a highly talented and accomplished Judge, (Earle,) now no more; which arose from an overwhelming misfortune, which at once crushed his bodily and his judicial usefulness. I almost shudder, Mr. Speaker, in alluding to those two distinguished men, in connection with what is charged upon me as a great fault, But *that*, in common with other disagreeable alternatives, is forced upon me.

I have, heretofore, treated the resolution, introduced by the member from Barnwell, without reference to its intrinsic demerits, or, to my own constitutional, vested rights. Can such an instance, in all past history, be found? I think not. A single member rises and presents the resolution offered against me. It is received by this Legislative body without the least legislative action or inquiry. A single member thus denounces a civil officer, and his denunciation is deemed enough, without further inquiry, to bring that officer before this body, to answer for charges utterly undefined, utterly unknown, and utterly unsupported. Should this example be wrought into an authoritative precedent, what a terrific weapon, (to alarm, upon any interested occasion, a Judge or other civil officer,) would be put into the hand of every member of the Legislation. Is it not plain, that such a proceeding is at war with all rational inquiry, with the just allowance of rights to the accused, and a decent regard to his feelings and position?

What is the just analysis and import of the Resolution, but this "Resolved," by A. B., (member from Barnwell,) "three-fourths, &c., concurring, that the Hon. J. S. Richardson, &c., be removed from his office, and the same is hereby declared vacant." It is too plain for question, that the Resolution is by the member from Barnwell *alone;* and all the consequences to, and harassing of, the officer, are to follow at his bidding, without any legislative recognition of his Resolution, *to call such officer to account.* Can there be a more unjust, irrational and unexampled proceeding against an officer, upon the mere *ipse dixit* of one man? Must not the evil be widespread, if any member can, at pleasure, do this? Is not the independence of every Judge fatally struck at by such an example of individual persecution? I utter such sentiments more in sorrow than in anger; more to prevent an evil and degradation to the State; more in defence of her character than my own.

But, further, the same Resolution requires me to answer matter, which, at the time of my election to a seat on the Bench, was unknown to the Constitution. The amendment of 1828, upon which the Resolution is bottomed, was adopted ten years after my contract with the State; and when it was adopted, was well understood as having no application to the incumbents in office. It cannot apply to me, by reason of the prohibition of the Federal Constitution to the State to pass any "*ex post facto* law, or law impairing the obligation of contracts." (Art. 1st, sec. 10.) And be it remembered, also, that every civil officer, and every member of this House, is sworn to support this Constitution, as well as the Constitution of the State. Take an example or two: the Clerk's office is limited by the Act of 1812 to four years; but that was not applied to the clerks then in office; all such still held their offices during good behavior. Again, in the late proposed amendment of the Constitution to limit the judicial office to sixty-five years of age, the limitation was restricted to future Judges only. It cannot be otherwise, if you respect the Federal Constitution. Take the case of the late Judge Bay, who held his office thirty-five years, without sitting in either Circuit or Appellate

Court; no one ever pretended he could be brought under the amendment of 1828. It is in vain to answer, that he was exempt from such duties by an Act. No Act can change the Constitution; and the very predicate of his legislative exemption was, that his commission was "during good behavior," which could not be affected by legislative or constitutional amendments.

Now, sir, I am in commission with the same vested and unchangeable rights, liable only to impeachment before the Senate. Wherefore, then, am I alone selected for unconstitutional persecution under the inapplicable amendment of 1828? The inconsistency is monstrous. But very like the other inconsistency, that as two Judges resigned at *seventy-five* years of age, I must, therefore, as a matter conceded, be disabled, "bodily and mentally," at *seventy* years of age.

Thus, then, whether you appeal to history or the Constitution, the thing does not tell well. It is too unlike South Carolina, and for that reason it does not suit you or me.

"The spirit of a man may bear his infirmities," (his bodily infirmities and misfortunes,) "but a wounded spirit who can bear it?" I cannot permit any self-abasement; I will not readily brook insult or injustice; these wound the spirit. But the intended infliction, hatched in some dark corner of the otherwise respected Barnwell, shall be shaken from me by the power of truth, and no harm be received.

Mr. Speaker, the legal and constitutional objections, I am disposed to take only on the grounds of the invasion of the judicial independence, and for the character of the State of South Carolina, which is above and superior to the encouragement of such example and proceedings. But I merely glance at such objections, which more properly come within the province and duty of my counsel, and which, in their discretion, they will further urge, if deemed advisable.

Mr. Speaker, I am about to conclude. Could I think it necessary to protect the honor and character of the State and the justice of this House, and to bring my judges to a proper consideration, I would invoke the powers which are supposed to lead men to a proper sense of their duty. But I deem it

superfluous, as I have an abiding faith in the general sense of justice and dignity of this body, who ought, by their conduct, to exemplify the character of the State. I will, therefore, barely recall to your memories the approved principles of a free government, as handed down to us from more than 2,500 years.

When the wise men of Greece had assembled to deliberate upon the proper principles of a free government, after six had spoken, the Athenian Solon rose and said: "That alone is a free government, where the oppression of an individual, or an injury to the lowliest citizen, is felt as a shock to the Constitution of the State; and they alone," the sage continued, "are worthy of freedom, who are as ready to rescue the oppressed, and to recompense the injured, as the immediate sufferer himself."

Now, sir, claiming my discharge, and asking for some requital for being most needlessly dragged hither, will your justice and zeal, in defending all constitutional rights, be withheld only when I claim justice and a shield against the many consequent evils of this seeming legislative prosecution, to me, to my character, usefulness and official weight, which are among my dearest rights.

Mr. Speaker, I thank you not a little for your feeling regard for my position, manifested in your deportment; and I thank the House for its patient bearing, which is always a consolation.

I have now only to ask, that the favor offered to me, of further time, be extended to my counsel, if they desire it.

During the entire delivery of the foregoing speech, the Speaker remained standing, to mark his respect for the venerable dignitary who was addressing the House.

On Judge Richardson's concluding his defence, Mr. Torre, of Charleston, prefaced by a speech of very delicate and appropriate sentiment, offered the following Resolution:

Resolved, That this House, having heard the Hon. Judge Richardson in answer to the Resolution proposing to declare his office vacant, and being of opinion that the grounds set forth therein are not sustained, ordered that all further proceedings thereon be discharged.

Mr. Bellinger, on behalf of his assistant counsel and himself, made a few eloquent remarks as to the gratification felt that no further defence was necessary, and was perfectly willing to repose the question where it was.

After a short conversational debate, in which Messrs. Davie, Henry, Memminger, Blakeney, Harllee and Hunt participated, Mr. Torre's resolution prevailed by a a vote of 74 to 32. The Clerk was instructed forthwith to communicate the result to Judge Richardson, who had previously retired.

The House then adjourned.

DANIEL ELLIOTT HUGER.

Judge Huger was the only son of Daniel Huger, who was a member of the first Congress; his mother was Sabina Elliott. He was born on 28th June, 1779. He received his education as a pupil of Bishop Smith, and having run his curriculum at Princeton College, graduated during the Presidency of Dr. Samuel Stanhope Smith. Chancellor DeSaussure prepared him for the Bar, and he was admitted at Columbia, in 1811. Forming a co-partnership in Charleston with Mr. Benjamin Yancey, and associating James L. Petigru with him at the Beaufort Bar, he steadily pursued his profession until December, 1819, when he was elected Judge in the place of Judge Cheves, who was selected as President of the United States Bank.

Judge Huger is peculiarly entitled to receive from me a full account of his eminent usefulness; for from 1816 to his death, we were friends in all the various vicissitudes of active lives. But the carelessness of friends in preserving precious memorials of one another, renders it difficult after the lapse of a few years to gather up the materials whereby we can sketch even a poor likeness. I first recollect Judge Huger in 1811, when I was a student of the College, and he a member of the House of Representatives. He was then unquestionably the first man of that body, although there were around him Joseph Alston, Benjamin C. Yancey, Joseph Gist, Thomas Hunt, and others, perhaps equally as well entitled to notice, but unobserved by a mere collegian. When Mr. Huger spoke, all was silent, and his counsels generally prevailed. At the extra session, in August, 1812, a measure of alleviation for the benefit of debtors was introduced by Mr. Joseph Black, of Abbeville, and pressed with his usual zeal. Mr. Huger rose to speak at the close of the debate in the evening of a summer's day. The House was in that moving, talking condition, which augurs little attention. In a few moments all were wrapt in silent attention, and gathered around the

speaker. When he concluded, in opposition to the measure, it was rejected by an overwhelming vote.

It will be remembered by many that the war of 1812 was opposed by the Federal party. Judge Huger was a member of that party. He, however, refused to go with them in their opposition. The contest, as he argued, was no longer as to domestic policy—it was between the country and a foreign nation; and his duty, he said, was to decide for his country. What she directed should have his obedience and aid. This noble line of conduct which he marked out, he pursued; and the consequence was, while he was deserted by the violent Federalists, he was hailed as a true patriot by the great body of the people. In 1814 the State determined to raise a brigade of State troops to aid in the prosecution of the war. Mr. Huger was elected Brigadier-General, and hence acquired the title of General Huger. Owing to the close of the war in the early part of 1815, the brigade was never raised.

From that time to December, 1819, General Huger was a member of the House of Representatives. On questions of Parliamentary law, his opinion was regarded as decisive authority. On all questions of consequence he spoke, and was always heard with marked deference. For fifteen years he represented St. Andrew's Parish in the House of Representatives. He was asked on some occasion, "What will your constituents think of a measure which had just been passed?" "Think," said he, "they will think nothing about it—they expect me to think for them *here*." He denied forcibly and justly the doctrine of instruction by constituents. The Constitution, he said, was his instruction; it told him, in the language of the oath of office, to "discharge the duties" of a Representative "to the best of his ability."

On 11th December, 1819, he was elected a Judge, and entered upon his duties with as perfect confidence in his abilities, honor and fidelity as ever was placed in any one by the people. He in this, as in every other office, did not disappoint them. Everywhere he did his duty, and did it well. The case of Thomas *vs.* Daniel, (2 McC. 354,) is selected as a specimen of Judge Huger's style, legal research and judg-

ment. In 1828, the Judge became impressed with the necessity of retrenchment. He thought the salary of a Circuit Judge was too much. He therefore advised the Grand Juries to recommend a reduction. This was accordingly presented on his circuit, in the fall of 1828. The Legislature acted on it, and reduced the salary of a Circuit Judge to $2,500. He instantly resigned, *and brought himself under the reduced salary.* Together he and I were elected, in December, 1828; he in his own place, and I in the place of Judge Waties.

In 1830, the momentous difficulties of a convention, leading to nullification, began to unfold themselves. Right or wrong, many citizens of the State devoted to its interests looked forward with great apprehension to the "*coming events.*" Among this number was Judge Huger. He thought it was his duty to represent St. Phillip's and St. Michael's in the House of Representatives. He resigned his place as a Judge, and was returned a member. The storm came on, and waxed stronger and stronger. Judge Huger met it boldly and manly; but he was overborne. He found that standing, *as he then did*, he could not control the House as he once did. The convention of '32 succeeded. The Judge was a member from Horry. The silence which he advised, and which the small number of Union men in that body observed, was, I think, a fatal mistake. If in 1832 and 1833 the Union delegates had spoken out fully and freely, much of the subsequent measures of violence would have been avoided.

Judge Huger had for many years desired a seat in the United States Senate. This was long deferred. At last, in December, 1842, he was elected to the Senate, and took his place. He soon found that it neither suited his habits nor his taste. He resigned in '45, to make room for Mr. Calhoun to return to the Senate, and sought the occupations of his plantations and the society of his family and friends.

The vexed question of secession brought him from his retirement; and with his venerable friend, Judge Cheves, he appeared on the floor of the Convention of '52, to advise, as the Nestors of a past age, with their younger compeers. Again South Carolina passed the fiery ordeal *unscathed.*

Never do I pass his hospitable mansion in Meeting street Charleston, without in imagination grasping, in more than common friendship, the hand of my friend. He stands before me now. Every one looking at him would say he was born to command. He was a fearless, but at the same time a prudent man. Those who did not know him intimately, thought him rash. This was, however, a great mistake. In December, 1830, an impulsive member of the House of Representatives used words, which he thought and felt, reflected most improperly upon him. His answer to the argument was more than usually cool, clear and temperate. "Personal imputations," he said, "were not to be answered *there*." He challenged his opponent to meet him before sunrise of the next day. Friends interfered and settled the affair, and his opponent in his place, next day, did himself the honor to pronounce a panegyric on the Judge. Meeting me after this had occurred, and knowing that my principles had been always opposed to duelling, he said: "No doubt you thought I acted rashly; but," said he, "my son and daughter were in the gallery, and heard the words, and I knew if I did not act immediately, my son would take up the quarrel, and then the consequences might have been fatal. Hence I chose to meet the issue myself."

If the brigade of State troops had been raised, and had taken the field, Judge Huger would have been known as the hero of many a battle. But as God in his mercy ordered, war passed away, and the Judge, instead of being crowned as a victorious general, with the blood-stained laurel, was destined to wear the never-fading chaplet of the legislator and jurist. He lived long and he lived usefully, and has left to his numerous posterity an inheritance of fame, which ought to be and will be cherished by them as long as memory lingers over the tomb of the spotless patriot and the just Judge.

The Judge married in 1800, Isabella Izard Middleton, a daughter of the "signer of the Declaration." He raised ten children, five sons and five daughters, two of whom preceded him to the tomb. After several weeks of sickness, he died at

Sullivan's Island on the 21st August, 1854, and is interred at Magnolia Cemetery.

Daniel E. Huger;—at the call of that name, how fresh is memory with remembrances of his many high and noble qualities. As we are about to close this sketch, his erect and manly form is distinctly before us,—there he stands, full six feet high—with those strongly marked features, so indicative of indomitable character—the ponderous brows, from beneath which shone those deep grey eyes, the light from which resembles a flash of the lightning from a heavy and darkening cloud, and like it, scattering light upon the darkness around. He was one of the bravest men we ever knew,—an old Roman, and such a one as Rome may well have been proud of, in her palmiest day. *Bonum virum facile dixeris—magnum libenter.*

JOSIAH JAMES EVANS.

Judge Evans was born in the district of Marlborough, on the 27th November, 1786. He was descended from Welsh parents, who constituted part of that colony who settled the Welsh Neck, on Pee Dee. I have often heard him speak of his step-mother, and of his causeless aversion to her when he was a boy. Hence, I suppose, his mother died when he was young. From a letter of General Campbell, the Consul at Liverpool, to his son-in-law, Judge Evans' eldest son, I see he received a part of his academic education at Fayetteville, North Carolina. He was among the earliest pupils of the South Carolina College. He graduated in the third class (in 1808). The distinguished men, Col. James Gregg, Gov. John Murphy, the Rev. William T. Brantly, Gov. Stephen D. Miller, Chancellor William Harper, Judge Nathaniel A. Ward, the Rev. Charles Strong, the Rev. Joseph Lowry, the Rev. James Lowry, George Davis, and Charles Stevens, Esq., were his classmates. They were indeed the lights of the college, in her early days. Of that class of thirty Gen. McQueen states that only three survive. On looking over the catalogue I suppose they are Lieut.-Gov. William J. Dubose, Thomas Gaillard, Esq., and William H. McKenzie. He studied law under his brother-in-law, Mr. Hanson, who had been a Professor in the College during his Collegiate course. He was admitted to the Bar, as a lawyer, 28th November, 1811, and as Solicitor in Equity 19th December, 1812. He was the Commissioner in Equity for Cheraw district in 1812, how he obtained the office, whether by election, or by appointment of the Governor, I do not know. In that year, October, 1812, he was elected a member of the House of Representatives, for Marlborough, the district of his nativity, and where he then resided. He must, of course, have vacated his office before the election. Gen. Campbell, in his letter to Judge Evans' eldest son says, (after graduation in the South Carolina College, Judge Evans in 1808, and he in 1809), "We both returned to our native

district, Marlborough, and were actively the advocates of reform of the Constitution, suffrage, and representation of our native State, and although very young, were warmly solicited to become candidates for the Legislature, as representatives of a policy, and what was then esteemed an ultra Democratic principle, universal suffrage. I was under twenty-one, and with much difficulty persuaded your father to become a candidate, and he was elected (if my memory does not fail me) the first Democratic representative, who in that district had triumphed over the Federal party."

He served in the House of Representatives in 1812 and 1813. He was appointed in 1812, by Governor Allston, one of his Aids, which gave him the rank and title of Colonel.

On Christmas day, 1813, he married Miss —— DeWitt, of Society Hill, Darlington district, and removed to that district, and to the family residence of his wife's father. He immediately entered upon a large and lucrative practice, which increased year by year, until he was elected a Judge.

In October, 1816, he was returned a member of the House of Representatives, for Darlington district, and in December, 1817, he was elected solicitor of the Northern, now called the Eastern circuit.

The duties of that office he filled to the entire satisfaction of every one, and was elected again and again without opposition.

At the annual meeting, November, 1818, Josiah J. Evans was elected a Trustee of the South Carolina College, and continued in that office, by election, or ex-officio, until his promotion to the United States Senate in 1852.

In December, 1829, he was elected a Circuit Judge, and in December, 1835, on the abolition of the Court of Appeals, he became a Judge, not only in the first, but also in the last resort. On the 9th of October, 1850, he finished his excellent and unpretending digest of the Road Law. This was undertaken on my suggestion, and at the request of the late Agricultural Society, of which Governor Seabrook was President. In 1848, I had performed a similar work, at the request of the same society, in digesting the Negro Law. Judge Evans was more

fortunate than I was. His work received the applause to which it was entitled, mine was counter to some of the slave prejudices of the day, and for the time I had to encounter what I have often done, the unpopularity of doing right. In December, 1852, he was elected a Senator in Congress. On the evening of the 6th of May, 1858, he died at his lodgings in the City of Washington. He dined with Senator Hammond and returned to his room before 10, P. M., and was a corpse before 11, P. M. Thus suddenly, in his seventy-second year, closed the life of an eminent and useful servant of the people of South Carolina. Some years before his death, probably in October, 1847, he lost his wife. Her death took place just as his law circuit was commencing. As the earth closed over her loved remains, he tore himself from his weeping family and reached Columbia on the 2d day of the term, ready to begin his labors; but the Bar feeling the propriety of deferring the commencement of his labor, insisted that he should not begin for a day or two. This was accordingly done; and then the Judge, as usual, entered upon those duties, which he considered paramount to feeling.

After making this summary of his life it remains that I should speak of its results. *As a lawyer*, Judge Evans was eminently successful, both as a civil and a criminal advocate. Yet he had not, and he never made, any pretensions to eloquence. He stated and reasoned out his case plainly and forcibly. He was the leading advocate in sustaining Mason Lee's will; and if the report of that case in 4th McC. 181, is anything like an abstract of the case, it was a Herculean effort; but he always assured me that the report was not a fair statement, that Colonel Blanding, who was against the will, grouped together the strongest facts on his side and drew the report accordingly. As lawyers, our sphere of action were in widely separated portions of this State, I therefore only met him at the Courts of Appeal. There, however, I heard and appreciated his arguments. In the Legislature of 1816, I first met him, and formed an acquaintance and friendship which only terminated with his life. He was my second in the House of Representatives, when, in 1817, I moved the resolution

prohibiting any Professor in the South Carolina College from being the Rector and Pastor of any Church. It was defeated in the House of Representatives more on the ground that the Board of Trustees was the forum in which such a motion should be made, than for any other cause. There it was subsequently moved and carried by General Robert Y. Hayne, and it has been an uniform rule now for forty years. It is right to say here, that the resolution was drawn by Dr. Maxcy, the President of the College, and that fact, as well as its propriety, more warmly enlisted Judge Evans and myself in its favor than perhaps we should otherwise have been.

As a Judge, I knew him from first to last, intimately. I have said, and repeat it, he was pure as Hale, and wise as Mansfield. He possessed and exercised the qualities of a good Judge. He was patient to hear, courteous to the Bar, and firm in his decisions. He was not a talking Judge, he stated clearly his decisions and did no more. While on the circuit his opinions were frequently the subject of review by my brethren and myself in the Court of Appeals, their usual correctness gave us little more to do than to concur in them and refer to his reasons for our conclusions. The cases of Swindler *vs.* Hillard & Brooks, 2 Richardson, 286; Dawson *ads.* the State, Riley, 105; Cregier *vs.* Bunton, 2 Strobhart, 487, may be referred to as examples.

In the Court of Appeals from 1836 to '52, sixteen years, we sat side by side, and when we differed, as sometimes we did, it induced me to examine more closely the grounds on which I stood. For I had as much confidence in Judge Evans' opinion as I had in that of my venerable friend, Judge, afterwards Governor, Johnson.

As senator in Congress, I think, it is only necessary to refer to his great speech in vindication of South Carolina in reply to Mr. Sumner's wanton attack in '56, to show that he was capable and able. But a few extracts from the remarks in the Senate on the occasion of his death, by his political opponents, may be referred to as just exhibits of his character as a politician. Mr. Hale, of New Hampshire, said: "When I first met Judge

Evans on the floor of the Senate, he realized to my mind more fully than any other man whom it has ever been my fortune to meet on this floor, the ideal which I had formed in my youth of an old Roman senator. There was a calm and quiet dignity in his demeanor, and an exact justice in all that he did, which fully realized the expectations which we naturally form of the character of a senator."

Of his subsequent knowledge of him, Mr. Hale said: "It was my fortune, serving upon a committee with him during the last Congress, to know him well. He was eminently a just and kind man."

Mr. Wilson, of Massachusetts, said: "During the present session I have served upon the committee on Revolutionary Claims, of which our departed associate was chairman. I have spent with him in that committee room many hours devoted to business and to the exchange of ideas and opinions upon a variety of topics of a public and private nature. While we both entertained opinions with the tenacity of severe conviction, I ever found him kind, charitable, liberal and tolerant to others.

"In that committee room, I learned to appreciate his character even more fully than I had when in the Senate chamber. *I learned to respect, to admire, and to love him.*"

These testimonials from Massachusetts and New Hampshire, from the lips of men politically opposed to him, supersede the panygeric of friends; all of them would say that much and more, *but more need not be said.*

As a friend and companion, none need to speak other than myself. Forty-one years had come and gone after we first met before his life closed. In that time, we had been most intimately associated, and my testimony is that he was a most faithful and devoted friend, and a most pleasant companion. In 1828, he and I were opponents for the office of a Judge, I was elected by a few votes; meeting immediately after in the lobby of the State House, we grasped each other by the hand, and he said, "*this must not diminish our friendship; and it never did!*" We were friends in life, and as a friend I love to linger over his remembrances. The Bar, the Court, and the

citizens of Columbia, paid tribute to his memory to which I refer, and hope they may accompany this memoir. Judge Evans was a large slave-holder; that he was a kind and good master is well known to his friends. The tribute of tears when they followed his body to his garden, and saw him laid alongside of their loved mistress, and at the head of his body-servant, Randolph, was all as slaves which they could pay. It testified that they loved their master, Judge Evans. In the sacred circle of home, among his children, he was known by affection. He was a good and just father. He died leaving an immense estate, the results of industry and care, to be divided among his four sons and an only daughter.

His early friend, General Campbell, speaking of him in the letter to which I have already twice referred, says: "Your father I may be said to have always known, and I have known him to honor him through life and to regret his loss. I would, however, be perfectly happy during my own life (the little of which is now left,) if I could look upon the past with that happiness he must have felt, and a confidence that I could, as he has done, leave my children independent."

Such as this memoir has feebly portrayed, was the character of Judge Evans: it only remains to add an attempt at personal description. He was of rather low stature, not more than five feet, eight; he was rather corpulent. His face was a fine one; his forehead was full, large and round; his face florid, his eyes blue; and all his features betokening kindness and firmness. He had not a gray hair in his head, as far as I could see, when we last parted in September, 1857.

It is done; the grave covers all that was mortal of Josiah James Evans; his place shall know him no more! It will not be permitted us to look upon any better man.

WILLIAM D. MARTIN.

Judge Martin was born at Martintown, Edgefield District, 20th October, 1789. He, after a good academical education, studied law with Edmund Bacon, Esq., and by his generous aid to finish his course in that respect, attended Governor W. G. Reeves' lectures at Litchfield, Connecticut. His diligence *there* was shown by his notes of the lectures in three large folio volumes. That they contained a rare fund of legal information, I know from the fact that they were borrowed by Anderson Crenshaw, Esq., of Newberry, afterwards Judge Crenshaw, of Alabama, and were by him highly commended.

Mr. Martin, at Edgefield Court House, on the 28th of May, 1811, married Henrietta Williamson, the daughter of Dr. Peter Williamson, "who was a distinguished physician and Revolutionary soldier." He was admitted to the Bar 27th November following. He was the partner of Edmund Bacon, Esq., of Edgefield, and had the principal management of a large and lucrative practice.

In February, 1813, his son, Gen'l. Martin, says his father removed to Coosawhatchie. If this be correct, he must have been living there in the Spring of 1815, when I first met him at Edgefield Court House, as the partner of Mr. Bacon.

He was elected a member of the House of Representatives, from St. Luke's Parish, in 1816. After the death of Benjamin C. Yancey, Chairman of the Judiciary Committee of the House of Representatives, Mr. Martin, at the November session of the General Assembly in 1818, was elected by the Committee their Chairman. This was a high, but a deserved compliment to so young a member. But he was fully equal to the duty, and gained instead of losing reputation, by the manner in which he discharged the duties.

He was elected Clerk of the Senate on the 23d of November, 1818, and continued in the active and correct discharge of the varied duties of his office until 1826, when he was elected to the House of Representatives in Congress. On the

13th of July, 1824, he had the sad misfortune to loose the wife of his youth. She left four young children surviving her. In the Fall succeeding her death, he removed to Barnwell. While a member of Congress (I presume in January, 1830,) he was married a second time. His wife was Sally Maria Dorsey, the daughter of Judge Clement Dorsey, of the Supreme Bench of Maryland.

In December, 1830, he was elected a Judge of the Circuit Court of Law of this State; he soon afterwards removed to Columbia, where he resided until his death, on the 16th of November, 1833.

As a lawyer, I had but two occasions of judging of Mr. Martin's powers in that respect. In the Spring of 1815, I had a short experience at the Bar, but it seemed to me that at that closely contested term, when Solicitors Starke, Goodwin, Bacon, Dozier, Simpkins, Glascocke, and Jeter, were constantly before the Court on the immense dockets of that period, Mr. Martin was fully equal in tact, knowledge, and argument, to any of them. I again saw Mr. Martin, as a lawyer, in the Spring of 1829, when, as a Judge, I presided at Barnwell, Walterborough, and Coosawhatchie; and *then*, confessedly, he was the leader of those respective Bars. When he first went to Coosawhatchie, he had the good fortune to meet with and become the fast friend of James Louis Petigru, Esq., whose name in South Carolina is synonimous with legal learning, acumen and skill, and also with industry, virtue and benevolence. They were both young, and long practised in the same Courts, occupying at Coosawhatchie opposite sides of every litigated case, without the slightest interruption to their friendship. They did business *with a celerity unknown to modern practitioners.* They examined out of Court, and in vacation, every case, and reduced it to the actual point in dispute. *To that, and that alone*, they directed their testimony and arguments. The consequence was, that the immense dockets at Coosawhatchie were disposed of at every Term, and the administration of justice there, as I have learned from my senior brethren, was a pleasure instead of trouble. Mr. Petigru's talents required a larger theatre; he therefore removed to Charleston before his friend Martin was elected to Congress.

As a legislator, I had the opportunity of serving at two sessions, 1816 and 1817, with Mr. Martin in the House of Representatives of South Carolina. There was then, as I conceived, a larger array of talent in that body than I ever saw there before, or have seen since. I need only say that Judge Huger, Sam'l Farrow, Joseph Gist, Chancellor William Harper, Benjamin C. Yancey, Daniel Barnwell, Judge Evans, were some of the members who then figured as Representatives of the people of South Carolina, to justify my assertion. In this array Mr. Martin was always found to be equal to the best. In Congress he was associated with Hayne, McDuffie, Hamilton, and Carter, and among them he occupied no inferior position.

As a Judge, I knew Judge Martin intimately. It was my fortune to be a Judge of the Court of Appeals during the short time he was spared to the people of the State as a Judge. During the long sitting of the Court of Appeals, in January, 1832, in Columbia, he sat in the place of Judge Harper, who had been persuaded to leave the Bench for a period to attend at Washington, with Professor Dew, to endeavor to bring Congress to consider the Tariff *in the proper point of view*. Then and there I had the opportunity to admire his admirable temper, his quick and ready perception of the points of a cause, and the uniform correctness of his judgment. Few of his opinions are on record. The case of *ex parte* Dukes and Marks, reported in a note to the case of the City Council *vs*, Benjamin, 2d Strob. 511, is a fine example of his reasoning powers and correct judgment.

For three years as a Circuit Judge, he held the scales of justice with a steady hand. In that time many of his decisions were the subjects of discussion and review in the Court of Appeals, and generally received the approbation of that Court. In that time, he had passed all over the State, and all the people had witnessed his prompt despatch of business, his kind and courteous demeanor in Courts, had admired his beautiful elocution, and his almost unerring judgment. Everybody who knew loved *Betty Martin*. Returning from Court at Horry, Fall of 1833, he lay down to sleep in Jones'

Hotel, Charleston, and the next morning was found a corpse. Thus in an instant of time, in the sleep of the night, his spirit escaped from its earthen tabernacle to be clothed *with immortality.* To his devoted wife and children it was indeed an unsurpassed affliction, when, instead of meeting his joyous and, to her, beaming face, they were crushed with the words, "*Judge Martin is dead!*" All over the State the intelligence fled with rapidity, and *carried everywhere sadness and mourning.* I was holding the Circuit Court for Newberry, in the place of one of my brethren, when it became my duty to say to the Bar and to the community, that my brother and friend, their loved and revered Judge, was no more. His gifted successor, Judge Butler, moved the resolutions, paying a just tribute to his memory. His widow, his four children by his first wife, and two by the last, survived him, (only one of whom now remains.) His remains lay in St. Michael's Churchyard.

BAYLIES JOHN EARLE.

Judge Earle was born 24th January, 1795. He was a graduate of the South Carolina College. He received, in his 17th year, the first honor of the talented class of 1811. His rival, Wm. Arthur, who received the second honor, was one of the finest declaimers to whom I ever listened. John G. Brown, Robert A. Taylor, Rich'd J. Manning, John Buchanan, John Carter, John R. McMillan, Dr. Thomas Smith, of Society Hill, and the Rev. Sam'l B. Lewers, members of that class, were no common men. John G. Brown was afterwards Secretary of State, one of the trustees of the College, a member of the House of Representatives, and President of the Branch Bank. Robert A. Taylor was a good lawyer, a member of the House of Representatives. Richard J. Manning was a member of the House of Representatives, Governor of the State, and died universally beloved and lamented, a member of Congress. John Buchanan is now an eminent lawyer; he has been a major general and senator, and is now a trustee of the College. John Carter was a lawyer and member of Congress. John R. McMillan was one of the most accomplished orators of his class. He died young. Dr. Smith is a trustee of the College, and is well known as one of the ablest practitioners of the healing art. The Rev. Samuel B. Lewers was a most interesting and successful preacher of righteousness, and teacher of temperance.

Among such men, it was no little honor to be first in College, and especially at so early an age. He studied law at Greenville, and in the meantime performed a tour of six months' duty as a soldier, in the cavalry under the command of Captain Kelly, in the Creek Nation. He was admitted to the Bar in April, 1816; and commenced a course of successful practice in the mountain districts. He was returned a member of the House of Representatives in 1820, and was elected Solicitor of the Western Circuit in the place of Warren R. Davis, on the expiration of his office in December, 1822.

Meeting Judge Earle at Laurens, one of the Courts of his Circuit, at every term, and riding the Circuit with him after I became Judge, I had occasion to test his powers. He was remarkable for the accuracy with which he prepared his cases, and managed them in Court. His arguments were plain, perspicuous and most cogent. Few, very few, escaped conviction while he held the Solicitorship; yet he never prosecuted with that apparent overwhelming zeal which sought a conviction at every hazard. He sought truth, and enforced its consequences in a calm and temperate manner. To his admirable preparation of the indictment, arrangement of the proofs, and his unanswerable argument, was to be ascribed the convictions of Sims for the murder of his father. 2d Bail., 32.

In December, 1830, he was elected a Circuit Judge; as I have already said, and discharged his duties to the satisfaction of every one. The various cases which he decided, will be found in 2d Bail.—1st and 2d Hill. His Reports evince his clear perception of the facts and the law, and present the cases in a way, not only worthy of commendation, but of imitation. The General Assembly, at their session of 1835, abolished the Appeal Court and made the Judges of the Law Court both Circuit and Appeal Judges in Law—and also with the Judges of the Court of Equity, Judges of the Court of Errors. Here again Judge Earle was tried and not found wanting. Here I select his circuit opinion in the case of the State *vs.* Wells, 2d Hill, 687—and his opinion in the Court of Errors, in the State *vs.* McBride, Rice, 400—(in both of which cases I was opposed to his conclusion)—and his opinion in the Court of Appeals in Law, in the case of Moore and Nesbitt *vs.* Lanham, 3d Hill, 299—as striking evidences of his ability.

In 1841, he began to give evidences of his decline; in the next year, he suffered a paralysis; in December, 1843, he resigned, and in the next year, 24th May, 1844, he ceased to be numbered among the sons of earth. No finer specimen of a man, personally, ever met my eye. His fine complection, well formed face and intelligent eyes, with a vigorous

form, all set their seal upon him *as a man*. He had a noble intellect. His graduating speech on the character of Cicero, and his valedictory addresses, would have done honor to any man, much more so to a mere boy not yet seventeen. His mind was clear as crystal, and had nothing like confusion. He was timid in stating his conclusions, but when arrived at they were defended with an ability which I have never seen surpassed on the Bench. Most of his opinions in 3d Hill, Dudley, Rice, McMullen, Cheves and Spear, were written at the close of the respective terms, and at one prolonged sitting. Strange to say, his opinions will be found to have been written without an erasure or interlineation from beginning to end. He was not, however, calculated to figure in popular assemblies. He was no declaimer, and spoke badly, unless he was fully prepared. Take him, however, all in all, few men were his superiors; and as a Judge, he was acknowledged, and ought to be remembered, as able, pure and just.

ANDREW PICKENS BUTLER.

Judge Butler was born on the 19th of November, 1776, and died the 25th day of May, 1857. He was the fifth son of the late Gen. Wm. and Mrs. Behethland Foote Butler. He was the survivor of their eight children. His father and mother were distinguished in their day and time. Gen. Butler was a soldier—a captain—in the war of the Revolution. He often led, after the murder of his father and brother, in the pursuit of the bloody scout, and once, if not oftener, he pursued *alone*, William Cunningham, his outstretched sword literally thirsting to avenge their blood. Gen. Butler was a member of the Legislature in South Carolina, Major General of the First Division of South Carolina Militia, and a member of Congress for many years. He commanded that division of militia called into the United States service at Charleston during the war of 1812. The various duties of these offices he ably and faithfully fulfilled. His son, Judge Butler, told me that his father spoke rarely of the Revolutionary difficulties in which he had been involved, and often said to his sons he did not wish them to know the deep causes of hatred which were then engendered. He died soon after his noble son, Major George Butler. Mrs. Butler was an extraordinary woman. She lived to the great age of eighty-six years. I saw her shortly before her death. She had her faculties all about her as well as she ever had them. In 1850, when the war of words about secession was filling many a stout heart with alarm, she said: "Gentlemen, I have seen two wars—I never want to see another!" During her husband's absence from home on public duty she managed their farm, and did the double duties of master and mistress. Her children she reared in devoted obedience and love. Never have I seen a mother more worthy of her illustrious children than she was. How much they owed to her cannot now be known. She entertained the belief that she was to outlive all her children. Nearly, very nearly, did that happen. One

by one she saw them go down to the grave, until one only child, Judge Butler, remained. When Col. Butler fell on the bloody field of Churubusco, and his death was soon after followed by her matchless daughter, Mrs. Emily Thompson, it seemed to me as if the good old lady must, heart-broken, yield to the pressure and pass away. But with Roman fortitude she bore up, and life only yielded to the lapse of time. Of her I would say, in the inspired language of Solomon, "Many daughters have done virtuously, but thou excellest them all."

Andrew Pickens Butler, after having the benefit of an education in the primary schools of his neighborhood, received the great advantage of Dr. Waddell's instruction in the Academy; and in 1817 (December) graduated at the South Carolina College. He had the good fortune to receive the impress of Dr. Maxcy, in this last preparation for the practice of an useful life. His graduating speech I well recollect. I then saw him for the first time. His peculiar appearance, arising from his agitated eyes, attracted my attention. I little expected to hear, as I did, a speech characterized by sound, manly sense, clothed in beautifully appropriate language.

He studied law—was admitted to the Bar in December, 1818, and settled in Columbia. He was, I think, engaged in the unsuccessful defence of Jesse Howel, in the case brought against him by Col. David Myers for slander. The Court for Lexington sat then at Granby. His brother, Major George Butler, and John Caldwell, were often employed on opposite sides of cases there tried. They had a case of slander. Pickens (I thus call him by the familiar second name by which he was known,) took part with his brother for the plaintiff, and spoke in something like this strain, that "just beyond the Congaree, as her blue waters would testify, a verdict had just been rendered for $3,000 in a similar case, and he hoped that the Jury would follow the example." Mr. Caldwell, in answer, said: "The blue waves of the Congaree would roll back in astonishment at such a verdict!"

Soon after the death of his brother, he settled permanently

at Edgefield, and there had, with Gen. Thompson, and afterwards with Nathan L. Griffin, Esq., a lucrative practice. He followed up at Lexington the beginning of his practice at Granby, to which I have alluded. There many an amusing incident occurred between him and John Caldwell, Esq. I can only venture to state one. Mr. Caldwell's partner was William Jones, (the poet of the South Carolina College, in the class of 1808.) He was, in the language of a good old man, who thus characterized his son, "not much of a lawyer." He had issued a writ in trover, against a defendant of the name of Ezekiel Ables, for the conversion of a rifle gun. He and Mr. Caldwell concluded, on grave consultation, that various counts must be put in the declaration. They counted in trover, detinue, trespass and covenant. When this declaration was presented to Butler, he said: "Mr. Caldwell, I must demur!" "Demur!" retorted Caldwell; "who ever heard of a demurrer at Lexington?" "Well," said Butler, "I will call my client, and see what he says." He accordingly called him. When he came in he gravely read to him the declaration, and said: "Now Zeke, you must plead to it." "Col. Butler," said Zeke, (who lisped,) "I doth not know how." "Tell me," said Butler, "and I will write for you." He had already written, "And the said Ezekiel Ables, by A. P. Butler, his attorney, comes and defends the wrong and injury when, &c., and says," Zeke said, put down "he does not owe the thaid plaintiff one thent, but, on the contrary, he oweth him conthiderable!" Down went the words, and the plea concluded, "and of this he puts himself on the country." The similiter was joined, and the case was placed on the issue docket. After many terms delay it was settled by arbitration. At Orangeburg, where Butler had a large practice, he and his class mate, Judge Glover, had many passages before Judge Gantt, whose humor shed a gleam of light in many a Court House. The Judge had, however, a great horror of a land case, especially when illustrated by a large plat. He had been worried for a great while by one, in which Glover and Butler had often had occasion to refer to a plat, which he called the map of the United States. At last, Butler,

observing that one of the Jury had left the box, said: "May it please your Honor, one of the Jury is gone." Said the Judge: "Is that all? I wish I may die, if I don't wish I was gone too!"

At Barnwell and Newberry, Butler had a large practice. He was a successful practitioner. He understood the strong points of his cases, and he wasted no time in attention to any others. He knew well the secret of examination in chief, *to quit the moment you extract the fact you wish*, and on a cross-examination not to push a credible witness too far. One of doubtful credit, he well understood might be demolished on a cross-examination. He spoke plainly and forcibly at the Bar. His illustrations were drawn from home scenes which every Juror well understood. For example, he said, in a capital case, which he was managing for the State, that the counsel for the defence, who was remarkable for captiousness, put him in mind of "a blind game-cock in a ring, striking all around him, without knowing at what he struck." Of another, who was remarkable for now and then making a successful hit and often recurring to it, he said, he put him in mind of a cur dog, who would start a rabbit out of a brush heap, and run it off, he was sure to come back and bark all around it, confident that there must be another in it."

I have seen it stated that Judge Butler went into the Legislature about the beginning of the party difficulties in South Carolina. This is a mistake. He went there as early as 1824, when the State followed the doctrines of Mr. Calhoun, Mr. McDuffie and others, in reference to internal improvement. In 1825, Judge Smith overturned the doctrines of Judge Prioleau's report of 1824, and predicted of it the State rights doctrines of that day; in the discussion of which Judge Butler and myself were arrayed against the resolutions of Judge Smith, and on that occasion Judge Butler made a strong speech against the political doctrines which were then beginning to spread from the head of the College, and in which he declared himself to be "*the last of the Mohicans.*"

In December, 1824, Butler, W. C. Preston, John G. Brown, Robert A. Taylor, W. K. Clowney, Thos. Taylor, Paul Fitz-

simmons, F. H. Elmore, John P. Richardson, and another, became the aids of Governor Manning, and were a part of his brilliant cortege, which attended General LaFayette on his visit to this State in March, 1825. When the General was received, on the right of Camden street, Colonel Butler galloped to the right of the line, and extended an order to Lieut. Colonel Gregg, calling him Major. "Colonel Gregg," was the proper military correction, which Butler instantly adopted, and received the reply, "It shall be done." At that instant, the caution was heard, "take care;" and on looking around, Colonel Butler's horse was standing perfectly erect. He quietly slipped off, and when the animal resumed his proper position, he remounted. From 1824 to the close of 1833, Judge Butler was in the House of Representatives, or Senate, from Edgefield. In 1827–'8, he was one of the committee charged to inquire whether Judge James should be removed from the Bench. The committee, after a tedious examination, reported articles of impeachment, which were voted by more than two-thirds of the House. He was one of the committee charged to carry up to the Senate, and there prosecute the articles. This was successfully done—the Judge was removed. Many tears fell as he read his submission to the sentence. Mr. Alfred Huger, as soon as the House returned to their chamber, moved the presentation to the dismissed Judge (who had once stood side by side with Marion) his salary for 1828; *it was carried unanimously!* He was one of that majority in the House of Representatives, who, in 1827, voted for the appropriation of $10,000 for Mrs. Randolph, the daughter of Jefferson. From 1828, began to gather the cloud of political differences, which long darkened the prospects of South Carolina. Judge Butler went with the party who favored Convention, and who followed it with Nullification. It is not *for me* to speak of the events which followed. They are past and forgotten *in everything which was to blame. If any one was in error, South Carolina has long ago forgiven it.*

In November, 1833, came the mournful intelligence of the obscuration of one of South Carolina's lights, the death of Judge Martin. Judge Butler, destined to be his successor,

moved at Newberry, in term time, before me, the resolutions of mourning and lamentation, which gave utterance to the feelings of the State.

He was elected by the Legislature a Circuit Judge, in December, 1833, and on the adjournment of the Legislature qualified and entered on his duties. He held his first Court in January, 1834, in the city of Charleston.

In December, 1835, the separate Court of Appeals was abolished, and Judge Butler became a Judge in the first and last resort. The office of a Judge did not, in the beginning, suit Butler very well. He was better qualified for the duties of an advocate or of a politician; but he soon accommodated himself to the severe duties of a Judge. Once and awhile his love of humor broke over all restraint, and a Court room burst into a roar of laughter, as it witnessed some corruscation of his wit.

His duties on the Circuit and in the Appeal Court were well performed. Many of his opinions will bear comparison with any which were delivered during the eleven years he was in the Court of Appeals. I cite the State *vs.* Ancker, (1 Richardson, 245,) and *ex parte* Leonard, (3 Richardson, 111,) as specimens of his judicial arguments.

In December, 1846, he was elected to the Senate of the United States. That he left the Bench with regret, and that he often looked back to it with a wish to return, are facts which I know both from verbal and written communications.

On his way to Washington he narrowly escaped shipwreck. In January, 1847, he took his passage from Charleston to Wilmington. The steamer was overtaken by an awful storm, which left her an unmanageable wreck. She had been out for forty-eight hours, when she ought to have made her trip in less than twenty-four. She was rolling in the trough of the sea after the storm had ceased. The captain gave her up *as lost*. This fact was communicated to Judge Butler. He desired that passengers and all on board should be called forward. He stated the sad fate which was before them, and desired that each and every one should be made known to one another, so that if any ever reached the land,

he, she or they might state the fate of the others. An elderly negro woman (the stewardess) said: "Old Master this is no time for introductions—you had better pray." He said "I cannot, but old lady if you can pray, do so." She instantly knelt down and poured out a fervent prayer. Almost as soon as it ceased, the lights of the steamer sent out from Wilmington in search of them, were seen bearing down to the rescue. The boat and her passengers and crew were saved. His sister, Mrs. Thompson, (who was a member of the Baptist Church,) remarked to the Judge, after he had narrated the circumstances to her—"Brother Pickens it was that old woman's prayer which saved you!" It was a fine thought, well placed before his mind, and I have no doubt he gave it often deep and serious reflection; for I have occasion to know he was intimately acquainted with Bible truths, and even with words which are often quoted wrong.

He began his duties as Senator in Congress in 1847, and continued in their discharge until the close of the extra session in March, 1857. He then returned to his home to *linger and die.*

It is impossible, in such a state as this, to speak of his great Congressional labors as they deserve. It will be recollected that he paid in the Senate Chamber the last sad remembrances to his colleagues, Senators Calhoun and Elmore, *That* to Calhoun was, I thought, remarkable for its propriety and eloquence—*it was a great occasion well met.*

He was for many years Chairman of the Judiciary Committee. Its responsible duties he ably discharged. His speeches in Congress have been read by all; they always sustained the rights of the South. In 1850, when secession burst upon South Carolina, Judge Butler did not favor it—he was for a Southern Congress; and in 1851 and 1852 he met the issue, and South Carolina sustained him.

Judge Butler was twice married. His first wife, Susan Anne Simkins, the second daughter of Col. Eldred Simkins, in a few months after marriage he followed to the tomb. His second wife, Miss Harriet Hayne, the daughter of Wm. Ed. Hayne, Esq., of Charleston, he, soon after the birth of their

only child, (Mrs. Haigood, of Barnwell,) saw languish and die. He ever after lived a widower. His mother and sister took charge of his lovely child. At his house was seen the venerable face of his mother as its mistress—her unexampled fortitude and cheerfulness sustained him in the dark hours of sorrow for the loss of wife, brothers and sister.

But I must pause. You all, my readers, knew Judge Butler. You have often joined in his merry laugh—you all remember his florid face—his head of snow—his dancing eyes and his manly form. But you do not all know that which distinguished him more than most men, *his kind heart.* No man was ever more devoted than he was to his mother, his child, his sister and brothers—no one ever was a truer friend. Distress never sought him in vain. He despised a mean action, and the rod of cruelty or oppressisn, he was ever ready to turn aside. He pitied more than he despised his enemies. He was a just, honest, good man, in all the relations of private life. In public life, he aimed to do right; and he sustained his purposes by well directed actions and words. He was not what may be called an eloquent man; but he thought right, and he spoke as he thought—sometimes, and indeed often, he gave utterance to sublime thoughts in impassioned eloquence.

This able servant of the people is no more! He has been called away when few were prepared for it. His well spent life will be his epitaph, and entitles him to live in the memories of us all:

> Statesman, yet friend to truth! Of soul sincere;
> In action faithful, and in honor clear;
> Who broke no promise, served no private end;
> Who gained no title, and who lost no friend.
> Ennobled by himself, by all approved.
> Praised, wept and honored by *him* he loved.

ROBERT BUDD GILCHRIST.

Judge Gilchrist was the son of Adam Gilchrist, a merchant of Charleston, and afterwards President of the Branch of the Bank of the United States, in that city. He was born in Charleston, the 28th September, 1796, and as in his early youth he was rather of delicate health, he was sent to Morristown, New Jersey, that his constitution might be strengthened and his education promoted. He there prepared himself, and entered Columbia College, New York. A short time before his graduation at that College, however, he took his dismission, for the purpose of entering the South Carolina College, the Junior Class of which he entered and took his degree of A. B. in December, 1814, and his degree of A. M. in December, 1817. In 1814 he applied for, and would have received, a commission in the army, but peace was soon after declared, and his plans were necessarily changed. He next desired to study medicine, and with that view made frequent visits to the room of his friend, Dr. Holbrook; but it was not long before he became dissatisfied with it, and made up his mind to devote himself to the legal profession. He studied law in the office of K. L. Simons, Esq., and was admitted to the Bar the 20th January, 1818.

He was associated in the practice of his profession with his brother-in-law, John S. Cogdell, until, upon the retirement of the latter from the professions to the Custom House, the whole business devolved upon Mr. Gilchrist. On 23d Dec., 1826, he was elected Captain of the Washington Light Infantry, a position which he held for several years with the most complete success—serving in that capacity through all the stormy times of 1831 and 1832. In 1827 he married his cousin, Miss Mary Gilchrist, of New York, after an engagement, necessarily deferred for several years, but which his practice, now become lucrative, enabled him to fulfill. In 1830 began the exciting time of Nullification. On the death of John Gads-

den, Esq., the District Attorney for South Carolina, Judge Frost succeeded to that office, and upon his resignation, Mr. Gilchrist became his successor. The delicate question arising between the State and the Federal Government, made it difficult to find an officer willing to assume the duties and responsibilities of the position. The commission was tendered to Mr. Gilchrist, by President Jackson, and was accepted from a high sense of duty and of devoted patriotism.

A letter from the department, accompanying the commission, is couched in terms which show their high appreciation of the man so selected. "Your appointment to this office, at the present period, shows the great confidence the President has in your energy, zeal and ability. The principal agency you will have in enforcing the laws of the Union will call for the exercise of these qualities, as well as of the prudence necessary to avoid any act that is not strictly legal."

His commission bears date the 25th July, 1831. Soon after his appointment his abilities were put to the severest test, by the trial in the Federal Court of what was popularly known as "the Bond Case," in which the constitutionality of the tariff was investigated.

In this controversy, aided by his friend, that distinguished jurist, Mr. Petigru, he had to encounter the attack and zealous opposition and singular ingenuity and ability of Mr. McDuffie, who rushed into the forum attended by the sympathy and enthusiasm of the dominant State party. In this encounter Mr. Gilchrist sustained himself with the calm, unostentatious bearing of the patriot who first satisfied himself that he was right and was then careless of the consequences. For the eight succeeding years he continued the discharge of these duties with a punctuality and diligence never surpassed. He held the office until 1839, when upon the decease of the venerable Thomas Lee, Judge of the District Court for South Carolina, Mr. Gilchrist was appointed to that high office by President Van Buren.

Having attained this noble eminence, by his virtues and talents, without the aid of any party or sinister influence, Judge Gilchrist applied himself to the task of discipling his

mind and extending his studies to correspond to the sphere of his important duties. For seventeen years he was the faithful officer at his post, shunning none of its smallest requirements and meeting like a man and an impartial arbiter the most important questions, and was at last borne down to the grave by the weight and protracted labor of his judicial duties.

He died on the 1st May, 1856, leaving his widow and two children, a son and a daughter, bereft of that sweet affection which cannot revisit them here; but the memory of which will be a consolation to them in all the vicissitudes of life.

The friend who has walked with him, hand in hand, for more than forty years, cannot trust himself with a minute record of his various excellencies, but may be permitted to say, that one has been removed from us who was eminent for his patriotism, his inflexible integrity, his abiding sense of honor and duty, and a benevolence which warmed all hearts within its influence.

CHANCELLORS.

RICHARD HUTSON.

Chancellor Hutson, one of the three Judges of the first Court of Chancery, established in South Carolina, was born June, 1747, in Prince Williams, then recently erected into a Parish, but still at that time, and for many years after, called "Indian Land," from having been reserved by AA. 1707, to the Yemassee Indians. He was the eldest son of the Rev. Wm. Hutson, an Independent minister, by birth an Englishman, who had been settled in 1743, over a congregation of that persuasion at Stoney Creek. His mother's maiden name was Mary Woodward. She was a widow, having been previously married to Mr. Chardon, by whom she had one daughter. In 1756, the parents of Chancellor Hutson removed to Charleston, his father having been called to the pastorate of the "Circular Church" in that city, where he served faithfully until his death in 1760 or '61.

The Chancellor received his preparatory education in the city, and his collegiate at Princeton. He came to the Bar in South Carolina—and upon the breaking out of the revolutionary war, took an active part on the whig side, and suffered for it, both in purse and person. In August, 1780, he, with other leading citizens, was sent to St. Augustine, and imprisoned. While there, it is said, he relieved the tedium of his sojourn by adding the Spanish to the six or seven other languages of which he was master.

Previous to being sent to St. Augustine, he had been a member of the Continental Congress, and as such in 1778, signed the articles of confederation. At the close of the war, his estate, which by inheritance was considerable, was much impaired; and it is a family tradition, that being obliged to sell his property at this juncture, he completed the ruin of his pecuniary prospects, by taking payment in continental currency, from motives of a rather Quixotic patriotism—hoping, by his example, to give confidence to the failing credit of the Government.

In 1783 and '84, he was Intendant of Charleston, (the first elected under the Charter,) and in the latter year was elected Chancellor. On the promotion of Chancellor John Rutledge, in 1791, he became senior Judge of the Court of Chancery.

In the published cases tried by that Court, the individual Chancellor writing the decree is seldom named. In only three cases reported in 1 Dev., can it be known, with certainty, that the decree was by Chancellor Hutson. We have, therefore, little from which to derive any idea of his ability or attainments. From the fact that he never married, and had none but collateral relations to take an interest in his reputation, no papers of any importance remain, or at least are known; and we can only judge by the positions he occupied, that his ability and character insured for him the rank of a leading man, in an age and under circumstances, and among associates, where it required more than an ordinary share of both to attain it.

The last political act of his life, was to vote for the adoption of the Federal Constitution in the Convention of 1788, where he sat as a delegate from St. Andrews. He died in office, in 1793, still in the prime of his manhood.

JOHN MATHEWS.

On the 21st of March, 1784, with John Rutledge, and Richard Hutson, John Mathews was elected a Chancellor. In '76, he had been elected a Law Judge: and in '77 he was the Speaker of the G neral Assembly, and afterwards a member of the Continental Congress. While he was such, a project was contemplated, if not agitated, of purchasing peace with Great Britain by the sacrifice of the Carolinas and Georgia. This intrigue was strenuously and effectually opposed by Mr. Mathews and his colleagues, Bee and Everleigh.

In January, 1782, he was elected Governor in the place of John Rutledge, and with Generals Wayne and Greene, followed the retreat of the British to their shipping, by entering Charleston, *as the Restored.*

His election of Chancellor was a just tribute "to exalted worth and disinterested services."

We can only conclude this very brief notice, by referring the reader to his decree in the case of Jacob Deveaux and wife Elizabeth, *vs.* Barnwell, Executor of John Barnwell, first volume Equity Reports, pp. 497, as a specimen of his legal learning.

"The question in this case arises on the will of J. Barnwell. The words necessary to be adverted to are, 'Whatever my wife shall leave when she dies, not willed, sold, or given, and delivered before good witnesses, whether house, lots, horses, stock, plate, furniture, &c., I order to be sold and the money divided amongst all my children.' It seems that Mrs. Barnwell, the wife of the testator, did make a disposition of part of the estate, by deed, to Mrs. E. C. Deveaux (one of the testator's children) and her children. It is contended by the complainants, that they are entitled to take what was so given by the mother, and also to an equal share with the rest of the children, of the estate left by the testator to his wife, *and not disposed of by her.* The first question, then, is whether the

complainants are entitled to take both what is given to Mrs. Deveaux under the instrument of her mother, and an equal share with the other children under the will of her father. It appears that it was the intention of the testator to divide that part of his estate, which his wife might not dispose of, equally among all his children; but it does not appear that he intended to give any child a double portion, which would be the effect of this claim. It appears that the provision made by the mother for Mrs. E. Deveaux and her children, out of the testator's estate, was made from providential motives, to secure to them what E. Deveaux would be entitled to at her death, on account of the embarrassed state of Mr. Deveaux, the husband. But it is contended for the complainant, that the provision made for Mrs. Deveaux by her mother, ought not to be considered as a satisfaction of what she claims under her father's will; because what is given her is only for life, with remainder to her children; and being a less estate, ought not be deemed in satisfaction. This is extraordinary. Old Mr. Barnwell gave an absolute estate to his wife, with power to dispose of the same, as she pleased, even to the exclusion of complainant; and what she did not dispose of, was to go equally among the children. Mrs. Deveaux cannot, therefore, claim under both the deed of the mother, and the will of the father. She may take her choice; but to take both would be highly unwarrantable. The second question under this will arises thus: Two of the testator's children died after the making his will, and in his lifetime, both of them leaving children. Old Mrs. Barnwell, (wife of testator,) made no disposition as to them. The question then is, can these grand-children come in under the will of the grandfather, for their parent's share of the estate so undisposed of by the grandmother? (See the words of the will above.) The rule, that the intention of the testator, if not inconsistent with some rules of law must prevail, is not to be rigidly adhered to in all cases: formerly words of survivorship were construed into joint tenancy. In the case of Elliott and al. *vs.* the executors of B. Smith, determined in our own Courts, the words of survivorship were as strong as could be. The words were

'but in case any of my children should die before the time appointed for the payment of their portions, then the share of such child or children, so dying, shall be equally divided among my surviving children.' It was decided that the limitation over was not confined to the surviving children at the time of the contingency, but at the death of testator; and that such children as survived him, and the representatives of the deceased, were equally entitled on the contingency happening. In the case of Drayton *vs.* Drayton, the Court went further: The limitation over was on the death of John to his surviving brothers. W. H., one of the brothers, did survive the testator, but died before John; yet his representatives were let in to a distributive share of the estate of John; so that the survivorship was confined to the mere survivorship of the testator. In the case of Sealy *vs.* Executors of Ball, it was decided that as no time was appointed by the will for the legacy vesting, that marriage was a proper period for securing what might otherwise be considered as a joint tenancy. Thus where the intention of the testator is to make an equal distribution of his estate among his children, and where such intention is founded in reason and justice, and not contrary to some rule of law or the principles of equity, Courts of Equity will carry them into effect. In the case before the Court, the intent is manifestly to divide the estate not disposed of by the wife, among all the testator's children. At the time of making his will all of them were alive; but two of them died before the testator, leaving issue. The testator never republished his will, (though he lived some time after,) nor made a new one. It is a strong presumption that he meant that his grand-children should stand in the place of their parents. To exclude them, would be to defeat his expressed intent to provide equally for his children. And though a will is not consummate till the death of the testator, it is in many respects inchoate from the execution. This construction may not quadrate with strict rules; yet it is not repugnant to any rule, and it is well warranted. Suppose a testator should leave by his will all his estate, to be equally divided among his children, and one of them dies a few days before him, leaving a large family de-

pending on the bounty of the grand-father, and he dies without altering his will, ought the grand-children to be left destitute, and the large estate to go wholly from them—perhaps to one child of testator, and he without a family? In such a case, the Court would be disposed to say, with Lord Chancellor Macclesfield, 'if there is no precedent, it is time to make one.'

"It is decreed, that complainants have their option, to take under the will of the father, or under the deed of the mother; and that the children of the two daughters, who died in the testator's lifetime, take their parents' shares respectively, of the estate left by the grand-father, and that the costs be paid out of the estate."

His resignation took place in November, 1797.

HUGH RUTLEDGE.

Hugh Rutledge, a younger brother of John Rutledge, in the Spring of '76, under the Constitution of that year, was appointed a Judge of the Court of Admiralty of South Carolina. After the fall of Charleston, he, with his brother Edward, Governor Gadsden, and many others, were sent as prisoners to St. Augustine.

In '77, Hugh Rutledge was Speaker of the Legislative Council, and so continued until 17th of October, 1778. In 1782, he became Speaker of the House of Representatives, and so continued to 1785.

In 1790, the Constitution of the State was adopted. The first section of the third article declared, that "the judicial power shall be vested in such superior and inferior Courts of Law, and Equity, as the Legislature shall, from time to time, direct and establish." Under this, it may well be doubted, whether the term "Chancellor" was any longer a proper designation, and whether, in strictness, such an officer should not be called, as he was before '21, "a Judge of the Court of Equity."

On the 19th of February, 1791, and after the Act to establish a Court of Equity had been passed, and his brother John had been elevated to the office of Chief Justice, Hugh Rutledge was appointed a Judge of the Court of Equity. He experienced the neglect of his Court by the Legislature in not filling the places of Mathews and Hunt, (who had been elected in the place of Hutson, and who died in a few months,) for two years—during which time he was a single Judge of a Court, then consisting, according to law, of three members. I see it was gravely doubted, whether the Court had not ceased to exist; but a matchless argument of H. W. DeSaussure, afterwards the Chancellor, showed conclusively that it had not, and perhaps also served to remind the Legislature of their duty.

Chancellor Rutledge died in January, 1811. His talents are said to have not been so "brilliant, nor of so distinguished a

cast as those of his brothers, John and Edward—but for solidity of judgment, and strong manly sense, he was not inferior to either of them." "As a firm, intrepid patriot, he was pre-eminently distinguished by the cheerful performance of every duty to his country."

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The following account of Chancellor Rutledge, from the pen of an honored citizen of Charleston, does him full justice :

There are many reasons why the author of this sketch should feel embarrassed by its preparation; but there are many more why every virtuous man in society should desire to have justice done to those who have preceded us and surpassed us in good works.

No movement has ever been made in the formation of our national character, where the name of *Rutledge* is not found. The first Congress, which met at New York in 1765, has been, not improperly, called the "Ovum Reipublicæ." Nine colonies only represented, and South Carolina among them, with Thomas Lynch, Christopher Gadsden and *John Rutledge* fully authorized to pledge their constituents for "weal or for woe." In this year Patrick Henry earned immortality for himself by that celebrated speech in Virginia, which put the ball of Revolution in motion.

Again we find what was called the Association, assembled at Philadelphia in 1774; and in the proceedings we see the "Seal" of our State, supporting and sustaining "*the cause*," with two members of the Rutledge family acting for *us*. And in 1776, when that great "proclamation" was made to the world, who can ever read the *most* important document, now extant, without admiring the chaste and graceful, and manly signature of "Edward Rutledge," to the "Declaration of Independence?" And perhaps it may be admissible to mention here that the biographer of Mr. Jefferson, (of course hostile to the Federal party,) speaking of them as the "old train bands of the Treasury Department," and as "men who had been enriched by frauds," with other epithets, upon which I do not propose to comment, makes this honorable offering to South Carolina. Mr. Randall says: "If General Charles Cotesworth Pinckney ever, in public or in private life, acted

otherwise than as a manly, pure and high toned politician, patriot and gentleman, we have failed to discover a solitary instance of the fact," and then adds in a note, "we think this remark applies fairly to nearly all the leading 'South Carolina Federalists,' * * * * * was accused of being one of the greediest of the 'Treasury Squad,' but the Pinckneys, the *Rutledges*, the ——— &c., &c., &c., were men above personal suspicion." Neither of those families ever required this certificate, and they certainly do not now; but the words are quoted, as used by a political opponent, and as applying to the period of bitterest party strife. Our purpose, however, is to speak of the Chancellor.

Hugh Rutledge was one of those three brothers who gave themselves to their country, when the success of American arms and the achievement of American liberty depended upon such "*gifts*." He was born in Christ Church Parish, District of Charleston, about the middle of the last century. His widowed mother intended him for the legal profession, and after receiving his preparatory education, he was sent to England, as was usual, to "study in the Temple." He returned in due time and took his position at the Bar, and upon the authority of the late Thomas S. Grimké, it is said that he "rated as among the very best common-law lawyers of his day." The Revolution soon commenced, and under the head "Hugh Rutledge," we find by a cotemporaneous historian these words: "As a firm and intrepid patriot, he was eminently distinguished by the cheerful performance of every duty to his country." And again, that when the lower part of the State was as a conquered province, Mr. Rutledge having been created Judge of Admiralty, he "refused the offer of protection, and bore all the hardships of exile at St. Augustine, sharing the sufferings of such men as Arthur Middleton, Edward Rutledge, Christopher Gadsden, Daniel DeSaussure, and others. And that after his exchange he was called to fill the Speaker's chair in the House of Representatives, and did so greatly to the satisfaction of its members, &c., &c., &c."

Mr. Rutledge married the daughter of Thomas Smith, ancestor of the Rhett family, and by this marriage had a

son, "Hugh," who died in early manhood, and a daughter, "Sarah," now the wife of Alfred Huger. After the death of the mother of these children, he married "Mary," the daughter of Major Benjamin Huger, who was killed during the war of the revolution; he left by this marriage five children, Maria, afterwards wife of Dr. Thomas Waties, of Sumter; Benjamin, who served during the entire war of 1812 to 1815; Francis, now Bishop of Florida; Ann and John, who died single. Among his *male* descendants are John Waties and B. Huger Rutledge, both members of the Bar. Waties at Columbia and Rutledge at Charleston.

According to Chancellor DeSaussure's Equity Reports, "upon the erection and establishment of the Court of Chancery, after the revolution, John Rutledge, Richard Hutton and John Mathews were elected Judges of that Court, and served until 1791, at which time John Rutledge was elected Chief Justice of the Court of Common Pleas and Sessions, and to fill the vacancy thus made, Hugh Rutledge was then elected a Judge of the Court of Equity." He continued on this Bench to the day of his death. How he performed the functions of this high office, it is our purpose now to speak, so far as is consistent with the objects of the present sketch. No department of the law affords finer opportunities for the gratification of elevated judicial aspirations, than that branch of the general science which is known to legal writers as the Law of Equity. Conversant with the most difficult and complicated matters which belong to the municipal law, it requires a large and comprehensive mind to embrace the subject in its various relations, as well as great patience of investigation, and nice powers of discrimination in him who undertakes to wield the remedial processes of its delicate and refined machinery, and to adjust the claims of opposite and conflicting equities to the purposes of practical life. Moreover, there are other requisites, especially necessary to the Equity Judge, which arise out of the peculiar jurisdiction of the Courts which administer this branch of the law. A sound *judgment* is, taking all things into consideration, the best qualification of every judicial officer. In a Chancellor, it is

absolutely indispensable. The Court over which he presides, is charged with that portion of the sovereign authority which exerts itself in behalf of those who are unable, under the law, to protect themselves. The Chancellor thus becomes, as it were, the general supervisor and custodian of the interests both of person and property of those classes of individuals—orphans, idiots, lunatics, &c., &c.—whose unprotected and forlorn condition attracts the sympathies of every benevolent mind. Mere learning, however great, (although very much to be desired,) is not all sufficient to carry him successfully through the varied and responsible duties of his position. The Chancellor ought to be more than a mere book-man. A well balanced judgment, strong practical wisdom, and a thorough knowledge of business and of life, are essential characteristics of any one who desires to become an ornament to the Equity Bench. In short, a *good* Chancellor, is one of the rarest, as well as one of the most valuable and efficient officers in the service of the State. In estimating the character of any one who has been engaged in judicial labors, and who has passed for some time from the stage of life, there are two ways, chiefly, by which posterity are enabled to arrive at just conclusions. The one is from the examination of his efforts wherever they appear upon the records of the Courts to which he was attached, in the shape of judgments or decrees. The other is from the testimony of those who were his cotemporaries, and who, together with him, in their day and generation, fought through the battle of life in the same calling.

In pursuing our enquiries relative to the merits of Chancellor Rutledge, as derived from the first of these general sources of information, it may be well to observe that it is not our intention to enter upon a detailed or critical examination of his judicial career. Such an inquiry would be uninteresting and tedious to the general reader; and the professional man has always at hand the means for the fullest light upon the subject by a consultation of his decrees, which will be found in the first, second and third volumes of DeS. Eq. Reports. We will here cite but two of his judgments by way of illustration, not because they are the best samples of his style

which might be selected—for, indeed, they are not—but because each of the cases referred to, occupy the position of leading authorities in the law of South Carolina, and establish principles of great practical utility peculiarly adapted to the circumstances of this country, at variance with those which belong to the Equity Law of England, from which our system of Equity is mainly derived. The doctrines of these cases have been considered law ever since their promulgation up to this day. The first of these cases will be found in the second volume of Chancellor DeSaussure's Equity Reports, p. 376, entitled Charles Lining *vs.* R. H. Peyton and others. It declares this important principle: That where a person purchases land from a trustee, who holds the land in trust for certain purposes, with a power of sale; there being a proviso, however, that the trustee shall hold the purchase money of the said land subject to the same uses. The purchaser is *not* bound to see that the trustee fulfils his duties, and is not responsible, if he does not.

"The bill stated that Ann Peyton, the wife of the defendant, was entitled under the will of her first husband, J. Stobo, to an estate in fee, in a tract of land, called Archfield, in St. Paul's Parish, containing six hundred and ninety-four acres. And she agreed to and joined with her present husband in selling and conveying the same (through a public sale by the Sheriff) to Dr. John Ramsay, on condition that the purchase money arising from the sale should be applied to purchase a tract of land of equal value, to be conveyed in trust to such uses as are therein set forth. That in pursuance of such agreement, the said R. H. Peyton purchased of Charles Freer, a tract of land, called Block Island, in St. Paul's Parish, which the said Freer, in consideration of 1,900*l.* conveyed to Joseph Peace, his heirs and assigns, in trust, for the sole use of Ann Peyton, during her lifetime, and upon her death, to the use of the said R. H. Peyton, during his life, and upon their death, to the use of the heirs of the said R. H. Reyton and Ann Peyton, with other uses, and for other purposes therein stated. And there was a proviso in said deed, that the said R. H. Peyton and Ann, his wife, might change said

trustee, and might sell and convey the said tract of land, called Block Island, to any person they pleased: 'Provided, the proceeds of such sale should be immediately laid out and vested in the purchase of some other estate, or property of equal value, either in lands or negroes, or public funds, or bank shares, which should be conveyed and secured upon the same trusts, and to the same uses and purposes, as the lands and premises above described were subject to.'

"That the said R. H. Peyton and Ann, his wife, in pursuance of said powers, had proceeded to change the trustee, and had appointed, by deed duly executed, J. S. Fowke, to be the trustee, in the room of Joseph Peace, who had consented thereto, and the said J. S. Fowke had accepted said trusteeship.

"That the said R. H. Peyton, and Ann, his wife, had also thought it advisable to sell the said tract of land called Block Island and that the proceeds should be laid out in the manner, and to the uses prescribed in the said deed; and they, together with the new trustee, J. S. Fowke, had, by proper deeds, conveyed the same, in fee simple, to the complainant, C. Lining, for the sum of $15,000. That the said Charles Lining had paid $6,000 in cash, and secured the remaining $9,000 by bond and mortgage of the land. That the $6,000 cash, paid by the said Charles Lining, had been invested in the purchase of lands and slaves, and conveyed to the trustee, to the uses stated in the original deed from Charles Freer.

"That doubts have arisen, whether upon the change of the trustee aforesaid, the estate in the Block Island tract of land, was so vested in J. S. Fowke, the new trustee, as to enable him to convey a fee simple estate to the complainant, and whether the original trustee, Joseph Peace, ought not to have joined in the said deed of conveyance. The bill, therefore, prays for relief, and that the Court would direct the conveyances to be perfected, so as to vest a full, clear and indefeasible estate in fee simple in said land in the complainant. The bill also submits to the judgment of the Court, whether it is the duty of the complainant, as purchaser of the Block Island land, to see to the appropriation of the consideration

money to the purposes of the trust estate, it having been suggested that it was the duty of the purchaser to see to such appropriation and investment, otherwise he might not be safe in his said purchase, and prays that the Court would make such orders, and give such directions in the premises, as will secure the complainant.

"The defendants, R. H. Peyton and Ann, his wife, Joseph Peace, the former trustee, and J. S. Fowke, the present trustee, admit all the facts stated in the complainant's bill, and submit to the Court that the deeds already made and executed, are sufficient to convey and assure the Block Island land in fee simple to the complainant; but they are willing to execute any other deeds or conveyances which may be thought necessary for that purpose. And the defendants deny that the complainant is bound to see to the application of the purchase money to the purposes of the trust, or that he ought to intermeddle therein; the same being the duty of the trustee and the *cestuis que use.*

"The answer of the minor children of R. H. Peyton and Ann, his wife, by their guardian, states their ignorance of these transactions, and submits their rights to the protection of the Court.

"Mr. Lining appeared in *propria persona.*

"And Mr. Parker for defendants.

"The case came to a hearing, and afterwards Chancellor Rutledge delivered the decree of the Court:

"This we believe to be a new case, no precedent having been adduced to show that it ever has been determined in this country anterior to the Revolution, which is more than probable it never was, as the proceedings of the Court under the royal government were extremely relaxed; and since the establishment of this Court, in 1784, we are pretty certain the question has never been formally discussed. Whatever may be the law in Great Britain on this subject, from which our jurisprudence has been principally derived, there are a variety of local circumstances which render it not only highly improper, but almost impracticable that it should be adopted in this country. The case before us proves the position; for

scarcely would a purchaser be found of trust estates who would be inclined to be saddled with the inconvenience and embarrassment of seeing that the purchase money was applied to the purposes of the trust. It has never heretofore been determined that he should, and we will not now establish a precedent—for it might tend exceedingly to embarrass, if not shake to the foundation, the titles of very many persons, who have heretofore purchased at the sales of the trust estates without the remotest idea of responsibility, as to the application of the purchase money. We do not say that where property has been conveyed in trust for the payment of debts, or other specific purposes, that it is not the duty, as well as the interest, of purchasers at such sales to attend to the right appropriation of the money; but in cases like the present, and others that may be assimilated to it, purchasers are not, and ought not to be, considered in the same light as trustees, and intrude themselves on the parties to see that the purchase money is applied as the trust deed directs, because the *cestui que* trust joining in the conveyance with the trustee, it is his particular duty, as well as his interest, to see the trust money properly applied—and if he finds the trustee disposed to misapply it, he can immediately apply to this Court for redress. The Court are, therefore, of opinion and decree, that in this case the complainant is not obliged to attend to the disposition of the purchase money of the estate in bill mentioned, conceiving that the *cestuis que* trust, who are parties to the conveyance, are fully competent, and the only persons who ought to interest themselves in the business. The trustee not having been changed in the manner the law directs, that should be done, and the conveyances to complainant be then made as the deed directs, or the original trustee may join in the conveyance."

This case was acted upon subsequently, and recognized as acknowledged law in the case of Spencer *vs.* The Bank of the State, Bailey's Equity Reports, p. 478, decided in the year A. D. 1831.

The other case we have thought proper to cite is that of William Wragg *vs.* the Comptroller General and others, cred-

itors of Mr. Irvine—found in 2 DeSaussure's Equity, p. 509. It decides, that where a person sells lands and conveys them in fee to a purchaser, and takes bond for the purchase money, but takes no mortgage, he has no implied lien on the land for purchase money unpaid, so as to give him any preference over the other creditors of the purchaser.

Chancellor Rutledge afterwards delivered the decree of the Court:

"In this case it was contended for complainants that the obligee had an equitable lien on the lands in bill mentioned, no part of the purchase money having been paid, and to that point several cases were cited, which, when examined, are found generally not to apply. The case in Vernon was between vendor and the assignee of the vendee, who had become bankrupt. The Court determined the vendor had a natural equity, and that the land should stand charged with so much of the debt as was unpaid. The cases in 2 Eq. Ca. Ab. 682, and 3 P. Wms. 307, were between the vendor and third persons, who had purchased from vendee, and had notice of the equitable incumbrance on the land. The purchase money not being paid, it was held that was sufficient notice for them to withhold payment. The cases of Coppin *vs.* Coppin, 2 P. Wms. 291, and Pollexfen *vs.* Moor, in 3 Atk. 272, do not apply, and the question is not determined in Blackburne *vs.* Gregory, 1 Brown, 420, for that case was decided on another point. But in the case of Fawell *vs.* Heelis, as reported in 1 Brown, p. 421, in a note, see also Ambler, 724, the point is determined that the vendor having taken bonds for the purchase money, had no lien.

"In England, it is well known that land is not liable to the payment of debts, but in cases where the heir is specially bound; his right being peculiarly favored and guarded. But in this country we all know that real and personal estate are equally liable to the payment of debts, and the plaintiff may make his election out of what property he will have his debt satisfied. It is, therefore, absurd to talk of a bond creditor having an equitable lien on land he has sold, unless he has taken care to secure that lien by a mortgage, since whilst the

debtor is alive, and indebted even on simple contract, if he is sued and judgment is obtained against him, any property he is possessed of may be seized and sold to satisfy the judgment, if it is not secured by mortgage or otherwise. This has been the law of this country for at least sixty years past. After the debtor's death, the law then directs the order in which his debts are to be paid by his executors, and then, for the first time, a discrimination is made between creditors by specialty, and those on simple contract. As the complainants then are not entitled to relief on the principle of an equitable lien in preference to other creditors, the next question is, whether the Confiscation Acts give them a preference? The Act of 1782 confiscates the real estate of Mr. Irvine, as a British subject. He is not banished by that law, because he had never resided in this country. The Act of 1783 declares that the creditors of confiscated estates by bond, bill, notes, or open account indiscriminately, where the estates are fully and clearly equal to the demands upon them, shall be paid their debts: Provided, that nothing therein contained shall entitle any creditor to more than his proportion, where the estate is insufficient for the payment of its debts. The land in question, it is admitted, has not sold for a sum sufficient to pay all the debts; therefore, under that law, the complainants' debt cannot be fully satisfied; but complainants have taken to their aid the Act of 1784, for restoring to certain persons mentioned in list, No. 1, thereto annexed, their estates, &c. Unfortunately for complainant, Mr. Irvine's name is not mentioned in the list, and therefore he could not, if alive, have availed himself of the benefit of that law; and if he could, the estate is nevertheless liable to an amercement, which the Comptroller will deduct on a settlement with the creditors. Nor can complainants be benefitted by the Ordinance of 1784, because they have neither a mortgage or judgment to bind the land.

"It was further urged that the Legislature intended to have given up the property altogether to Mr. Irvine's representatives, and that one branch of the Legislature had actually passed a resolution to that effect. Whatever may have been

the intention of the Legislature, it can only be known to the Court, when it has been enacted into a law. Such a law has not been passed, and a resolution cannot repeal a positive law of the land.

"The Court are of opinion that the Confiscation Act of 1783 being unrepealed, the complainants can only be paid their demand in proportion with the other creditors of Mr. Irvine.

"Costs to be paid out of the purchase money of the land."

A moment's consideration will suffice to satisfy any thinking mind of the value of the above doctrines. They set aside and abolish some of the most troublesome, and in their practical working, most injurious doctrines of the English Law. They have become rules of property among us. They are consistent with our institutions and the spirit of our people; for however harmonious the doctrines of the equitable lien of the vendor of real estate, and the duty of the purchaser of trust property to see after the application of the purchase money, may be with the theory of their law, and however applicable under the circumstances which surround the English people, all such restrictions upon the free interchange of property are hostile to the genius and the interests of the American people.

The above cases are enough to illustrate Chancellor Rutledge's judicial style. They show that although versed in the learning of the law, he was not so bound down by the force of precedents as to be unable to act independently of them when the interests of the country plainly required it. In conclusion of this part of our subject, we may indulge in this general observation: That Chancellor Rutledge's mind was logical and exact—his style clear and perspicuous—his learning comprehensive and accurate—and his judgment sound and independent.

We come now to speak of the second source of information above referred to as the means of acquiring knowledge concerning the characteristics of those who are passed away—the judgments of cotemporaries. Let the cotemporaries of Chancellor Rutledge, most of them opposed to him in politics, declare what opinions they entertained of him.

From the Charleston Courier.

TUESDAY MORNING, Jan. 22, 1811.

At a full meeting of the gentlemen of the Bar, convened in the Equity Court Room, and upon John Julius Pringle, Esq. being called to the chair, the following resolutions were unanimously adopted:

The members of the Bar in Charleston, deeply regretting the death of the late Hon. *Hugh Rutledge*, and bearing in mind the many public and private virtues and important services to his country, which distinguished him throughout a long and honorable life; being convened for the purpose of testifying their respect and veneration for his memory, have adopted the following preamble and resolutions:

Whereas the Honorable *Hugh Rutledge*, late and for many years a Chancellor of this State, from early life devoted himself to the service of his country, during her struggles for liberty gallantly fighting in her ranks, and by his example throughout, animating his countrymen in the field, in captivity and in banishment, to meet and sustain with heroic fortitude all the various trials of the Revolutionary conflict, and after the establishment and consolidation of the independence of his country, requiting her well earned confidence by the able and faithful discharge of the duties of several high and important stations, and in his late capacity of Chancellor, (wherein those who pay this tribute were the constant witnesses of his conduct) administering public justice during a long course of service, with great learning and ability, with unsullied purity and inflexible virtue; always adorning the judgment seat with a deportment mild and dignified, humane and liberal; and in private life uniting all those amiable and valuable qualities which prompt esteem, cement friendship, and produce extensive usefulness: *And whereas* the recent death of this excellent Judge and most worthy citizen, is a public bereavement greatly to be deplored, and is deeply regretted by the members of the Bar, they have, therefore,

Resolved, As a testimony of their sense of the loss sustained by the public, of the esteem which they bore to his person, and of the respect and veneration which they cherish for his memory, that the members of the Bar, now convened, will

put on mourning for him, by wearing a crape on the left arm for *thirty days*, from the date hereof.

Also, That the Chairman of this meeting do request the Reverend *Mr. Simons*, Rector of St. Philips Church, to preach *a funeral sermon* on the occasion as soon as may be convenient to him.

That the foregoing preamble and resolutions, signed by the Chairman, be published in the Charleston newspapers.

JOHN JULIUS PRINGLE, Chairman.

January 21, 1811.

Chancellor Rutledge had lived in the most tempestuous period of our history; he had gone through the seven years of incessant trial and conflict, and he had endured all that such a struggle had to inflict. War, with all the concomitants of war, was followed by political divisions, the most relentless and bitter. He did not escape, but he met the violence and the fury of party as he had previously met the common enemy of our country; he put both at defiance, and he did so successfully.

Chancellor Rutledge early adopted the opinions of Washington and of Marshall; and with his two brothers, the two Pinckneys, and others, was one of those South Carolina Federalists of whom the biographer of Mr. Jefferson has spoken; He died as he had lived, neither changing his creed, nor compromising his doctrine. But in behalf of such men, let it here be said, that so far as *this* State is concerned, the history of *that* party has never been written. And that when the bugle sounded again in 1812, they were found standing by their country, seeking no emolument for themselves. I have a distinct recollection of the three Rutledges, of the two Pinckneys, and of other men of those days—Moultrie, Davy, Burke, William Washington, Isaac Huger, &c., &c.—and I have seen the man of whom we are speaking in company with some of them. His appearance was dignified in the extreme—somewhat stern, but polished beyond mistake—and his manners spoke his position and his training. Rigidly, but courteously polite, and perhaps a little severe in his deportment, it was impossible to be in his presence and not recognize the school to which he belonged. He was always

the same model of a republican gentleman, affable and accessible, but never familiar; always gentle, but never doubtful, and on questions of principle, unyielding and immovable without reference to policy or circumstances. The basis of his whole character was truth, and though he never departed from the highest refinement, yet where his own conceptions of integrity and morality were concerned, he would neither give nor take. He was inflexible himself, and not indulgent to those whose conduct savored of delinquency. All his intelligence and all his research, seemed, on this subject, only to confirm his natural disposition.

I do not imagine that any one, with the ordinary knowledge of good breeding, could have taken a liberty with such a man; and I am very sure *he* never would intentionally have trespassed on the feelings of another. He was charitable and generous; he was kind, humane, affectionate and brave; his friendships were like his "will," proverbially firm and unchanging. His only pride was that which every honest man has a right to indulge in, the consciousness of his own rectitude and the strength of his own resolution, and he necessarily commanded the respect and confidence of every virtuous mind.

In life, Chancellor Rutledge performed his duty without fear or favor, and with an utter contempt for everything like ostentation or parade. Believing himself, as a citizen, equal to others, he never sought for patronage, but acknowledged the rights and prerogatives of all men; and in death he was calm and tranquil, but still preserving his peculiar aversion to the vanities of the world. Once when required to prepare an inscription for the tomb of a friend who was prominent in his regard, he simply wrote,

"An honest man 's the noblest work of God."

And when the last arrow was hastening him away, having made his peace with heaven, he turned to those who wept at his side, giving them comfort and consolation, leaving with them this injunction: "Place me near my brother, Edward, but let no stone mark where I lie."

JAMES GREEN HUNT.

Chancellor Hunt was elected a Judge of the Court of Equity in May, 1794, and presided during the June Term of the same year. In the Reports, no decree appears to have been delivered by him. His death occurred in the course of that year—when and where I am unable to say—and I have to regret that there are no materials to be obtained, which would enable me to do him justice.

WILLIAM MARSHALL.

Of Chancellor Marshall I have been able to learn but little. I have looked through the second volume of Equity Reports from May, 1800, to November, 1805, and it appears that Chancellor Marshall delivered five decrees only. They are generally short and well argued. It may be proper to state that Chancellor Hugh Rutledge, as President of the Court, usually delivered the decrees. I can only do him justice by appending a decree of his from second volume Equity Reports, p. 145, which indicate to the reader his legal ability:

REPRESENTATIVES OF JAMES ASKEW *vs.* JOHN E. POYAS.

The object of complainant's bill are, to discover from the defendant's oath, whether a parol agreement was not entered into between him and the complainant respecting the land in bill mentioned to the following effect: That the whole of what belonged to complainant (being 201 acres) should be sold; that the defendant should purchase it, and pay £200 for a moiety of it; that the Sheriff should make titles to defendant for one moiety, and complainant for the other moiety. That the defendant should also discover whether a copartnership was not entered into between them for the purpose of establishing a brick-yard, and carrying on that business, the defendant accounting for the profits of it, or the work of the negroes on it; and that the defendant may discover whether the negroes of complainant sold by Sheriff under execution were not purchased in by defendant in trust for complainant. The defendant in his answer denies the agreement as set forth, but says he agreed to purchase 201 acres, a moiety of complainant's land, provided he could get good titles: that he was to pay and did pay £200 for it; and it was agreed that on complainant's repaying him one-half of the purchase money, he should have half of the land; that he was always ready to comply with the terms, but complainant never was. Defendant denies that titles were to be taken in his and complainant's

name; but when he received them from Sheriff, he shewed them to complainant, who made no objection to their being made to defendant. He denies that he is liable to account for the profits of the brick-yard. He admits a copartnership was contemplated, but denies that Askew complied with any of the stipulations agreed on. He is nevertheless willing to allow wages for the negroes of complainant whilst there; and denies that the purchase of the negroes was made in trust; but avers they were sold under execution for complainant's debts; and defendant bought them for a valuable consideration, and has paid the money.

This case lies in a very narrow compass. The first question respecting the parol agreement is plain and clear: the defendant totally denies it as stated in the bill; and there is no written evidence to contradict his answer—it must therefore be taken to be true. To admit parol proof of a parol agreement, in a case not tinctured with fraud, would introduce all the mischiefs and inconveniences which the statute of frauds intended to prevent: and would be in effect to repeal the statute which makes void all parol agreements concerning land. The parol testimony respecting the agreement must therefore be laid aside. The defendant's answer, denying the agreement, standing uncontradicted, the bill would be dismissed, were it not necessary to retain it for the purpose of defendant's accounting for the work and labor of complainant's negroes. Defendant having denied the existence of a co-partnership, and there being no proof of it, the complainant is not entitled to account for the profits of the brick-yard. Defendant having also denied the purchase of the negroes at Sheriff's sale in trust for complainant, and it having been fully proved by Mr. Ford that the sale was a fair one; that he thought and believed defendant was bidding for himself, and that he never heard that he was buying for any one else; and Turner, a Deputy Sheriff, swearing that defendant absolutely refused Mrs. Askew's request to buy them in for her husband, but said that he would purchase them for himself; and the bill of sale from the Sheriff to defendant being in the common form, he cannot

be considered in any other light than as the absolute proprietor of the negroes; but as he admits complainant had some other negroes working at the brick-yard for a certain time, it must be referred to the master to ascertain how many there were, and how long employed there, and what will be a proper allowance to be made for their services during that period.

Chancellor Marshall departed this life in November, 1805.

WILLIAM DOBEIN JAMES.

Chancellor James was elected a Judge of the Court of Equity, on the 14th December, 1802, in the place of Judge Burke. At an early age he joined Marion's partizan corps, and bore a distinguished part, as a soldier in the Revolutionary War. He was, when elected a Chancellor, the Solicitor of the Northern Circuit.

He was from 1802 to '24, twenty-two years, a Judge of the Court of Equity. In December '24, after the organization of the separate Court of Appeals, he was transferred to the Law Bench. Many of his decrees, while in the Court of Equity, were exceedingly well written. His judgments, however, were not to be relied on; and after he went upon the Law Bench, his intemperate habits became so notorious, that an impeachment followed, and he was removed, in January, 1828. This judgment, though rendered in sorrow, was just. It set a wholesome example before the people of the State, and plainly told them, that neither gray hairs, Revolutionary services, nor honest purpose would excuse incompetence arising from irregular habits. A most interesting account of the trial and judgment will be found in the accompanying letter.

CHARLESTON, September 5, 1859.

My Dear Sir:—I was present, as you know, at the trial of Judge James; and of all the duties I have been required to perform, this was the most painful and embarrassing. I had been taught from my cradle to reverence the men of the Revolution; and there was *I*, who had never fought a battle for my country, suddenly invested with power to condemn one whose wounds bore witness to his valor, and whose fidelity had never been doubted; an obscure individual, who had shed *no* blood for liberty, sitting in judgment over the comrade of Marion and of Sumter! I would have shrank had it been possible, but there was no retreat without delinquency to the commonwealth.

My old friend, Col. I'On, was in the chair, presiding with that grave and dignified solemnity which the occasion would have elicited from an experienced Chancellor, and with that kindness and gentleness, and consideration for the accused, which was in keeping with his own generous and elevated disposition. All of us were surprised at the readiness and promptness with which he disposed of every question; indeed it would have easily been believed that the Bar was his profession, and the law of evidence his favorite study.

W. C. Preston appeared as Counsel; and even then, by *his* name, it was conclusive that whatever eloquence, energy, and learning could achieve, *was to be accomplished.* The Senate, acting as a Court, sat with closed doors. Many witnesses were examined, and the trial progressed slowly and mournfully to its termination It is impossible for me to speak of the defence made by Mr. Preston, but it is equally impossible for me ever to forget it; he was "great," without an interval from the beginning to the ending; but at last *the day* came, and the "sternest stuff" was necessary to meet it. The vote was to be taken; each Senator was called on by his name, the word "Honorable" omitted; and as he stood uncovered, the President put the question, "What say *you?* Guilty or not Guilty?" The Senator, placing his right hand upon his own breast, answered "Guilty (or not guilty,) on my honor," and immediately took his seat, the silence of the grave prevailing. It is known what was the verdict—a brave old soldier was to be cashiered—the day for pronouncing sentence was fixed! Judge James entered the Senate Chamber, leaning on the arm of his Counsel! Col. I'On rose to receive them, and looking steadfastly at both, remained silent for a moment, as if he was gathering strength to meet what was coming. As well as I can remember, he addressed the venerable sufferer in these words—"*William Dobein James, what have you to say why sentence of Impeachment should not be passed upon you?*" I have never witnessed such a scene! We held our breath as the axe was falling! *Your* old friend and *mine*, Col. Hampton, was sitting next to me. Hampton had been in battle, and had seen blood; and if ever there was a brave

man, Hampton was one; but he gave way now, with hardly a show of resistance. Col. I'On continued to wait for the reply. The old man tried to rise, but could not, without assistance. Drawing from his pocket a slip of paper, he read as distinctly as he was able:

"*Mr. President*—..... I have served my country too long, not to be sensible of my duty to submit (as well as I may,) to this heavy stroke. .... I could have wished that my old age had been spared this awful calamity, but Providence ..... has thought proper to bring me, through the varied and trying scenes of a long life to this bitter period. ..... To the Almighty, and to Him alone, I look for support and consolation. ..... I pray him to bless and prosper MY COUNTRY, which, while she casts me off, cannot, and I trust will not, be disposed to deprive me of the consolations which result from a consciousness of good intentions and honest conduct in office."

These were touching words to those who had assisted at the sacrifice; and, as he uttered the last syllable, he sank back into the chair he had with difficulty left! The whole Senate was agitated beyond articulation! I looked at I'On, and his appearance is now before me: he labored under the deepest emotion, yet all the features of his face seemed fixed; it was the marble expression which indicates the power to follow "duty," lead where it may; but it was the "agony" also, which sometimes accompanies the performance! Other members were giving vent to their feelings in audible tones of solemn grief; and then it was that nature's spring, which had been pent up before, found a crevice in this rock of granite. The waters of life came forth without control. I'On would have died at his post anywhere, and at any time. He never knew how to surrender; but his heart "ran over" at his eyes, and tears of tenderness and of sorrow chased each other down his rugged and motionless cheeks! It was the "statue" that was weeping.

Mr. Huger submitted the following resolution and made a short speech, or rather a few remarks: they were hurried and almost incoherent; but the Senate was glad to take them—they

savoured of kindness and of mercy! They were a relief to those to whom they were addressed.

"*Resolved*, That this Court, in discharging the painful duty imposed upon it by the State of South Carolina, having passed sentence of removal from office upon the Hon. Wm. D. James, feels it incumbent upon itself, in justice to the said Wm. D. James, publicly to declare their sincere conviction, that his character for honest integrity as a man has not been impeached by this sentence; and, in consideration of this belief, as well as in consideration of his Revolutionary services, they recommend to both branches of this Legislature that the said W. D. James be authorized to draw upon the Treasurer of the Upper Division, for the full amount of his salary appropriated up to the 1st January, 1829."

In support of which Mr. Huger spoke as follows:

"Mr. President: I have but a few words to say in support of the paper I have had the honor to offer you. I need not speak when the hearts of all have so eloquently spoken already. I need not appeal when every bosom is filled to overflowing, when every Senator is subdued by the appeal his own nature has made. I need not ask for the adoption of this resolution, because I know the men to whom it is submitted. I need not press it on you, because I know that the sorrow, the deep, heart-piercing sorrow, of all who hear me, has seized upon it already. 'Tis carried! Mr. President, 'tis carried! Not by the voice of my humble self—not by the feelings of one whose heart is sinking under the pressure which rests upon it. 'Tis carried by the honor of this House, Mr. President—*that* impulse is always irresistible. I see the vote of every man streaming from his eyes. I share the conflict in every man's bosom. Let *him* say "no," who is more or less than man. Let *him* say "no," who has forgotten the scene that has just been consummated—who has forgotten the picture which has just been exhibited. Sir, I call upon my friends, who are about me—I call upon them, to say for me what I am unable to utter for myself.

"Mr. President, when I think of that unhappy man who has just departed—when I see him tottering, quivering, sinking

under the agonizing beatings of a broken heart—when I remember that he has fought for his country—when I remember that *his* blood has been shed for the purchase of that very liberty which gives *me* power to condemn him, sir, my mind falters when I turn upon the deed which my own hand has done. I shrink beneath the shadow of my own unworthiness, and for a moment—aye, for more than a moment—I disown the act that has turned him upon the world thriftless and friendless. When I remember that the blood, which is now gushing through his veins, is the very blood in which our Constitution is written, I ask, and ask it triumphantly, where is the man that calls for another word upon the question? Sir, the law *must* have its victim. The law *has* had its victim. Yes, the altar is bedewed with the tears of the very men who have presided at the sacrifice. Sir, I will not violate the feelings of the House any longer. They warn me to be done. I leave the question, just were it ought to be, in your own hands. Looking your God and your country in the face, I call for your decision."

The resolution passed by an overwhelming majority, and when the Senate adjourned each one seemed to seek some private way to his quarters, that he might avoid the observation of others. * *

To Hon. J. Belton O'Neall,

Milford P. O., Greenville, S. C.

Note.—Mr. Huger evidently spoke without a moment's preparation, and when asked to furnish what he had said, for publication, he declined, professing his utter inability to do so. The words were taken by a listener, and were reported as above in the Charleston Courier.

WADDY THOMPSON.

In December, 1805, Waddy Thompson was elected a Judge of the Court of Equity, in the place of Judge Marshall, who died the November preceding. Judge Thompson was a native of Virginia, and was a well educated lawyer. He had a vigorous, clear mind; saw with almost intuitiveness the strong points of a case, and frequently decided them without waiting for argument. He disclaimed in his decrees the affectation of learning, stating, and most usually reasoning out his propositions, without a reference to authorities. Until the close of 1808, I do not see that Judge Thompson delivered any decree, except in the case of Hattier *vs.* Etinaud, 2d Equity Reports 570. The Court of Appeals, in Equity, was organized, and met in February, 1809, in Charleston, and from that time forward Chancellor Thompson's decrees will be found in 3d and 4th Equity Reports, Harper's Equity Reports, and in 1 and 2 McC. C. R. In 1817, when the Judges of Law and Equity resigned to receive the increased salary, Judge Thompson was re-elected. The 1st Section of the 3d Article of the Constitution of South Carolina, *inter alia*, provides: "The Judges of the Superior Courts shall at stated times receive a compensation for their services, which shall neither be increased or diminished during their continuance in office." By the second Section of the Act of the 13th of December, 1817, it is provided that the Judges of the Courts of Sessions and Common Pleas, and Judges of the Court of Equity, shall receive as a compensation for their services the sum of three thousand five hundred dollars each, per annum, in lieu of the salary "(£600), heretofore prescribed by law." Act to increase the salaries of the Governor of this State and other officers therein mentioned. Acts of 1817, '40 and '41.

By the 4th Section of the Act of 1808, entitled, "An Act for the better arrangement of the sitting of the Courts of Equity, for the establishment of Courts of Appeals for the same, and other purposes therein mentioned," a Court of

Appeal, consisting of the Judges, was established and directed to sit in Charleston, on the first Monday in January, and the second Monday in March, in every year, and at Richland Court House on the first Tuesday next, after the ending of the Common Pleas Circuits, in every spring and fall of the year. By the 10th Section two additional Judges were directed to be elected, making the full Bench of Equity Judges *five*. In conformity with this Judges DeSaussure and Gaillard were elected. The Bench then consisted of Rutledge, James, Thompson, DeSaussure and Gaillard.

In 1824, when the Court of Appeals was established, and the Judges in Equity were by the Act of that year reduced to two, and were called Chancellors, Chancellors DeSaussure and Thompson were elected. Chancellor Thompson held his office until December, 1828, when he resigned, and retired to his residence at Greenville, where he lived in the enjoyment of his family and friends, until, having fulfilled his course, he was gathered to his fathers.

HENRY WILLIAM DeSAUSSURE.

Would that I could do justice to my venerable friend, Chancellor DeSaussure. He was a native of Beaufort district, and was born at Pocotaligo, 16th August, 1763. He was descended from a noble foreign ancestry; but he needs no such adventitious aid. His father, Daniel DeSaussure, an extensive merchant of Beaufort, gave himself and fortune to the cause of his country, in the time which tried men's souls, and was thought worthy to accompany the Rutledges, Gadsden, Moultrie and others, after the fall of Charleston, as prisoners of war to St. Augustine. After the war, from '83 to '91, he was a member of the Legislature, and for the two last years President of the Senate. Here many a son might rest, and claim the glory of such a descent. But Mr. DeSaussure, however much he gloried, as he ought to have done, in such a father, needs only to appeal to himself, and his title to a most high and respectful remembrance will be established. In his seventeenth year he served as a volunteer in the defence of Charleston, when it was besieged by Sir Henry Clinton. After the city fell, he refused to take protection, and was sent to the prison ships. After two months sojourn in those chambers of cruelty and death, he was exchanged and sent in a cartel to Philadelphia, where he had the happiness to meet his father, who had also been exchanged. By the direction of his father, he entered as a student of Law in the office of Mr. Ingersoll. In 1784 he was admitted to the Bar of Philadelphia, and on his return to Charleston, in 1785, he became a member of the Bar of his own loved and honored State. Here he had to meet and grapple with such lawyers as the Rutledges, the Pinckneys, Pringle and others. If the diamond be polished by constant friction with other diamonds, then indeed did Mr. DeSaussure have the opportunity of acquiring by his association that brilliancy which rendered him so illustrious. In the spring of '85, he married Miss Ford, of Morristown, New

Jersey, who made his life and home happy during many years.

In October, 1789, he was elected a member of the convention to frame the Constitution of this State. He aided in this great work. What part, however, he bore in it, we do not know. It is probable his youth and modesty held him back from prominently mingling in the labors of such men as the Rutledges, Pinckneys, Matthews and Lowndes.

In '91 he was a member of the House of Representatives, and bore a part in the labors of that organic session in Columbia, from the 3d January to the 19th of February. I have in my possession the first and second volumes of the laws of South Carolina, from the 3d January, 1791, to the 21st December, 1804, with notes in Judge DeSaussure's handwriting. In the margin of the Act for the abolition of the rights of primogenitures, &c., he remarks: "Drawn by Edward Rutledge, signer of the Declaration of Independence and afterwards Governor, in 1799." In the margin of the Act, "to establish a Court of Equity," he notes: "Drawn by General Thomas Pinckney." In the margin of the Act, "to amend the several Acts for establishing and regulating the Circuit Courts," he remarks: "Drawn by H. W. D." These Acts are examples worthy of imitation by our present legislators, who, if they would hold the pen for their own thoughts, might sometimes make their legislation more intelligible.

It is greatly to the credit of Mr. DeSaussure that he advocated every proposition of mercy in favor of the deluded Tories. If Marion's counsel, at Jacksonborough, in '82, had been followed, and the confiscation Act had never been passed, many valuable men, mistaken, it is true, in their notions of duty and loyalty, would have been saved to the State.

In '94, while at the Sweet Springs in Virginia, which he had visited for relief from an attack of rheumatism, which had threatened his life, the office of Director of the Mint was tendered to him by President Washington. By the advice of General Hamilton, he accepted the office, and proceeded to Philadelphia, and with that diligence which always characterized him, soon made himself master of his duties. In

consequence of a wish expressed by President Washington, he caused the first coinage of gold, and in six weeks from the expression of the wish "he carried to the President a handful of gold eagles." On the 1st of November, '95, he retired from his laborious office, bearing with him the expression of the President's satisfaction with the discharge of his duties, and his regret at his retirement.

It seems, after his return to Charleston, in 1795, he was Intendant of the city, and when he left the office, received, what he always deserved, the thanks of those who had served with him for the manner in which he had discharged his duties. In 1800 he was returned to the Legislature, and there, in 1801, aided successfully in establishing the South Carolina College. He said to me: "We of the lower country well know that the power of the State was thenceforward to be in the upper country, and we desired our future rulers to be educated men." If he had never done anything beyond this, which literally *forced* education upon the country lying north and west of Columbia, his memory ought to be loved and cherished by the thousands who have thus been educated. The South Carolina College was to his death the object of his care and solicitude. My first knowledge of the Judge was when a mere College boy, in 1812, he invited my friends, Whitfield Brooks and John M. Lee, and myself, to partake of one of his hospitable dinners. From that time forward I had the honor of knowing and being known by him. From 1817, with one year's exception, I have been a member of the Board of Trustees of the South Carolina College, and never till his retirement from the Bench, in 1837, do I recollect that he was absent from any important meeting of the Board.

He retired from the Legislature in 1802, but was again induced, in 1808, to return. In the session of that year, fortunately for the State, he was elected a Judge of the Court of Equity: and to him the system owes its shape, *form and existence.* He was to South Carolina what Kent was to New York. Unwearied industry, combined with a thorough knowledge of law and equity, and a patience which never tired of hearing, and a politeness which made the merest tyro

feel he was in the presence of a friend, caused him, as he deserved to be, the head of his Court, admired and loved by every one who had the heart of a man.

His decrees, embracing nearly two-fifths of all the Equity cases decided in nineteen years, are monuments of which any Judge ought to be proud. Such of them as visited the Court of Appeals, or which he delivered in that Court, will be found in 3d and 4th Equity Reports, Harper's Equity Reports, and 1st and 2d McCord's Chancery Reports. If read, they will satisfy the most incredulous of Judge DeSaussure's title to be ranked, not only with Kent, but also with Hardwicke and Eldon. I would select Bunch *vs.* Hearst, (3d Equity Reports, 273); the decision on the demurrer in Prather *vs.* Prather, (4 Equity Reports, 33); Butler *vs.* Haskell, (4 Equity Reports, 651), as specimens of his exhausting argument, and his clear and convincing decisions of cases. Many of his unpublished decrees, and which would have been a part of two unpublished volumes of his Reports, (which the miserly policy of the Legislature refused to aid in publishing), would add more to his fame. How much the profession is indebted to him can only be fully appreciated by those who practised before his four volumes of Equity Reports were given to enlighten, aid and guide us.

In 1817, he and his brethren resigned, to have the benefit of the increased salary. This enabled the Legislature, by giving him a higher vote than any of the other Judges, to make him the President of the Court of Appeals in Equity.

In 1824, at the organization of the separate Court of Appeals, instead of being placed on that Bench, as he ought to have been, and as Judge Johnson desired, he was, with Judge Thompson, elected a Chancellor, and assigned to Circuit duty. He felt this, as he ought to have done, a great neglect of faithful public duty. He, however, patiently met and encountered the heavy duty, as one of two, instead of five, Circuit Chancellors.

In 1836, when the Court of Appeals consisted of all the Judges of both Courts, he took place, as the President of *that Court of ten*, in which a consultation was almost intermina-

ble, and where harmony of views could no more be expected than in a Jury room. Then, as always before, I had occasion to admire the dignity, courtesy and patience of the venerable man who sat among us, as the Nestor of a past age, and upon whom we were soon to look no more.

In December, 1837, he resigned, and Gov. Butler said of him, in his message announcing his resignation, with great beauty and truth: "He has worn the sword of a soldier, amidst the perils of the Revolution, and the ermine of a virtuous magistrate in peace. The one was never used but against the enemies of his country; and the other will descend from him without spot or blemish." The Legislature responded to this language of the Governor by saying that they regarded, "with a due estimate of their value, his (Chancellor DeSaussure's) long, able and faithful services to the people of South Carolina, in the high judicial station which he has occupied—services which not only furnish the best memorial of his worth, but an enduring example to those who are destined to succeed him." They presented to him the salary for 1838.

Chancellor Harper, in a memoir prepared at the request of the South Carolina Bar Association, thus speaks of him:

"A few months after his resignation, his health appeared for a time to improve, so as to afford hopes of a life prolonged beyond the ordinary period. These appearances, however, were but transient; he soon sunk again, and continued more and more to decline, until the 26th of March, 1839, when he expired. And, perhaps, no man ever met death under circumstances of greater mitigation. During his long illness, which happily was not attended with great pain, he was surrounded by affectionate relatives, the objects of his own fondest attachments. He perceived more clearly than in former times the affectionate interest with which he inspired his numerous friends, and, it may be said, the State at large. The business of life with him was done. He had the happy consciousness of having discharged faithfully and honestly, so far as human frailty would permit, his duties to himself, to his family, and to society. He saw his numerous children,

of mature age, established in life, with fair hopes, or assurances of prosperity and usefulness, and he knew that he should transmit to them, and to their children, the inheritance of a name unsullied by any shade of dishonor. He conversed cheerfully with his friends, endeavoring to make his conversation not only entertaining but instructive to them, and spoke of nothing more cheerfully than his own approaching dissolution. There was no affectation of stoicism; no undervaluing of life, which his own benignity had taught him to enjoy; but the religion which he had professed in life supported him in death, and he looked forward with the serene hope of a happy immortality. There is no superstition in believing that this auspicious closing of life was vouchsafed by the peculiar favor of heaven to a good and virtuous man. "The good man is taken away, and the merciful man is removed, and the living lay it not to heart." Yet there have been few men whose death has caused a more general or affectionate regret. His remains were interred in the family burial ground at Columbia."

The leading traits of the character of Chancellor DeSaussure, were the sense of duty, and benevolence. The former was most conspicuous to general observation, in the discharge of his official duties. His devotion to them was assiduous, untiring. His object was not to *get over* the business of a Court, but to get *through* it, and dispose of it effectually; and for this purpose, he was the most patient of listeners and investigators. The labor which he bestowed in the preparation of his opinions, his research into every quarter and authority whence light could be derived, were extensive and almost unbounded. Yet, coming so cautiously and laboriously to his conclusions, he was the least opinionated of human beings. In exercising appellate jurisdiction, when his own decisions were in question, he scrutinized them with the same candor, freedom, and impartiality, as if he stood totally uncommitted on the subject, and I believe no one more sincerely rejoiced in the correction of his errors. Even when retaining his own opinion, it was overruled by others, he cheerfully acquiesced, and ever after, in good faith, followed

and maintained the authority of the decisions from which he had dissented. Never did he attempt to obtain consideration for himself, and to depreciate the tribunals, of which he formed a constituent part, by insinuating their errors, and his own better judgment. It appears, from a return of the Commissioners in Equity, made for another purpose, in 1830, that of more than two thousand decrees and opinions, made and delivered in the State, for the preceding twenty years, nearly one-half were pronounced by Chancellor DeSaussure.* Dur-

* Total number of regular Decrees in the Circuit Court of Equity, *from January* 1809, *to January* 1829, according to the Commissioners' returns.

Charleston, total, 700	of these Chancellor DeSaussure delivered		272
Richland	104		55
Georgetown	139		66
Colleton	101		55
Beaufort	135		45
Laurens	120		54
Spartanburgh	59		33
Darlington	63		19
Barnwell	31		14
Orangeburgh	42		16
Edgefield	111		42
Abbeville	133		48
Pendleton	44		12
Greenville	11		6
Camden	41		14
Lancaster	8		6
Chester	21		10
York	23		12
Fairfield	50		33
Union	68		38
Newberry	89		36
Sumter	91		38
Total	2.173	Chancellor DeSaussure delivered	924
Charleston Court of Appeals, total			320
Chancellor DeSaussure delivered			185
Columbia Court of Appeals, total			395
Chancellor DeSaussure delivered			205
The cases reported in 3d and 4th Equity Reports, and in Harper's Equity Reports, and in 1st and 2d M'Cord's Equity Reports, amount to			233
Of these, Chancellor DeSaussure prepared and delivered*			163
*And of these were reversed			17

ing the greater portion of this time, there were five Chancellors; and when we recollect the care with which his opinions were prepared, we may very well say, that more than one-half the labor of administering the Chancery jurisdiction within the State, was performed by him. For twenty-five years he never failed to attend a circuit at the appointed time. And in later years, when increasing infirmities might well have excused such omissions, they were exceedingly rare. During the same time, he never failed to attend, three days alone excepted, in the Court of Appeals.

In Court, he presided with a dignity from which few would have ventured to derogate, and an urbanity which took from every one all temptation to do so. It must have been, indeed, a rude nature which could have failed in respect to this venerable magistrate. Before him, every one was sure of a patient hearing; and if uncommon merit appeared—and more especially, in the young advocate—it was sure to be distinguished by him. He knew and respected the rights of the Bar, so important to the freedom and security of the community, and claimed respect for the justice of the State, as represented by himself.

The same industry, the same conscientious sense of duty, was conspicuous in every office, or business, public, or private, which he undertook. As I have said, he was careless of wealth, and rather impaired than improved his circumstances, while in public office. But he was always careful to be fully informed of the exact state of his affairs, that he might not expose himself to embarrassment, and to avoid all risk of doing injustice to others. He could not have endured to have a pecuniary claim made on him which he was not prepared to satisfy. It was the business of every morning to make a memorandum of all matters of duty, business, or civility which required his attention during the day, and, in consequence, none of these were ever neglected. His reading was various and extensive, and it was his habit to note every passage which was curious or instructive in what he read.

He was habitually and devoutly religious, according to the faith of his fathers; though without a shade of the harshness,

severity, or intolerance, which has been sometimes attributed to that form of Christianity. He was, indeed, one of those who made religion amiable, by showing that it is not incompatible with every thing that can grace, or adorn, or cheer human life; and even the thoughtless and the gay, who would have heard with impatience the admonitions of a different sort of instructor, could not fail to be impressed by his.

His benevolence appeared in the whole of his demeanor to every one with whom he came in contact. I believe that nothing would have given him more pain, than the thought of having, in any degree, given pain to the feelings of another. But this, from the original bent of his nature, and the effect of confirmed habit, would have been scarcely possible. But he did not merely abstain from giving pain; it was his study to oblige and give pleasure. He raised those with whom he conversed, in their own esteem. I recollect a distinguished gentleman from another State to have said, "how I envy him the presence of mind, which never fails to prompt him how and when to do and say that which is kind and courteous." He was, in the highest sense of the word, *polite*. And it was no holiday suit, put on for purposes of exhibition in society. His politeness ran through the whole tenor of his deportment—in the intimate intercourse of his family—in his address to servants—for it was founded in his nature. No shade of any thing coarse could, at any time, be detected in his conversation or demeanor; he had the true refinement of mind, which does not admit the thought of what is debased or impure. He loved the conversation of the young, who found in him not only an instructive, but a most agreeable associate. In times, when the contests of political party had severed old friendships, and the intercourse of those who differed in opinion was distant or interrupted, no friend of his was chilled or estranged for a moment. He could not bear a good man's enmity. From the universal amenity of his manners, some may have supposed his bearing indiscriminate to all; but it was only his intimate friends who could estimate the strength, sincerity, and constancy of his

attachments — warm and unimpaired, even to the moment of death—his zeal for their interests, his care to defend or enhance their reputation, and his watchfulness, either to render serious services, or to do that which should be grateful to their feelings.

He was, indeed,

> "The kindest man.
> The best conditioned and unwearied spirit
> In doing courtesies,"

that it has been my lot to know. We may sum up his character in a word, as that of a man who performed faithfully all the duties of life, who rendered kindness to all with whom he had intercourse, and who did wrong to no one.

On the 26th March, 1839, in the seventy-sixth year of his age, he closed his valuable life, in the house of his eldest son, Henry A. DeSaussure, Esq., in the city of Charleston.

To the people of Columbia, the memory of Chancellor DeSaussure should be especially dear. He came to that city in 1812, as a permanent inhabitant. His hospitable house was open to every stranger, and to every youth who was disposed to be good and great. He made society what it has since been—kind, courteous and hospitable. His example was the light of morals and piety. Everywhere, but more especially at home, he was remarkable for that kindness which spares *all*, and for that benevolence which blesses *all*.

His life was a useful, happy one. His wife, till her death, in 1822, was the sun of his house, and the light which encircled his head with the beams of gladness. His children were and are worthy of him. What more need I say? The man whom we all loved, and whom we remember *now*, after a lapse of twenty years, with tears of sadness, has passed from earth to brighter and better worlds on high.

THEODORE GAILLARD.

Chancellor Gaillard was descended from the Huguenots. He was a native of St. Stephens' Parish, was educated in England, and was an eminent lawyer. Many of his arguments are to be found in 2d Equity Reports. He was remarkable for "thoughts which breathe and words which burn." He spoke briefly, but always to the point, and made it so clear that "he who runs might read." He was a member of the House of Representatives in '98, '99, 1800 and 1801; and was the Speaker in the two last years. He then retired from the Legislature, but was again returned as a member of the House of Representatives, in 1808, and was again elected Speaker.

By the 4th section of the act of 1808, entitled "an act for the better arrangement of the sitting of the Courts of Equity, for the establishment of Courts of Appeal for the same, and for other purposes therein mentioned, a Court of Appeals, consisting of all the Judges, was established and directed to sit in Charleston the 1st Monday in January and the 2d Monday in March in every year, and at Richland Court House on the first Tuesday next after the ending of the Common Pleas Circuits, in every spring and fall of the year. By the 10th section, two additional Judges were directed to be elected, making the full Bench of Equity Judges *five*.

Judges DeSaussure and Gaillard were at this time elected. The Bench then consisted of Rutledge, James, Thompson, DeSaussure and Gaillard.

I first had the honor of addressing Judge Gaillard, as a Solicitor in Equity, in February, 1815. His decree in my favor, in a case which I had much at heart, (O'Neall *vs.* Cothran—Speers and Waters, 4 Equity Reports, 552,) gave me a most exalted opinion of the Judge. His decrees, to be found in 3d and 4th Equity Reports, will speak for themselves. There are many of his unpublished decrees, which,

if they could even yet see the light, would, I am persuaded, give him a still higher fame.

In 1817, the Judges in Equity resigned to receive the benefit of the increase of salary, as I have already stated; the result of that election re-arranged the Judges, thus—Henry W. DeSaussure, Thos. Waties, Theodore Gaillard, Waddy Thompson, and Wm. D. James. The Court of Equity, when I first came to the Bar, had a more popular appreciation than the Law Court. After 1820, from causes which it is not *here* necessary to state, it began to decrease, and in December, '24, the abuses, real or imaginary, led to the breaking up of the Appeal Court in Equity, and also of the Law Court of Appeals, then called the Constitutional Court, and the establishment of the separate Court of Appeals. Under that act, Judge Gaillard was transferred to the Law Court. His long absence from the law forum had very much impaired his adaptiveness to its duties. In 1826, he suffered a paralysis; but notwithstanding his distressed condition, he continued to discharge the duties of his station until the spring of '29, when he died upon his circuit. Thus fell another of South Carolina's sons, who was in every way worthy to be counted in her hour of pride as one of her jewels.

We copy an ample sketch of his usefulness from

"*An Eulogium on the late Hon. Theodore Gaillard, one of the Judges of the Court of Common Pleas, and formerly a Chancellor of South Carolina; delivered, agreeably to appointment, in St. Michael's Church, May* 19, 1829, *by Wm. Lance, of the Charleston Bar.*"

"Our lamented fellow-citizen, the subject of this obituary respect, received his nativity in the parish of St. Stephen, in this District. His ancestry, both paternal and maternal, were of Huguenot origin, and of first and ancient respectability in France. Towards the close of the Revolutionary conflict, he embraced the facilities of a patrimonial independence, to pursue in England the studies which conduced to his future destinies. He became a polished scholar. He attained a perfect knowledge of the language so universal in Europe,

and spoke it with a familiarity, elegance and purity nearly vernacular. Passing from the accomplishments of the classics and the polite literature of the academy, he approached the Common Law in her very oracular temple, the Inns of Court in London. His velocity of genius and superior rate talents soon rose above the difficulties of that arduous study, which, (to use the emphatic words of Edmund Burke) 'is one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding, than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and to liberalize the mind exactly in the same proportion.' He was unquestionably 'so happily born.' He displayed, in a remarkable degree, a combination of force and enlargement of capacity with rapidity and brilliance of conception. His mental vision soon extended from the centre to the circumference of the orb he was to revolve in. No contractedness of thought, no narrowness of scheme, no limited or confined view of the professional instruction he was acquiring, could discover an inlet for their sordid influence, into an intellect at once so elevated and so far sighted. Law he studied, not merely as a livelihood and a medium of money-getting, but as the magical and invincible dispenser under heaven of equal justice and equal rights to his fellow creatures. From her libraries and volumes, his pre-conceived sentiments and sagacious comprehension readily amassed the knowledge which justified him in foreseeing success and eminence. The power which enabled him soon to master the great elements, could secure an easy passage to the practice of his profession. Before returning to the land of his birth, to engage in the active scenes of the world, he added to his literary and professional acquirements the improvement of travel in an European tour. He was one of the very few of those who have in our region ascended the seat of justice, who enjoyed such an advantage. Not that the survey of countries, nations and manners foreign to our own, of necessity widens the range of the mental faculties. But if there is already an expanse of intellect, enriched with the lore of learning, a keen

and observing discernment and an intuitive insight into human nature, much valuable information may be gathered by scanning our species in various climates, under multiform governments and diversified religions. Its influence though not distinctively marked from the other qualities of great talents, yet mingles with them in pervading the spacious field of usefulness to the public. At the period of Mr. Gaillard's arrival in Carolina, her Bar could boast of some of the first and greatest lawyers in the United States. This being matter of history, I need but refer your recollection to the splendid catalogue. It was a constellation whose effulgence cannot be outshone. May congenial luminaries through all times of our liberty, reflect an equal light on the system which surrounds them! To be bright among such as then adorned the profession, is no equivocal stamp of sterling celebrity. To be prominent among brilliant orators, erudite jurists, finished scholars and accomplished gentlemen, is an insurance of posthumous fame, which can never be weakened or endangered, while history is disinterested but in transmitting the truth, and men take a concern in what has past, as well as in the present, and in that which is to come. As a practitioner at the Bar, he was unsurpassed in uprightness, in judicious zeal, in ability in the cause of his clients; many of whom, still spared to our society, I have heard speak of him with raptures of satisfaction. In the conduct of business, the felicity of his genius arrived at its substance, while many were toiling through its forms. He went through it with the energy, alacrity and patience appropriate to the occasion. He employed no indiscriminate machinery. In the most important case, there was no parade, or hurry, none of that grovelling pomp, which is sometimes supplied as a substitute for real capacity, or resorted to as a show of occupation, or a stratagem for employment. In all matters of his professional avocation, there appeared ease and regularity, without the tedious particulars of mere method. He lightened on the strong holds and 'vantage ground' of his cause, while some by slow degrees were wading through intricate and unimportant minutiæ. Though he studiously regarded the technical apparel of the

law when interwoven with the essential merits of a case, he disdained the wiles and nets which to the 'shadow of wisdom' only are serviceable as instruments. He carried his aim upon its intrinsic worth. If he lost it, the client was always content that justice was done him by his Counsel, though he might murmur at what he conceived its denial by the occupier of its seat. The widow and the orphan always found in him the warm friend and gratuitous advocate. His lively cast of temperament and affability of manners relieved the weariness which must sometimes overcome the most industrious of a vocation whose responsibilities are so numerous and weighty. His pleasantry rendered the business, either of the Court or the office, easy to himself and agreeable to others. There was no assumption, or affectation, or simulation about him. To his associates at the Bar, he was unreserved, candid and explicit—neither cold nor repulsive, nor yet too compliant. He urged with fearless perseverance the views presented to his own judgment, without passing the boundaries of complaisance. He estimated the dignity of his post too highly to admit an identity of the Counsel with the party he represented. He scorned advantage, though he insisted on right. He considered himself not the instrument, but the protector of a litigant.

"An intellect so active, well-stored and vigorous, so commanding and comprehensive, was not permitted to continue in one department. His political talents were of the highest order. They particularly attracted the admiration of the State at the signal revolution of 1800, which brought the Republicans into power. It was a crisis more than any other since the overthrow of a foreign monarchy, pregnant with the fate of substantial liberty and popular rights. To borrow the words of one of the greatest of modern orators on a different occasion, 'It was a time for a man to act in. We had powerful enemies; but we had faithful and determined friends and a glorious cause. We had a great battle to fight, but we had the means of fighting. We did fight that day, and conquered.' That conflict, my friends, was not the every day struggle of

mere competitors for office. It was not a contest waged chiefly for the selection of men, not the common rivalship for personal popularity disconnected from the comparative qualifications and claims of the candidates, too often 'a conclusion,' (to employ an expression of Dr. Johnson) 'in which nothing is concluded.' The most virtuous patriots and consummate statesmen were arrayed in the contending ranks. It was a mighty warfare for principles involving the very 'breath of life' of the national constitution. It was a crusade against measures, a policy and a conduct which, (however righteous the motives of their projectors) the people of the United States felt unsuited to their genius, and a violence to the safe-guards of the Republic. The victory then achieved, (if I may be allowed the expression) 'saved alive the soul' of the government. 'I speak with the freedom of history, and I hope without offence.'

"It was at this triumph that the constituents of his native parish a second time selected our deceased friend their representative in the Legislature. His election as Speaker of the House, proclaimed the voice of Carolina for Mr. Jefferson; and he was appointed an elector of that illustrious ornament of the age, whose name and fame are as imperishable as the spark of liberty is inextinguishable in the bosom of Americans. The presiding officer of a legislative body at a season of such political effervescence, must necessarily possess great talents to preserve dignity and order in their deliberations. No ordinary degree of judgment and tact is then requisite to enforce and regulate the employment of the time dedicated to the public business. It may safely be asserted that in so arduous a station, no one could have excelled him. He was never taken by surprise at the parliamentary questions arising so suddenly in debate, frequently proceeding from warmth, and made the test of relative strength, and too often handled as were the Parthian arrows, as the last expedient of those who are retreating under defeat. He resolved them without hesitation, and with reasons so lucid that all assented to the conclusion, with a conscious impartiality so evident to both sides of the House, that an appeal to themselves seemed

almost obsolete from disuse. In such scenes and elements he shewed a genius,

——— 'populares
Vincentem strepitus et natum rebus agendis.'

"As an orator, whether at the forum, in the Senate, or in a popular assembly, his rank was among the most eloquent. He was both persuasive and overwhelming. His style was perspicuous, easy, forcible and glowing, far removed from effeminacy or redundance, or the slightest seemingness of preparation. It was decorated by the suitable ornaments of a most finished education, and exhibited a fine and classical taste,—acquirements which must always command a superiority. It was fervid, without extravagance, florid without inflation, chaste and elegant without conceit or affectation. His language, where the occasion required it, (and an exquisite judgment could not mistake when it occurred) could rise to the loftiest elevation of eloquence;—it was always striking and pointed, never below the dignity of the most fastidious or refined understanding. It could flow in a majestic stream, and like the Pactolus roll golden particles in its current. There was in it, too, a peculiar conciseness, energy and terseness seldom united with so much grace. There was no timidity or weakness of expression—no ambiguity or obscurity of phrase, no masking of the real purpose of the discourse by vague terms. His ideas seemed as rapidly communicated to his hearers, as they passed over his own creative imagination. They escaped from his lips clothed in the garment exactly fitted to them, illustrating the philosophical remark of Buffon, 'Le style est l'homme meme.' The light, and fire, and vehement enthusiasm of his mind, were transfused to the sentence which was the instantaneous conductor of his thoughts to the intelligence of his audience.

"In argument and debate he was powerful. He had a penetration which could fathom the abysses and trace the most intricate windings of the human heart. No recesses or mazes were undiscoverable by his sagacity. The labyrinth of craft and artifice was as passable to his scrutiny as the

straight road of plain dealing. He saw his way distinctly himself, and could illuminate it for others by the torch of his genius, and open it by the clue of his acute perception. In truth he was

> —— 'a great observer, and looked
> Quite through the deeds of men.'

He was capable too of rousing and captivating the passions, when eternal justice cried aloud for vengeance on her insult. He could then seize the citadels of the sensibilities and tender susceptibilities of our nature, and gain the trophy of pathetic ardor. This was strikingly exemplified in a very memorable case, the arraigning of the murderer of a relative. On this occasion, so awful and impressive, he poured forth the tremendous invective and overpowering philippic of Cicero against Catiline and Verres, and the all-subduing denunciation of Anthony over the dead body of Cæsar. Every feeling of abhorrence at the atrocious enormity of the crime, was excited in the breasts of the crowded audience, whose eyes were suffused in tears for the untimely and violent fate of the assassinated friend of the orator; and the perpetrator of the deed paid the forfeit of his life, exacted by the laws of earth and heaven, and claimed by the anguish of an agonized family, and by an offended country, through the feeling and splendid appeal of the accuser, who vindicated their wrongs and avenged the ghost of his slaughtered kinsman.

"It was not only in the style, reasoning and solid strength of his speeches, that he evidenced an inexhaustible treasure of natural and acquired endowments as an orator. There was a melody and harmonious compass of voice, a distinctness of elocution, an ardent animation of manner, which enchained the fixed attention of his hearers, to the end of a discourse always limited in its range by a happy condenseness. His whole delivery delighted them, enlivened the arena of public and forensic business, and carried the conviction that he argued in the fairness of reasoning, aloof from the ensnaring or entangling subtleties of a recondite and abstruse logic. His oratory was a happy specimen of what Cicero admired as uniting the valuable attributes of a public speaker—

'Eloquens is, qui in foro, causisque civilibus, ita dicet, ut probet, ut delectet, ut flectat. Probare necessitatis est; delectare, suavitatis: flectere victoræ. Nam id unum ex omnibus ad obtinendas causas potest plurimum.'—(*Orat. ad Brut. S.* 21.)

"It was not in his extemporaneous speeches alone that he was distinguished. As a writer, his compositions were an admirable model of imitation. One I well remember, (as do many who are here present) delivered by him where I have now the honor of appearing before you. He was the first orator appointed at the formation of the '76 Association. On the anniversary of the national Constitution, he pronounced a finished encomium on its august framers, and a most luminous commentary on the blessings it would secure to our happy land, and the sanctuary which would be opened to the persecuted and oppressed of all nations and climes, under this wonderful, and I hope indestructible, edifice of Republican government.

"He possessed, too, in a transcendent degree that rare talent which, like the poet's, is a gift of nature—genuine wit. It was playful and sportive, elastic and recreative, in the hours and toils of business, diffusing cheerfulness and social charm, but never outstepping dignity. It exhibited a mirthful irony, without violating courtesy. It conveyed the sting, too, when deserved, and the aptness of the moment never escaped his sagacity. His sarcasm could be poignant and bitter. When the occasion called for it, ridicule was a formidable weapon in his hands. In his satire, there mingled sometimes the sprightly and instructive vivacity of Horace, at others the serious and terrible severity of Juvenal. Perhaps no faculty of the mind requires more wariness and prudence in its just and wholesome exercise, and none so frequently confounded with its spurious substitutes. Risibility can easily be excited by the humour of burlesque and drollery, but this is the proper diversion of a farcical afterpiece. The pretence of rudeness or flippant conceit, mistakes as a sign of its triumph what is its best punishment, unretaliating silence.

"After a service of several years in the Legislature, (during which he declined a re-election to the chair, from the principle

he professed that such honors should be partaken of in rotation by others) he retired to more tranquil scenes. But in the contest of 1808, which resulted in the elevation of Mr. Madison to the Presidency, and the continuance of the Republican system of administration, he was induced to add the weight of his abilities, political popularity and influence, to the cause of his party. He was returned a member of the House from the Parish of Christ Church. His able discharge of the duties of Speaker was still fresh in the remembrance of all. The station was again conferred on him under circumstances highly flattering and complimental.

"It was during this session that the Court of Appeals in Equity was established, a tribunal which greatly meliorated the condition of our judicature. It was a reformation introduced and supported by the most enlightened of the profession. The acknowledged talents, erudition and experience of the officer who presided over the House, identified him at once with the institution they had created. He was invested with the ermine by an unanimity seldom paralleled. In this office, so vitally important to the great interests of property and the domestic and business relations of society at large, his unclouded intelligence, quick-sighted acumen, and solid strength of judgment, applied with readiness and singular aptitude the doctrines of Chancery to the cases which called for his adjudication. Of these doctrines his knowledge was extensive, profound and eminently practical. His decrees were pronounced with a promptness and decision equally removed from precipitancy or unnecessary delay. They were the exact type of his ideas, clear and easily intelligible to all. They were encumbered by no superfluous reference to authorities, no pedantry of the science, (of which for the occasion he conceived himself the expositor and the minister,) no useless elaboration in arriving at a conclusion. His analyzing mind had thoroughly investigated the original sources of our jurisprudence by which he was to be governed. A most felicitous memory could array instantly the printed guides he was to follow, while his nice discrimination developed the spirit and reason of the equitable and legal codes he was

dispensing. No Chancellor submitted with more deference to points already decided, though they met not his concurrence. No one was more zealous in preserving inviolate the great land-marks of the system, though the bold independence and activity of his penetrating mind would discern, and would fearlessly assert, when requisite, the inapplicability of some antique principles to our unparalleled institutions. What was said of Lord Thurlow by an admirer, may be repeated of him, 'I never found that he meant to break through the rule. No man criticised more upon rules laid down by other Judges, but no man was more rigid in observing them, when he could once deduce them.'—*3d Vesey*, 527.

"Judge Gaillard, though anxiously desirous of sustaining the boundaries between the tribunals of law and equity, wished to assimilate as far as is practicable in wise discretion, and to amalgamate in the administration of justice, the nature of each with the other. His view might be somewhat similar to what Lord Eldon declared of two objects of his admiration—'Chief Justice De Grey said, he never liked equity so well as when it was like law. The day before I heard Lord Mansfield say, he never liked law so well as when it was like equity;—remarkable sayings, (he added) of those two great men, which made a strong impression on my memory.'—6 *Ves.* 259. There was a very general acquiescence in or confirmation of his decrees. When he differed with the Bench of his judicial colleagues, it was then he took more than ordinary pains. His lights and learning became then peculiarly public property. They were put forth to be examined by all, not for display or effect, but from an imperative sense of indispensable duty, which would withhold nothing from the suitors, the Bar and the community. His ambition was to satisfy himself that his judgment was supported by principle and precedent;—and when precedent failed, the exuberance of his intellect was never bewildered in reaching the point where justice should prevail. A Judge who should commence with, 'Having had doubts upon this will for twenty years,' would, (however extraordinary his attainments) in our country, be soon transferred to the chair of a professorship, as better

adapted to his lucubrations than the business for which Laws and Courts are designed.

"The satisfaction afforded by the amenity of his manners, the resolute and wise exercise of his official power, the disposition to accommodate where there was no sacrifice of what he deemed not under his control, by the safety and correctness of his decrees, and a judicious despatch of business without haste or impatience, was fully manifested by a re-election of our lamented friend as complimentary as his first, when the Chancellors resigned to receive a compensation more equivalent to their labors—a testimonial certainly not of doubtful character.

"In 1824, a new arrangement of the Circuit and Appeal Courts was organized. Whether this innovation is an improvement on the preceding models, (one of them coeval with our Constitution, another existing for sixteen years,) must be left to a test of the same duration, if a triumvirate is not long before superseded by other experiments. At this period of the partition and division of judicial labors, the duties of the Law Bench were allotted to Judge Gaillard,—the number of Chancellors being reduced to two, and they and the Law Judges rendered subordinate to the appellate. The versatility of his genius, the variety of his information, and the speediness with which he could recover the recollection of former, and grasp the extension and accumulation of any knowledge, soon rendered his novel situation light and familiar to him. It furnished too, a wider and more apposite scope for his popular, delightful and commanding eloquence, than the fabric of the Chancery scarcely ever presents. His charges to the Jury comprised so succinct a compendium of the circumstances and proofs, that the various capacities of our citizens embraced, without fatigue, the compass of the case. His abstract so divested it of the extraneous and irrelevant, that their good sense could review the concentrated weight of the testimony with the ease their memory could retain the incidents of an impressive narrative. In conducting their attention to the law which was absolutely to control them, he was distinct, confident and energetic, avoiding authoritative dictation, but

maintaining the prerogative of office bestowed by the popular sovereignty for the public good. He knew and participated in the feelings of the people of this country too well not to be certain that they would firmly and conscientiously enforce the dominion of their laws—the only omnipotence under heaven which they acknowledge.

"As a magistrate, no one was actuated by a more strict and accurate sense of his duties to the public. During the sixteen years he served as a Chancellor, an excellent constitution, with uninterrupted health, enabled him to be constant at his post, and vigilant and unwearied in the discharge of its functions. He knew well the rational allowances for the difficulties in which the counsel and clients, with all their diligence and zeal, must at times be embarrassed in their progress. But he avoided in his indulgence the extreme of either lenity or rigor. When business could be done with efficiency, (the mere show of it he detested,) his co-operation and unrelaxing attention would accelerate its march. In a judicial administration approaching a quarter of a century, (but one year less than Sir Matthew Hale's,) his good fortune would have been singular indeed, had he escaped the insinuations and murmurings of unjust discontent, of jealousy or of envy, to which that celebrated English Judge was exposed, and which all, whose pre-eminence eclipses inferior but aspiring intellects, must in the general course of events expect to follow their superiority. The sturdy independence of Lord Coke, and the inflexible integrity of Clarendon, could not avert the stroke aimed by the vindictiveness and malignity of enemies. The resentment of subordinate minds, or narrow hearts, can never be extinguished or appeased. It can only be silenced, if not satiated, by the removal or the downfall of the colossus which daily casts a shadow on the diminutiveness of their statues. On such occasions, pusillanimity is propelled by both consciousness of wrong and the dread of its object. Such examples verify the remark of the Roman historian who held the key to the human heart, that ill-will towards an individual is but the necessary consequence of having injured him. A really great man should, however, treat the calumnies

and scandals of the assailants of his public character and the defamers of the purity of his motives, with the disdainful contempt uttered by Mr. Burke for those who attempted to discredit him with his constituents at Bristol—'The highest flight of such clamorous birds is winged in an inferior region of the atmosphere. We hear them, and we look upon them, just as you do, gentlemen, when you, enjoying your serene air on your lofty rocks, look down upon the gulls that skim the mud off your river, when it is exhausted of its tide.'

"In reference to the more active pursuits of life, and the frequent recurrence of occasions which call forth the strong and sometimes the violent emotions of the mind, as to passing scenes, perhaps Judge Gaillard's predominant passion was a deep, intense and ardent interest in the political fortunes and concerns of his country. From those of high rank in the profession, and on the Bench, in this hemisphere, we almost naturally look for this propension of the mind. All our institutions being reared on the foundation of freedom and equal rights, those who from youth have imbibed in daily study the spirit of our laws and constitutions, appear as it were the vanguard in descrying their transgressions, and detecting aberrations from their injunctions. They habitually become guardians of the rights of their fellow-citizens, sentinels over the movements of those in power, antagonists of encroachment, champions of a constitutional and wise administration, and suppressors of factious and indiscriminate opposition. To be the head of a party at any time is, in general, a testimonial of some talent, or some signal service. But to be a leader in the times which brought him on the political stage, is an incontrovertible proof of intellectual supremacy. The immortal author of the Decline and Fall of the Roman Empire, who as a member of Parliament studied men as in his unbounded scholarship he studied languages and books, records from his personal observation, Mr. Fox's 'argumentative vehemence, who, in the conduct *of a party*, approved himself equal to the conduct *of an empire*.'

"In the political sentiments and acts of our deceased friend, there were always discernable decision and consistency. He

was a great advocate of the reform of our representation in the Legislature, and of the extension of the elective franchise, which has given our citizens equal privileges and equal participation in the enactment of the laws which are to govern them. He was a politician, not for the gratification of his own ambition. He never swerved from uniformity to gain office, or for his own aggrandizement. He declined the solicitation of influential admirers during the late war, (while he resided at Columbia,) to represent them in Congress; as also two appointments (of District Judge) from the General Government. He was satisfied with the judicial honor which his native State had bestowed on him, though nature seemed to have destined him for a statesman.

"I have spoken chiefly of his public course. But in private life he possessed an alliance of qualities which endeared him to his friends, and of virtues which will render his memory sacred where the awful calamity of his loss is most severely and heavily felt. He was benevolent and kind to the poor, compassionate and charitably indulgent to the infirmities of our nature. Added to all, he was a religious man. In his Christian faith he was sincere and impregnable. I do know that he was a devoted and profound student of divinity. An immense portion of his very generally extensive reading, was of the highest standard theological works. He studied the inspired volumes for himself, but sought with an unabating avidity for the opinions and expositions of learned divines, on the doctrines and mysteries of revealed religion. Though his preference of the faith and institutions of Protestant Episcopalians was decided and unmoved, he was too pious a man and too enlightened a citizen, not to hold in reverence all other persuasions and sects. Neither bigotry nor polemical controversy mingled with his own belief or his attachment to the forms of worship which he preferred. He claimed only for his own conscience and his own church, the inalienable liberties which our glorious and happy constitution has guaranteed to all who worship God in spirit and in truth He thought with the ancient Christians of Constantinople, 'Our bodies are Cæsar's, but our souls belong only to God.'

"That his devotion in the advancement of religion was fervent, and his piety ardent and practical, 'ever witness for him' two conspicuous monuments. The establishment of the fund for promoting the independence of the Episcopate, and enabling the incumbent to supervise with undivided attention the general interests of the Diocese, was an object of his intense solicitude. The erection of a holy mansion for Episcopal service at the Capital of our State, was projected and achieved by his unremitting exertions. Philanthropy and industry, indeed, marked his steps towards every work in whose completion his foresight augured benefit and prosperity to the public.

"Within the last three years of his life, it pleased Heaven to visit him with grievous affliction, which for a time deprived the State of his services. His sufferings were great, but he bore them with the serenity and fortitude of philosophy' and with the patient and humble submission of the pious, who look to 'things which must be hereafter.' As soon as his physical frame could gratify the aspirations of his mind, his irrepressible sense of duty rose paramount to every terrestrial consideration. He undertook the remote journeyings requisite in the performance of judicial functions. The last act of his high office, was the trial of a citizen for his life. He thought the accused innocent and injured. His eloquent charge conduced to his acquittal. His robust mind rose above bodily debility, and the blaze of his genius flamed radiant and resplendent like the light of the setting sun. But the infirmity of his system could not long sustain the weight or support the active operations of so powerful an intellect. This was too observable to the friends and gentlemen of the Bar who were around him. With a kindness and tenderness, the unerring indication of magnanimity, they endeavored to arrest even his further thought of business. Their urgent advice could not prevail over his own view of his duty. He proceeded on his journey to the adjoining district, — but nature was exhausted, and his mortal career was drawing to a close.

"Convinced that his end was approaching, he looked to it as

a termination of his woes. With the undaunted Roman he thought—

> 'Of all the wonders that I yet have heard,
> It seems to me most strange that men should fear;
> Seeing that death, a necessary end,
> Will come—when it will come.'

It had no terrors for him. He had done his earthly duties to the best of his powers. He met it as a welcoming messenger. It was his relief that he had finished his course. It had been his hope, that like his venerable brother, (that amiable and exemplary statesman, so long the popular President of the national Senate,) he should terminate his life while in the actual service of his country. That hope was realized, and

> 'He gave his honors to the world again—
> His blessed part to heaven, and slept in peace.'"

WILLIAM HARPER.

Chancellor Harper, my colleague and friend, was born 17th January, 1790. His father was a minister of the Methodist church, and came to America with Coke, Atterbury and Brazier. With the latter, he came to Charleston in 1791, and preached in Trinity church. He was afterwards in charge of the Methodist church in this city, and lived in the old parsonage. I have heard the Judge say, that a person riding up to it, with a chesnut limb as a switch, on dismounting, stuck it into the ground. It grew and became a large chesnut tree, which once stood, and perhaps still stands, in the yard. Mr. Harper married, as his second wife, Mrs. McCall, and removed to Enoree, Newberry district, where he died. He had two sons by his first wife, William and Wesley. The latter graduated in the second class of the College, and died soon after. William graduated in the third class, (1808.) His graduation was, I presume, deferred from the necessity he was under of teaching to provide for his collegiate course. When he graduated, instead of an oration, he recited a poem, which received high commendation from that competent judge, Mr. James L. Petigru, in his oration delivered on the semi-centennial anniversary of the South Carolina College, Dec. 4th, 1855.

Chancellor Harper studied medicine for a time in Charleston, and afterwards read law in the office of Col. John Joel Chappell. He was admitted to the Bar in 1813, and was the partner of his legal instructor. After Colonel Chappell was elected to Congress, Mr. Harper had the entire field to himself. He was, however, little known beyond his immediate circle of friends, until his great arguments on the Circuit Court and in the Court of Appeals in Equity, in the case of Butler *vs.* Haskell, (4 Equity Reports, 651,) gave him favor and success. He tells us in his memoir of Judge DeSaussure: "In the humblest obscurity, I was distinguished by his countenance, encouraged by his kindness, instructed by his advice." Thus aided, and more than all sustained by his own great abilities, he moved steadily on to greater and still greater usefulness.

In 1813, (December,) he, with John Caldwell, was elected a member of the Board of Trustees of the South Carolina College. John Murphy, afterwards Governor Murphy, was the first graduate who ever sat at that Board. *They* next received that great honor and distinction. In 1816, Mr. Harper was elected a member of the Legislature from Richland. At that period, the separate Court of Appeals was brought forward for the first time for the consideration of the House of Representatives. D. E. Huger, Benj. C. Yancey, Wm. D. Martin, and Harper, were all in favor of it. Chancellor Harper made, in support of it, the strongest argument of all. I was opposed to it, and so continued till 1824, when I yielded my opposition under a conviction, which has remained ever since unchanged, that it was the best and surest means of administering justice in the last resort.

Mr. Harper had married the daughter of David Coulter, Esq., an excellent wife, who blessed his life, and watched over with unceasing care the decline, which many years afterwards carried him from her, his family, and country to a better world. He removed with Mr. Coulter to Missouri in 1818. He there soon rose to eminent distinction; he was elected Chancellor, and fulfilled the onerous duties of that office until the poverty of his compensation forced him to resign. After the death of his father-in-law, he returned to South Carolina, in 1823; and in December of that year was elected State Reporter. He first filled that office, which was created by merely an appropriation for the same. Previous to it, Messrs. Nott and McCord, and Mr. McCord alone, had published four volumes of Reports, under a contract with Mr. Faust, the State printer. Mr. Harper published a single volume of Law Reports, beginning in November '23, and ending with November, 1824. He also published a small volume of Equity Reports, embracing the same period, which he often declared contained only a single case which ought to be regarded as authority. During the period he filled the office of Reporter, (1824,) he argued with his friend, J. L. Petigru, then Attorney General, the great case of Stoney *vs.* McNeil. His argument in reply to Colonel Hunt, who was on the other

side, was regarded a most masterly one by the Bench and Bar. It will be found at pages 166, 7, 8, 9, 170, 1, of his volume of Reports. After this, in 1826, he was appointed by Governor Manning, in the recess of the Legislature, Senator in Congress, *pro tem.*, in the place of John Gaillard, whose lamented death vacated the place which he had long filled, so much to his own honor and the glory of the State. Mr. Harper accepted the appointment, and very satisfactorily discharged the duties. He had no purpose of becoming a candidate for the office when he accepted the appointment. He accordingly did not offer at the succeeding session, when Judge Smith was replaced in the Senate, from which the election of General Robert Y. Hayne, in 1822, had excluded him. In the fall of 1827, I presume, Mr. Harper removed to Charleston, where he practiced successfully. He was returned by the Parishes of St. Philips and St. Michaels to the House of Representatives in 1828. On the organization of the House, he was elected Speaker, and continued in the discharge of the duties of that *great office*, until at the same session, upon the resignation of Chancellor Thompson, he was elected as Chancellor in his place. He immediately accepted the office, and entered on its duties, and removed with his family to Columbia.

His decrees, for the period of time—two years—in which he was Chancellor, before he was placed on the Appeal Bench, are in Bailey's Equity. They are remarkable for the care, ability and just judgment with which they were prepared and decided. Out of the many deserving notice, I select Blake *vs.* Jones, (Bailey's Equity, 142;) McDowal *vs.* McDowal & Black, (ibid. 324;) as examples worthy of his fame.

In 1830, Chancellor Harper and the writer were placed on the Appeal Bench. My commission as a Law Judge was a few days older than his as Chancellor, and it so happened that I received a few more votes than he did. These gave me posisition as second in the Appeal Bench, although he was three years my senior in age. No Judges ever encountered a heavier portion of duty than then fell to our lot. We entered the Court of Appeals the first Monday of December, 1830,

and with short intervals of rest were employed until the first Monday of July. Our session in the city of Charleston was for ten successive weeks.

It is only necessary that I should point attention to 2d Bailey, from page 1 to 540, and to Bailey's Equity, from page 148 to 519, for the evidences of the labour performed by Johnson, Harper and O'Neall during that time.

In 1832, (November,) he was a member of the convention which nullified the tariff. He met with the same body in March, 1833, to rescind the ordinance of Nullification. It nullified the Force Bill. This measure was adopted on the motion of Judge Harper. In the committee-room, when the motion was made, General McDuffie gave a practical illustration of the inutility of such an ordinance, by simply saying: "I should like to see you nullify the army provisions of that bill." This ordinance also contained the definition of allegiance, which protracted the rage of party till December, 1835.

In the discharge of a public duty at Washington, in connection with Professor Dew, Judge Harper was absent the most of March and April, while the Court of Appeals sat in Charleston. In 1835, (December,) the Court of Appeals was abolished, and Judges Johnson and Harper were elected Chancellors. In the discharge of the duties devolving upon him, and in the different systems or alterations which were adopted, he faithfully performed his duties. Under the Act of December, 1842, giving him leave of absence till the first of May, 1843, Chancellor Harper visited Europe. His tour was the source of great pleasure to him, and the narration of his travels was exceedingly interesting.

On the 16th of October, 1847, he closed his useful life. He had long been seriously afflicted, and his death, though long expected, carried mourning all over the State; for he was personally loved by all who knew him. His talents were of the first order. He was heard with delight in deliberate assemblies; but to be properly appreciated had to be heard in the consultation room. His memory was stored with cases and he had a wonderful facility in applying them. The vexed question arising out of Bell's will was heard before

the ten Judges. Harper delivered the opinion of the majority in the case Henry & Talbird *vs.* Archer, (appendix to Bailey's Equity, 535,) a reference to it will be a sufficient illustration of his powers.

His memory was, beyond all doubt, the most extraordinary which I have ever witnessed. Poetry, law and literature, were alike at his fingers' ends. This might be accounted for, perhaps, on account of the value of the recollections. But an instance occurred in Charleston beyond anything of which I believed the human mind to be capable. Sitting at the breakfast table with Judge Johnson and himself, I read from the morning's paper a paragraph containing a jumble of absurdities without connection. After breakfast, as we were walking Broad street, in the rear of our President, Judge Johnson, he said to me, I can repeat that which you read at breakfast; and he did, not omitting a word.

Judge Harper, in Court, was as remarkable for patient hearing as ever Chief Justice Marshall was. He said to me once: "Though I am satisfied in favor of the party about to speak, yet I had rather hear him; he may, in endeavoring to support his side of the case, show me where he is wrong."

He was one of the kindest of men, and had the least vanity of which human nature is susceptible. He loved his family and friends with unchangeable affection.

As a member of the Episcopal Church, he died in the full fruition of that hope which can exclaim: "O death! where is thy sting? O grave! where is thy victory?"

He thus finished his course; and I would say, in conclusion, if the testimony of his surviving colleague, in a Court which did more labor than ever was demanded from any other, be of any value, he merited everything which love or friendship could award.

DAVID JOHNSON.

Chancellor Johnson (as I learn from an autobiography which I append) was born in Louisa County, Virginia, 3d October, 1782. In this particular of his nativity, I was mistaken in the notice taken of him in my reply to the Bar in Charleston, January, 1855—8 Rich. 12. In 1799, he commenced the study of law, with the late Judge Nott, then an eminent lawyer, living and practising in Union District. In December, 1803, he was called to the Bar, and entered into partnership with his friend and legal instructor, and settled at Union Court House. In 1810, he was elected to the House of Representatives of this State, and in December, 1817, the Solicitor of the Middle Circuit. On resigning this office, in December, 1815, he was elected an Associate Judge. In December, 1817, to obtain the increase of salary which the Act of that session provided for, he, with most of the other Judges resigned, and was re-elected by a very large vote. In 1825, he was placed upon the Appeal Bench, although he preferred much that his senior and more experienced friend, Chancellor DeSaussure, should have been elected. At the resignation of Judge Colcock, in December, 1830, he became the President of the Court of Appeals, and so continued until the breaking up of that Court in December, 1835; he was then elected a Judge of the Court of Equity. Upon the resignation of Chancellor DeSaussure, he became President of the Court of Appeals in Equity and Court of Errors.* In December,

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* In the House of Representatives, Dec. 5th, 1815.

The General Assembly of South Carolina receive the resignation of the Hon. Chancellor David Johnson with deep and unaffected feeling. His long public service—his great ability and learning, added to his high moral dignity and worth, have contributed to advance the prosperity and character of the State; and it is with the highest gratification that the General Assembly express the estimate in which he is held. Be it, therefore,

Resolved, That upon the retirement of the Honorable Chancellor David Johnson from the Judiciary of South Carolina, he carries with him the unfeigned regard, respect and admiration of the whole State, as well for his distinguished public services as for his great ability and learning, and elevated dignity and moral worth.

1846, he was unanimously elected Governor and Commander-in-Chief. After the expiration of that office, in December,

Resolved, That the General Assembly, impressed with these views and feelings, tender to the Honorable Chancellor their best hope that the enjoyment of the leisure of his age may be commensurate with the success which has uniformly crowned the labors of his life.

Resolved, That the House do agree to the resolution.

Ordered that it be sent to the Senate.

IN THE SENATE, Dec 11, 1846.

Resolved. That the Senate do concur in the resolutions.

Ordered that the resolutions be returned to the House.

IN THE HOUSE OF REPRESENTATIVES, Dec, 19th, 1848.

The Special Joint Committee, to whom were referred the accounts of the Executive, beg leave to report that they have made progress in the performance of their duty regarding the civil and military contingent fund proper.

As far as the accounts have been presented, vouchers for the same have been duly presented, examined, and found correct.

The venerable Governor having suffered for months past under great bodily affliction, has recently been confined by serious illness. The Committee have not, therefore, had the benefit of a personal conference with him.

Under these circumstances, they deem it due to truth and justice, to allow the Governor further time to arrange and exhibit his accounts. Your Committee, therefore, recommend the adoption of the following resolutions:

Resolved, That time until the next session of the Legislature be extended to the late Governor, to examine and receive his accounts.

Resolved, That the House do agree to the Report.

Ordered that it be sent to the Senate for concurrence.

By order. T. W. GLOVER, *C. H. R.*

IN THE SENATE, DEC. 19TH, 1848.

Resolved, That the Senate do concur in the Report.

Ordered that it be returned to the House of Representatives.

By order. WM. E. MARTIN, *C. S.*

Between the time of his going to the Bar and his election to the Legislature (the precise time I do not recollect) he was appointed by the Legislature, and without his knowledge, Commissioner in Equity and Ordinary for Marion District, both offices involving the exercise of important judicial powers; but finding that they interfered with his professional pursuits, he resigned them both at the end of two years.

On the expiration of his office as Governor, resolutions, highly complimentary of the manner in which he had discharged its duties, were introduced and unanimously adopted in the House of Representatives. The distinguished member of the Bar (then, and for many years before, a member of the House,) in advocating them, remarked, amongst other things, that they were well merited; "for," said he, "we have tried him in all sorts of harness: In the offices of Solicitor, Judge of the Law Courts, Chancellor, Judge of the Appeal Court, President of the Court of Errors, and in the Executive Chair, and he works well every where."

1848, he lived in retirement, and closed his excellent life on the 7th January, 1855, at his residence, Limestone Springs, Spartanburg District. I have thus sketched rapidly, and without pause, the principal incidents in his life; and it looks like one continued testimony of love and affection borne to him by the people of the State for thirty-eight years, and it is beyond all doubt true, that he possessed the respect, confidence and love of the people, in an eminent degree. Yet, like many of his friends, a cloud of unpopularity was now and then wafted over the sunny skies of his days. Chancellor Johnson married early in life Barbara Herndon, of Newberry district, and much of his success in life he attributed to her energy of character.

Judge Johnson's description of his own powers is better than any which I could give. He had, he says, but "little fancy or poetry in his composition, nor did he cultivate the graces. As an advocate he had no pretensions to eloquence, and rarely attempted any thing like declamation. His success at the Bar and his reputation as a Judge were based on a well-founded knowledge of the principles of law, and a sound discretionary judgment in their application, *with the honest purpose of attaining the truth.*"

True, most true: I believe no Judge, not even Sir Matthew Hale, ever followed "*honesty and truth,*" more implicitly than did David Johnson.

In the herculean labors of the Appeal Bench, from 1824 to 1835, he did his part fully. At the six week's term of the Court of Appeals in Charleston, January, 1833, where he and I alone held the Court, he delivered forty-one opinions. That may serve as a specimen of the labor which he encountered and performed.

He says, of his style of writing, that it was generally "plain and perspicuous, having no affectation of ornament, and unobscured by metaphysical or subtle distinctions." This is also true, as every one will say, who will read his opinions, scattered through the Law and Equity Reports, from 1st Constitutional Reports by Mill to 2d Strobhart's Equity. I will say more, they will find that they are also characterized

by clearness of perception, irresistible argument, and an unsurpassed style of judicial eloquence.

I select from memory—Lawrence *vs.* Beaubine, 2 Bail. 623; The State *vs.* Hunt, 2 Hill, 226; Means *vs.* Brickle, 2 Hill, 657; The State *vs.* the Bank of South Carolina, 1 Speer Appendix, 537; and if the reader has not a more perverted judgment than I believe any lawyer of the present day has, I should be willing to trust to his opinion as to the merit of my deceased friend and brother, as a Judge.

His autobiography, written when he was 70, tells us "that he was six feet three inches in height, and that in the meridian of life he had a well formed, vigorous, muscular frame. In his earlier life, he frequently entered into the chase, and indulged in athletic exercises with much zest. In his old age, he became more corpulent." "The frosts of seventy winters," he says, "has silvered over locks that were black, and dimmed the once dark brown eye, but the heart is still young, notwithstanding many bodily afflictions."

This is what most of you, my readers, will recognize as a description of the good, great, unpretending, child-like man, who was your Judge and Governor—your friend and my friend, and the friend of all who deserved friendship. To his memory and over his remains stands, in the grave-yard at Union, a monument bearing his likeness and memorial of his useful life. It will stand for ages—but at last it will decay and perish, and still, like Coke and Hale, the name of David Johnson will live in the records of our jurisprudence; and if fame can so be, I would say, "*esto perpetua.*"

Autobiography of David Johnson.

David Johnson, Ex-Governor of South Carolina, was born in Louisa county, Virginia, on the 3d of October, 1782 His father, the late Rev. Christopher Johnson, and his mother Elizabeth, the daughter of Capt. James Dabney, were natives of the same county. In 1789, with their family, they emigrated to South Carolina and settled on Broad river, in Chester district. The son having gone through the old field school-drill, was in 1796 placed at a grammar school in York

district, the Rev. Dr. Joseph Alexander, of the Presbyterian church, being at its head. This school was founded by Dr. Alexander a few years after the Revolutionary war.

At the time spoken of, it was one of the only two grammar schools in all of the upper portion of the State, and the only Alma Mater of many of the distinguished young men of the day. The course was mainly confined to the Latin and Greek languages, geography and moral philosophy.

Having passed through this course, Mr. Johnson received instructions in mathematics and practical surveying from a private tutor; and here, on account of the distance and expense of the superior seats of learning, his early education closed.

In 1799, he commenced the study of Law in the office of the late Judge Abraham Nott, then a practising attorney distinguished for his professional learning and great moral excellence. In December, 1803, young Johnson having just attained the twenty-first year of his age, was called to the Bar: and invited by his *friend* and preceptor, entered into partnership with him in the practice of the Law, and immediately after (December, 1803,) settled at Union Court House. This partnership continued about four years, and was dissolved by consent, on Judge Nott's removal to Columbia.

The business which was by this means left in the hands of Mr. Johnson was considerable, and laid the foundation of his future success in life.

In 1810, after only a few week's canvass, conducted in good temper between personal friends, (and by a very flattering vote,) he was elected to the House of Representatives of the State Legislature. At the end of the term for which he was chosen, (December, 1811,) he was elected by the Legislature Solicitor of the Law Circuit in which he resided. On resigning this office in December, 1815, he was elected Judge of the Courts of Common Pleas and Sessions. The State Constitution provides that the salary of a Judge shall not be increased or diminished during his continuance in office; and at the time of Mr. Johnson's appointment, it was limited to £600, (about $2,571,) but in December, 1817, the Legislature in-

creased it to $3,500. This could only apply to those subsequently elected, and Johnson and most of the other Judges resigned their places and became candidates for a new election. The Bar feeling that the field was fairly open for competition, several of the most distinguished of them became candidates; but all the old Judges, Johnson amongst them, were re-elected by *handsome* majorities.

In 1824, the Legislature provided by law for the organization of a separate Court of Appeals, (to consist of three Judges having *final* appellate jurisdiction in all cases,) from both the Law and Equity *Circuits*. The judiciary then consisted of four Chancellors and six Law Judges, and it was obvious that the Legislature looked to these ranks for supplying Judges to the new Court. The impression seemed to be that this Court would be best filled by taking two Judges from the Law Court and one Chancellor.

Mr. Johnson, the youngest man on either Bench, entered into this view. He would willingly (as he assured his friends,) have declined all pretensions that he might have had in favor of the late venerable Chancellor DeSaussure, whose industry, learning and great moral worth, had placed him at the head of the Chancery Bench, but his friends advised that no one, and no member of the Bench especially, ought to oppose any obstruction to such selection as the Legislature might think proper to make—and he acquiesced.

There were then, as there have been frequently in South Carolina and other States, strong prejudices against the Chancery system.

These, it is believed, arise out of something inherent in the system itself, but a portion of them inevitably attach to those who administer it. The consequence in this case was, that Judge Nott, before spoken of, the late Judges Colcock and Johnson, all of the Law Bench, were elected. Judge Nott died in 1830, and John Belton O'Neall, now at the head of the Law Court of Appeals, was elected in his place. Judge Colcock resigned in 1832, and the late Chancellor Harper succeeded him.

In 1832, a Convention of the State passed an ordinance

which *nullified* certain Acts of Congress, providing for the collection of import duties; and the Legislature, at their session in the December following, passed an Act to carry the ordinance into effect.

By this all officers, civil and military, were required to take a new oath of office in certain circumstances, and in case of refusal or neglect, their offices were declared vacant. Two cases, arising out of the refusal of military officers to take the oath, came before the Court of Appeals, which then consisted of Johnson, the presiding Judge, O'Neall and Harper. The Act was adjudged unconstitutional and void. Johnson and O'Neall concurring, Harper dissenting.

Upon the announcement of this judgment, public denunciations of the majority of the Court broke forth like a tornado from the press, from the public assembly and from private coteries, until the Judges were placed under a kind of popular ban. This, it is believed, was the leading cause which led to the abolition of the separate Court of Appeals in 1835.

On the abolition of that Court, it became necessary to reorganize both the Law and Equity Courts, and provide for a new Court of Appeals. At this time a better feeling prevailed, one at least more consonant with the liberal, high-minded spirit of South Carolina. Johnson and Harper were, by a vote of the Legislature, transferred to the Equity Bench, and O'Neall to the Law Bench; and the Chancellors and Law Judges assembled, were to constitute a Court of Appeals from both the Law and Equity Courts. The Court of Appeals subsequently underwent other modifications; but it is sufficient for the occasion to remark that Johnson, as the senior Judge, presided in the department to which he belonged, whether in Law or Equity, as long as he remained on the Bench.

In December, 1847, he resigned his office as Judge, and was elected Governor without opposition.

The manner in which he discharged the duties of that office has been very generally approved. He was active and zealous in fitting out the volunteers for the Mexican war, and assumed the responsibility of defraying the expenses out of

the public treasury, which was subsequently approved by the Legislature. On the subject of the pardoning power he entertained some peculiar notions, which were carried out with good effect. Although a lawyer, he would not allow himself to judge of the guilt or innocence of one convicted of crime, nor did he listen to representations in the form of petitions, but regarded the verdict of the Jury and the judgment of the Court as conclusive of the fact and the law; nor did he ever allow himself to question the propriety of the sentence of the Court, where, as is very common in misdemeanors, it is discretionary. He departed from these rules in one instance only, and that under peculiar circumstances. The recommendation of the Jury, or the advice of the presiding Judge, were promptly responded to, and a pardon followed of course. There was yet no want of sympathy with the frailties of humanity. A distinguished lawyer whose client had been convicted of murder, and who came to the Governor's office armed with a formidable array of petitions, was met by a friend on his return, who enquired if he had succeeded in obtaining a pardon. His answer was "No—but I have seen a Governor who can say no to an application for a pardon with a tear in his eye."

The great controversy between Republicanism and Federalism had passed off before Governor Johnson came into public life; and from that time until the doctrine of Nullification was broached, there were indeed no political parties in the State. The doctrines of the Republican school, in which he cordially concurred, were almost universally received as orthodox. Those of Nullification, it is well known, gave rise in South Carolina to one of the most bitter and intolerant party strifes that ever agitated any State. He was then the presiding Judge of the Court of Appeals; and although prudence might have suggested the propriety of his standing aloof from it, the belief that a great revolution was impending, and that his duties as a citizen were not wholly merged in those of a Judge, he entered the ranks of the Union party and battled against the new doctrine. The results are known, Nullification triumphed, and he shared fully in the odium which

attached to his party. In the violence of party strife he was necessarily separated from many of his most loved and valued personal friends; but on a reconciliation between the parties in which he was an active agent, the most bitter and uncompromising were the first to do him justice.

In his farewell message to the Legislature in December, 1848, he avowed his intention to go into retirement to spend the remainder of the days allotted him in seeking the consolations of religion, and, as far as he was able, to promote the welfare and improve the condition of his kind in the circle into which his lot might be cast. But he had not then foreseen that the State which had fostered him with a mutual care, and which he so much loved and honored, was so soon to be involved in another party strife. Secession, in 1850, had raised its head, and was stalking over the land with giant strides. Conceding the right of Secession, but knowing, as every one else did, that South Carolina would not be sustained by any sister State, and believing that an Act of Secession on her part alone would be ruinous to her interest, and probably alienate the other Southern States from her, he opposed himself openly and fearlessly to it in several speeches made to popular assemblies. It is scarcely necessary to add that an overwhelming majority of the State have come to this conclusion.

Governor Johnson had but little fancy or poetry in his composition, nor had he cultivated the graces. As an advocate, therefore, he had no pretensions to eloquence, and rarely attempted any thing like declamation. His success at the Bar, and his reputation as a Judge, were based on a well founded knowledge of the general principles of law, and a sound discretionary judgment in their application with the honest purpose of attaining the truth. His style of writing is generally plain and perspicuous, having no affectation of ornament, and unobserved by metaphysical or subtle distinctions.

In stature Governor Johnson was six feet three inches in height, and in the meridian of life had a well formed, vigorous, muscular frame. In his earlier life, he frequently entered

into the chase, and indulged in other athletic exercises with much zest. In his old age he had become more corpulent. The frosts of seventy winters had silvered over locks that were black, and dimmed the once dark brown eye, but his heart was still young, notwithstanding many bodily afflictions.

JAMES J. CALDWELL.

I approach the brief sketch of this Chancellor with very much the feelings with which a parent would undertake to announce the death of a child. James J. Caldwell was a native of Newberry district, and began the preparation of his life for virtue and usefulness under my care, when I taught in the Newberry Academy, in 1813. He was born the 13th of January, 1799. His father, Daniel Caldwell, was of that race of Scotch-Irish Presbyterians whose love of liberty and learning was shown in their own country, and in the land of their adoption. He and his wife both died in the great epidemic with which Newberry was visited in December, 1815, January and February, 1816. They left a family of five very young and interesting children, of whom James J. was the oldest, and the only male.

After I ceased to teach, in the summer of 1813, he went to Mount Bethel Academy, in Newberry district, and under the care of Mr. Elisha Hammond finished his academical course. He entered the Junior Class of the South Carolina College in December, 1815, and graduated in December, 1817, in the class of which Fishburne and Baynard received the first and second honors, and in which are found the illustrious names of McWillie, Butler and Glover. He received a distinction in that class, which placed him on a footing with those whom I have last named.

After his graduation, he entered my office and studied law under my care. He taught school for the year 1819 in the Academy at Edgefield, and returning from Edgefield in the fall or winter of 1819, finished his legal course, and was admitted to the Bar in the spring of 1821. He married Nancy McMorries, the oldest daughter of James McMorries, Esq., who had been his guardian. Together they experienced as much happiness as falls to the usual lot of mortals, until death, which spares neither great nor small, severed the tie. Alone he

struggled on with his profession, and after some time succeeded in establishing himself firmly at Newberry.

In 1830, he was elected a member of the House of Representatives, and continued a member until December, 1835, when he was elected Solicitor.

Here it ought to be remarked that, although Mr. Caldwell never was a member of any temperance organization, he uniformly refused to treat the people when he was a candidate. His success at the polls showed *that a virtuous man's election never need depend upon corrupting voters with intoxicating drink.* In 1833 he was elected by the Legislature Brigadier General of the 10th Brigade of South Carolina Militia. In December, '35, he was elected Solicitor, and the harrassing duties of that office he ably performed until December, 1846, when he was elected a Chancellor, in the place of Chancellor Johnson, who was then elected Governor. The duties of this office, heavy as they usually are, he materially increased, by his anxious desire to have his cases and decrees accurate in every particular.

He removed to Columbia some years before he was elected a Chancellor, and resided in the immediate neighborhood of the city when he was elected. His health was feeble from the time he grew up to man's estate, and from the period of his election as Chancellor, it was manifest to me that he was overtasking himself, and undermining health and life in the pursuit of eminence.

In January, 1850, I strenuously opposed his riding the Southern Circuit, in the following month. I saw, however, he would do it, and I plainly told him that I thought his life would pay the penalty; but he thought duty demanded it, and accordingly began, but was obliged to abandon the Circuit at Barnwell.

On the 11th of March, 1850, while at home, the intelligence of his death fell upon my ears, with as startling an effect as a peal of thunder on a clear day! He died in the 52d year of his age. Thus perished, in the full tide of success, my pupil. If his health had equalled his industry, he

would have increased, year by year, in favor and usefulness. Chancellor Caldwell was remarkable for his morality, excess of no kind ever had a place with him. He was a kind husband, an affectionate parent and gentle master.

Like General Jackson, he stood by his friends, and they by him. He was fond of encouraging and developing youthful talent. But sometimes he struck a rock expecting a spark, and was answered by darkness. From his office in Columbia proceeded many young lawyers, instructed and prepared by him. He was a good lawyer; and if he had lived, he would have rivalled, if not excelled, some of his able brethren in Equity. But three years afforded little opportunity to establish the character of a Chancellor. In Court, he was patient and kind, and all who had business when he presided went away pleased.

I take leave of him here, by saying to South Carolina, my own as well as his loved mother,

> "Day by day do thy great ones go down to the grave;
> But thy genius expires not, but soars like the morn,
> When it rises, pavilioned in light, from the wave,
> As glorious as though but that moment 'twere born."

GEORGE W. DARGAN.

This gentleman, the son of Timothy Dargan, Esq., was born third of April, 1802. His father was a very intelligent and excellent man, a member of the Baptist Church. He was for very many years a member of the House of Representatives, and was in that body in 1814, when General Williams was nominated as Governor. When inquired of whether the General would accept the office, he replied, that he had no doubt, if asked, he would say, that he would not have the office; but if elected without an inquiry, he would accept: "For," said he, "he has never refused to serve in any capacity in which the people demanded his services." A rule, we may add, that he himself always observed.

Chancellor Dargan received the usual school education in the neighborhood where he was born, and was prepared for college by Edward Park, the son of Dr. Thos. Park, Professor of Languages in the South Carolina College, at the academy near Darlington Court House. His teacher, (Edward Park,) was a well educated man, and afterwards became distinguished. His training gave his pupil the foundation of a literary knowledge, upon which he afterwards so successfully established his reputation.

Chancellor Dargan entered the sophomore class of the South Carolina College in December, 1818, and graduated with distinction in 1821. In his class were many young men of great promise, who subsequently realized early expectations in their lives of usefulness and eminence. Among them I recognize the names of the Rev. Basil Manly, Dr. Maximilian Laborde, Drayton Nance, Esq., John P. Zimmerman, Esq.

Soon after he received his degree of A. B. he commenced the study of the law at Society Hill, with Josiah J. Evans, Esq., then the sole and a leading lawyer on the northern, now the southern, circuit. He was admitted to the Bar in

1823, and settled at Darlington Court House, entering at once upon a large and lucrative practice.

In 1826, he was elected Commissioner in Equity for the Cheraw Equity District, composed of Darlington, Marlborough and Chesterfield: in that office, he was distinguished for his accurate Reports, and the legal learning and judgment which he displayed. His Report in the case of Gee *vs.* Hicks, Richardson's Equity, Case 5, was, I know, an exceedingly able one: his positions, some of which were overruled by that wise and good Chancellor, DeSaussure, were sustained by the Court of Appeals. It was that Report which, I think, Colonel Gregg asked the Court of Appeals to preserve. It is in the records of the Court, and perhaps enough of it appears in the Report to indicate its excellence. He held that office until December, 1841, when he resigned.

In October, 1842, he was elected to the Senate of South Carolina, and in 1846 he was re-elected. In this body he was much distinguished by his ability and devotion to his duties. He was elected a Chancellor, in 1847, to supply the place of Chancellor Harper.

He was struck by apoplexy on Saturday night, the 14th of October, 1858, and after lingering for eight months, he closed his useful life, at the residence of his mother-in-law, Mrs. Quigly, in the City of Columbia, on Sunday night, 13th June, 1859.

He and his brother, Julius A. Dargan, Esq., were partners in the practice of the law, from 1837 to his election as Chancellor.

His first wife was Mary A. Wilson, the daughter of Samuel Wilson, of Darlington. They were married 21st December, 1826. His amiable and excellent lady died 4th March, 1843. She was the mother of seven children, all of whom are dead except two—Adela E., now the wife of Dr. William A. Player, and Georgiana Henrietta: this child, though not yet fifteen years of age, during the long and painful illness of her father, devoted herself to him with sleepless attention and unwearying kindness. What greater loveliness can be presented than such attention to a dying parent?

His second wife was Elizabeth M. Wilson, the relict of the Rev. John Wilson. She was the daughter of Major Joshua Phyer, of Fairfield, and of his second wife, (now Mrs. Quigly.) This interesting lady still survives: they were married 15th December, 1846. She was the mother of four children by him: only two now survive, William Phyer and Edwin Julius.

Having known Chancellor Dargan, both as a lawyer and a Judge, I can speak of him from my own knowledge. He was a good lawyer, fully capable to understand and manage the most intricate cases. His powers were not those of the rhetorician: he spoke, it is true, fluently and well, but argument was his greatest characteristic. Neither fancy nor passion entered into his speeches. He had not that soul-stirring eloquence which could hold an audience spell-bound. Yet his sound sense, truthfulness and honesty, made all who heard him listen with confiding attention.

On the Bench, Chancellor Dargan was patient and attentive. He heard and understood his cases; and when a Judge is thus possessed of the facts and law, he must decide correctly. A great fault in decisions is in not understanding fully a case at the Bar. When this is the case it requires months, nay, even years, of doubt, to reach a conclusion. Chancellor Eldon's great fault as a Judge was in doubting once and doubting on, until time was wasted, and the parties' means expended, while he was preparing an elaborate judgment. This was, however, not Chancellor Dargan's fault: he wrote, perhaps, more about his cases than was necessary, yet he generally attained an early conclusion, and delivered his judgment within a reasonable time.

Without referring specifically to his many well-reasoned opinions, I refer to his dissenting opinion in Buist *vs.* Dawes, 4 Equity Reports, 430, as illustrative of his acumen and reasoning. In that case I differed with him, and so did a majority of the Court of Errors; yet I was not insensible to the merits of his dissent.

Though not in the same Court, yet I had frequent opportunities of forming an opinion of him; and I can say with

truth that he was an ornament to the Equity Bench, and that he is entitled to have it said, as we stand by his tomb, that "*he was a just Judge.*"

In all the relations of life—whether as a citizen, a son, a husband, a father, a master, or a neighbor—he was without reproach. The law of his nature was kindness to all within his reach. His house was open to hospitality, and his heart was never closed to the appeals of charity and benevolence. His life was, indeed, full of "mercy and good fruits." He was cut down in his prime—still he had rendered his name immortal; and has descended to an early tomb, leaving to his wife and children the best of all inheritances, a name covered with the praises of his fellow men.

The following is the lamentation of one of his gifted classmates, when he had just witnessed the close of his life; it may speak forth a better exposition of his character than any which I can give:

"He had all the learning which is demanded by his high position; and a most eminent legal gentleman has declared that in a particular department of legal lore—without a knowledge of which no man can be a lawyer—he had perhaps no superior. His fame is established; but I must call attention to a particular feature which is impressively presented by a distinguished member of the Bar of Charleston. I mean that gentleness, that urbanity, that goodness of heart, that forgetfulness of persons, which would secure to the humblest solicitor all the respect and attention which were extended to the most distinguished of the profession. I am here reminded of what Lord Campbell says of Lord Eldon: 'Nor was his graciousness reserved only for his family, friends and favorites; it was with him an habitual benevolence, extending to all who came in contact with him. There was no fawning upon royal and noble persons, no ostentation of condescension to private men: he talked as frankly and as courteously with a tenant, a clerk, a servant, or a stranger, according to their respective relations with him, as with a prince of the blood; preserving always a demeanor which was free alike

from affectation and assumption, and in which natural dignity was tempered with unfailing good humor.'

"His mind was marked by great vigor and acuteness. His intellectual sight was clear, and there was no confusion of the objects which appeared within the field of vision. Everything was distinct and well defined. His propositions were lucidly stated, and enforced with a perspicuity which never allowed misconception of his end and purpose. His understanding was analytical and argumentative, and when engaged in its highest exertions, there was a logical coherence, which might well be compared to solid masonry. With this vigor he united a rich fancy, and a lively taste for the æsthetic and the imaginative. But they were nicely balanced, and the brilliant and enchanting pictures which so frequently played like sun-beams before him, never seduced him from the severer exactions of reason and reflection. If there be any in whose bosoms such a fact would awaken distrust, let me remind them that Eldon, Brown, Johnson, our own Webster, Harper, and thousands of the master-spirits of earth, drank freely at the fountain of poetry and fancy, and that a most eminent writer of our times has made the question, whether Homer or Newton had the most brilliant imagination. I may say of him what is said of a great English Chancellor, that he is not free from tinsel, but is characterized by sterling vigor of thought, richness of imagery, and felicity of diction; that in his readings he did not confine himself to legal and antiquarian lore, but throughout life was a devourer of romances, and in this way sharpened his appetite for judicial labors. His papers are marked by a style in which is combined great vigor, with neatness and elegance; and I could point to some of his decrees, in which the suitors were of the highest social position, where there is displayed a moral eloquence which reflects the greatest honor upon the Judiciary of the State.

"As rich as were the intellectual endowments of Chancellor Dargan, it is with still more pleasure and higher admiration that I contemplate his moral nature. Never have I known a more beautiful character. In love of truth and justice, in

charity towards others, in amiability and kindness of spirit, in courage to do his duty, and disregard of consequences when set upon his high purpose, I have never seen a higher model.

"He was remarkable for his personal independence; but however much he might differ from others, all felt that he acted upon conviction, and that his whole conduct in life was regulated by principle. He was ever in the search of truth and right, and always ready to make any sacrifice, however great, for their attainment. A gentleman of position, when speaking of a business transaction in which his integrity and love of the right shone forth conspicuously, remarked, 'I almost bow down in homage to the purity and justice of that man.' But it is only when we contemplate him in domestic life, in association with his immediate neighbors, in the discharge of those duties which belong to the private citizen, that we can rise to full conception of his character. Some men seem to be forgetful of the more quiet and unpretending duties of life when elevated to official rank and power, as if the Deity, in investing them with new functions, had relieved them from the common obligations of humanity. This was not so with Chancellor Dargan. On the contrary, he felt that nothing could absolve him from the responsibilities of the man and the private citizen; and with an earnest conviction that the public officer is but the steward of the Lord, and that of him to whom much is entrusted, much is expected, his sense of obligation was only confirmed and augmented, and a new and higher motive imparted for the faithful discharge of all his duties."

A gentleman, who sustains towards him the dearest relation, and who of all men perhaps is most entitled to speak, in a letter now before me, exhibits this feature of his character in language so just and so appropriate, that I cannot do better than adopt it:

"His chief enjoyment was in the quiet and repose of domestic life, where science, art, literature, and religion combined to shed their genial and radiant influences in the embellishments of a home which was at once the temple of taste, of refinement, and of a noble and generous hospitality.

His door was open at all hours—alike to rich and poor—to all who chose to be his guests. With a generosity almost lavish, he acquired a large property. His means were freely given in aid of the destitute. Full of kindness and benevolence, no application for aid was refused."

I have said enough to vindicate his claim to a character truly noble and exalted, and worthy of admiration; but, I have to add that the crowning grace of all was his devotional, religious spirit. It is a fact abundantly proved in the history of our race, that the possession of all the virtues which have been ascribed to Chancellor Dargan, is entirely consistent with a nature which recognizes no life beyond the present, and which even questions the existence of the great God Himself. His whole soul was permeated by a religious sentiment, and no one believed more firmly than himself the great truths of Christianity. A friend, with whom for years he conversed freely, informs me that he had naturally great pride of opinion and of heart, and that the inclination of his mind led him sometimes into unprofitable speculations; that many years ago he had expressed the opinion that he had not an experimental knowledge of faith in Christ, and a change of heart; but that he had ardently desired it; that he was in the daily habit of prayer and reading the Scriptures; and that finally all doubts were made to give way to an humble, steady confidence in the atonement of our Saviour. Throughout his long and painful existence, he exhibited an habitual resignation to the Divine will. There were no murmurings, no expression of discontent. To very few did earth present as many attractions. With a family of peculiar interest, with ample means for the gratification of his tastes, and the exercise of a noble and generous benevolence, in which he took such exalted pleasure, in the full maturity of his powers, but at a period of life when the enjoyments of the world, though they may have lost the keener relish which they once afforded, are better appreciated, and impart a higher satisfaction, with the advantages of the most elevated, social, and official position, with

"Honor, love, obedience—troops of friends!"

to whom, I ask, could earth be dearer, and present itself in more lovely and attractive aspects! It was the privilege of the writer of this imperfect notice, to see him upon the bed of death—to dispense, with other friends, those kindly offices prompted by affection; to witness his resigned and prayerful spirit; to hear his last words, "let me go—dismiss me now;" and to see the final struggle of that noble soul when it left its tenement of clay and ascended to heaven. But I have done. The people of Carolina, who knew him so well, will ever cherish his memory, and the lawyer will be reminded of Lord Chancellor Camden, whom he so much resembled—the universal favorite of the English nation—praised alike by the malevolent Junius, and the generous Almon and Lord Campbell. What was said of him may be well applied to Chancellor Dargan: "that he was endowed with abilities of the highest order, with learning deep and extensive; with taste discriminating and correct; with talents in society most instructive and agreeable; with integrity universally acknowledged; with a kind of benevolent solicitude for the discovery of truth, that won the suitors to a thorough and implicit confidence in him; that with politeness and facility he kept up the true dignity of his important office; that in the midst of exemplary patience, his understanding was always vigilant; that he lived beloved by his family and friends, respected and venerated by his country, and died universally regretted by all good men."

So, too, the voice of his neighbors ought to be heard, and may be well appealed to for a further view of his life and character. In that respect, the following may be usefully read:

PUBLIC MEETING.

In pursuance of a call published in the Flag, a large concourse of citizens assembled at Darlington Court House on the 4th inst., to give expression to their deep sense of the loss which this district, in common with the whole State, has sustained in the death of Chancellor Geo. W. Dargan. On motion, the Hon. I. D. Wilson was called to the Chair, and F. F. Warley, Esq., requested to act as Secretary.

The Chairman, in a few fit and appropriate remarks

explained the object of the meeting, and took occasion to refer in eloquent terms to the history of his deceased friend, dwelling, more especially, upon the deservedly high and enviable position he occupied as a legislator, while representing this district in the State Senate.

Mr. E. A. Law, with a few appropriate remarks, introduced the following preamble and resolutions, which were seconded by Col. E. W. Charles, and unanimously adopted:

"The people of Darlington District, feeling deeply sensible of the great and irreparable loss which they, in common with the people of the whole State, have sustained in the death of their esteemed and beloved fellow-citizen and neighbor, Chancellor George W. Dargan, deem it not only a duty which they owe to the lamented dead, but a privilege, to give some public expression to the sorrow with which this mournful event has affected them, and to their appreciation of his genuine worth. While mingling our griefs and tears with others around the grave of this truly great and estimable man, it is fit and proper that we, the people of his own district, his immediate neighbors, associates and acquaintances, who knew him long and intimately, and had every opportunity of observing and knowing the excellencies and amiabilities of his character in private and in public, should record our tribute to his virtues, and bear our testimony to the ability and fidelity with which he uniformly discharged his duties as a public officer and a citizen.

Born and reared in this district, he completed his collegiate education at the South Carolina College in 1821, studied law in the office of the late Judge Evans, and was admitted to the Bar in 1823, and the same year commenced the practice in this place. By his talents and application to business, he soon established for himself the reputation of a well-informed and able lawyer, and maintained throughout his professional career, the character of a learned and faithful counsellor, an able and skillful advocate, a high-toned and honorable gentleman. His magnanimity elevated him above petty artifices and chicanery, and led him to seek the accomplishment of his aims by fair, direct and honorable means, and to rest his

claims to public confidence and success, upon the soundness of his judgment, the strength of his reasoning, and the fairness and integrity with which he maintained his opinions; which qualities, in an eminent degree, were blended in his character, and did not fail to secure for him the confidence of all who knew him as a lawyer.

In 1826, he was elected to the office of Commissioner in Equity for Cheraw District, then composed of Darlington, Marlboro' and Chesterfield, the duties of which office he continued to discharge with industry and fidelity, and to the entire satisfaction of all with whom he had official dealing, until the year 1841, when he sent in his resignation.

In 1842 he was elected to a seat in the State Legislature, as Senator from this district, where he served the State with his characteristic industry and ability, until the expiration of his term, and so much to the satisfaction of his immediate constituency, that he was re-elected to the Senate for a second term, and occupied the important position of Chairman of the Committee on the Judiciary, where his learning and talents were brought so conspicuously before the public view, and his worth so justly appreciated by his associates in the Legislature, that before the expiration of his second term in the Senate, he was elevated to the Chancery Bench in 1847, to fill the vacancy occasioned by the death of Chancellor Harper.

In this high and dignified position he uniformly conducted himself with marked propriety, courtesy and good temper, and administered justice to all suitors with so much cheerfulness, promptness and ability, as to secure for himself, both as a high Judicial Magistrate, and a man, the admiration and confidence of the members of the Bar throughout the State. His written opinions, as recorded in our Chancery Reports, evince the strength and vigor of his intellect and his extended research, and will ever remain as standing monuments of his claim to a high rank among the eminent Jurists of our State.

As a statesman, he was familiar with the whole system and history of our Government, had carefully studied its operation, and marked its tendency to the ultimate overthrow of Southern

rights, which led him heartily to embrace the political faith of the State Rights School, to which he adhered with unwavering constancy and devotion. He was an advocate of State-interposition in 1832, and proved the sincerity of his faith by enlisting as a volunteer in the service of the State to sustain her Ordinance of Nullification.

He was a Secessionist in 1850, and was elected by the people of this district, in 1851, as a member of the State Convention, which assembled in 1852. And being convinced that no action which he could approve would be taken by that body, he declined taking his seat, and sent in his letter of resignation.

As a politician, he was honest, firm and consistent. Possessing a clear and discriminating mind, well stored with varied learning, and disciplined by study and vigorous exercise, he formed his political opinions with care, expressed them with confidence, and maintained them with firmness. Sincere in his purposes, and unpracticed in the arts of dissimulation, he was fearless in following out the convictions of his own judgment and sense of duty, wherever they might lead, and never shrank from the responsibility of an open and manly avowal of his sentiments in reference to political questions involving the interests of the State or of his native district, for both of which he cherished an ardent and devoted affection.

As a citizen of the district, he entertained enlarged and liberal views and a noble public spirit, and manifested a lively interest in every important enterprise which was calculated to advance the prosperity of her people, and promote their intelligence and social well-being, as evinced on all suitable occasions, and especially in the zeal and untiring energy with which he labored for many years to promote our rail-road enterprises, and improve our agriculture, and in the generosity and cheerfulness with which his heart and purse responded to every call for the promotion of education and religion, and for the relief of the needy and destitute.

In his social intercourse with his friends and acquaintances he was undisguised, frank and cordial, and his manners toward all who approached him, were characterised by so

much dignity, simplicity, and affability, harmoniously blended with intelligence and true benevolence of heart, as to render his society instructive and attractive to all, and repulsive to none.

The impression which such a character leaves upon society at large, cannot readily be obliterated, and the possession of such virtues as were beautifully exemplified in the life of the deceased, ought never to be forgotten by the living. Therefore

Resolved, That the death of our esteemed and beloved fellow-citizen, Chancellor Geo. W. Dargan, has affected us with profound and heartfelt sorrow; and while we bow with becoming submission to this afflicting dispensation of a mysterious Providence, we cannot but regard the removal of this great and good man and able and upright Judge from the sphere of his usefulness, as a public calamity, and the loss of one in whom were united so much learning, integrity and amiability of character, as irreparable to the whole circle of his friends and acquaintances.

Resolved, That as citizens of his native district, we will cherish with fondness the memory of the many virtues and excellencies of the deceased, who, while living, won our confidence and esteem, and secured for himself a well-merited distinction, and has left behind him an enduring fame, which, now that he is gone forever, we claim as a part of our common inheritance.

Resolved, That, as a token of our sincere sympathy with the family of the deceased in their bereavement, a copy of the foregoing preamble and resolutions be transmitted to them; and that they be also published in the Darlington Flag and Charleston Mercury.

On motion, the meeting then adjourned.

I. D. WILSON, *Chairman*.

F. F. WARLEY, *Secretary*."

It ought perhaps, in justice to Chancellor Dargan to be stated, that after his health began to decline, he expressed anxiety lest the public interest should suffer from his inability to take his place on the Bench, and spoke of resigning his office, but was dissuaded by his immediate friends and physicians, who

thought he would soon be able to resume his duties. Not satisfied to act upon their advice alone, he sent a special message to his brethren of the Chancery Bench to ascertain whether, in their opinion, the public interest would suffer from his temporary absence from his post; and acted upon their advice, and that of many members of the Bar, in not sending in his resignation.

We append the following extract from a letter written by Rev. S. B. Wilkins, dated July 5th, 1859:

"Chancellor Dargan was a man whom I had long known and highly valued. We were in College together, and afterwards admitted to the practice of law in the same class; we lived near each other, and practiced in the same Courts from 1323 to 1837, when I withdrew. Within that time we passed through one of the most exciting political struggles which has existed in our State and district. We found ourselves arrayed on different sides in that struggle, but its trying scenes did not seriously interrupt the feeling of personal friendship that had grown up between us. I could say much of his fair, honest, candid, honorable bearing at the Bar and on the political arena; I could say much of his manly, firm, unchanging personal friendships, for I have known and experienced them. I feel that by his death I have indeed lost a *friend.* But I forbear.

"His worth as a husband, parent, brother, friend, companion, citizen and Magistrate, is known, felt and acknowledged by all. His death is mourned as a private and public calamity; but there is one subject connected with him of which I would add something.

"In 1837, soon after I had announced my design to withdraw from the Bar, I one day met his venerated father, who said to me 'I wish you would talk to George—I think he is a Christian.' Accordingly, I went and said to him, 'I have come to speak to you on the subject of religion—your own feelings and personal interest therein—if such conversation would be agreeable to you.' He answered that it would. We then, and from that time ever after, frequently—very fre-

quently—had long, free, and most interesting conversations on personal religion; and though he would never acknowledge that he had grounds to hope that he himself was a Christian, yet he often expressed as his, such sentiments as I think the Bible teaches, that none but Christians have. He said he preferred religious conversation to any other, when introduced by another; that he did not introduce it himself, only because he feared that by so doing persons might understand him as professing more than he was conscious of feeling. He professed to venerate the Scriptures; to understand their teachings as orthodox Christians do; to admire the law of God; to desire that the love of God might fill his soul. These, and such as these, were oft his repeated sentiments, at different times, under different circumstances and at distant intervals. He has asked me, and more than once have we kneeled together, where no human eye could see, and no human ear hear, in humble prayer to the God who heareth and who answereth prayer. He once said to me, that 'after you and I had travelled the same way, our roads have separated, but I love sometimes to meet you still.' Yes, valued friend, and I will hope that if it be my happy lot to have some humble place with the redeemed of the Lord, we shall yet find our roads again converged so as to bring us to meet in our Father's house on high, where parting shall never be known. It was my privilege to visit Chancellor Dargan but once during his last sickness: we then prayed together, and gladly would I have visited him oftener, had my circumstances permitted.

"Although what is written above is but a faint expression of my feelings, and the utterance of them even so far a mournful pleasure to me; yet I have been so long retired from the busy scenes of life, that I should hardly have ventured to offer anything in public, had not a mutual friend encouraged me to do so."

RECORDERS.

WILLIAM DRAYTON.

In attempting a sketch of the life of the eminently just and great man, whose name heads this article, I do so with a perfect consciousness, that, after my best efforts, it will still be imperfect. My first recollection of Col. Drayton was in December, 1811, when, as a college boy, I listened to his matchless defence of William Hasell Gibbes, Master in Equity for Charleston District, on articles of impeachment, before the Senate of the State. I have little recollection of the matter, beyond the beauty of language and the manner of the speaker Although it was my good fortune to know Col. Drayton, after he had passed through the war of 1812, had served with eminent ability as Recorder of the city, and when he was a distinguished Member of Congress, yet I never had the pleasure to hear him speak, save on the occasion to which I have alluded. I have, therefore, to rely on information from others, which I have sought from the best sources, and which I hope will enable me to place facts before the public.

Col. Drayton was born at St. Augustine, East Florida, 30th December, 1776. He was the youngest of ten children. His father, William Drayton, had been Chief Justice of East Florida, but was deprived of that office on account of suspected sympathy with the Revolutionary patriots of his native State. The mother of Col. Drayton was Mary Motte, of Revolutionary family. "She died soon after his birth. Mrs. Turnbull, the mother of Robert Turnbull, Esq., (the author of Brutus,) took and nursed him with Robert, who was then, also, an infant, and thus they grew up as foster brothers."

He was sent to school, in England, but on the death of his father, on the 18th of May, 1790, at the early age of less than fourteen years, the straitened circumstances of his family recalled him to Carolina; he had, however, acquired a taste for classic and belles lettres literature, for which he was remarkable to the close of life.

At about fourteen, his education at school ceased, and he became an assistant in the Clerk's office of the Court of General Sessions and Common Pleas, for Charleston District, under his brother, Jacob Drayton, then Clerk. His training, though laborious, was, I have no doubt, of great service, and made him that patient, diligent man, remarkable for his precision and elegance at the Bar, in the army, on the Bench, and in the Legislative Hall. He was admitted to the Bar on the 12th of December, 1797. An incident here may be stated as illustrative of his high sense of honor and integrity. Soon after his admission to the Bar, "he had just collected about seven hundred dollars for his first, and perhaps only client, and was proceeding through the street to give it to him, when he stopped at the Court House, where a public meeting was being held, and had his pocket picked of the seven hundred dollars within. To have endeavored to excuse himself by explaining how and when he had been robbed, he felt would have discredited him in more ways than one with his client; so he immediately gathered together his few valuables and books, sold them and restored the lost money—his client quite unconscious of any unusual delay. Here he was *then*, a lawyer without money or a library."

Col. Drayton's first commission was 1st Lieutenant in the Ancient Battalion of Artillery, (7th December, 1801.) He was subsequently, (1st February, 1804,) commissioned Captain-Lieutenant. On the 20th May, 1803, he was admitted to practice in the Circuit and District Courts of the United States. "About this time," says his son, William Heyward Drayton, of Philadelphia, "he began to enter upon that practice, which became, between that period and March, 1812, one of the most extensive in the State; and among the eminent men of that time engaged at the Bar in South Carolina, he took the very highest professional stand as counsel, advocate, and man of honor."

One of his legal pupils, my brother, Chancellor Dunkin, says, "My first acquaintance with him was in the fall of 1811. He was then at the head of his profession, and I was a youth just graduated from college. But I remember well the situa-

tion of the Charleston Bar at that time. Mr. John Julius Pringle, Mr. William Laughton Smith, Mr. John Ward, and others of that class, were passing away. Their places were taken by Mr. Cheves, Col. Drayton, and Col. Keating Lewis Simons, in the foremost rank. Immediately anterior, however, to the period of which I speak, to wit: in 1810, Mr. Cheves had succeeded Mr. Robert Marion, as Member of Congress from Charleston District, and, as a consequence, which I believe, has been uniform in South Carolina, he had withdrawn from the practice of his profession. This left in the hands of Col. Drayton and Col. Simons the command of the most important and lucrative business. For several years previously, the emoluments of Col. Drayton must have been very large, for he was engaged in every commercial cause of any interest or magnitude. About this time, I have frequently heard his annual professional income estimated at from fifteen to eighteen thousand dollars; and, I may add, as an encouragement to young and *briefless* lawyers, that, although then in the receipt of this large income, the first twelve months of his practice was confined to the issuing of a single writ."

Politically, Col. Drayton was a Federalist. This was the result, both of conviction and association. The most eminent men of Charleston were, generally, of that party. His intimate association with Edward Rutledge, would have inclined him that way. He thought with the party, that the war was uncalled for, and ruinous in its commercial consequences. Yet, like Judge Huger, he did not suffer this opinion to swerve him from loyalty to his country. Attached to the military, both from taste and association, he was among the first to offer his services to the General Government, and with "a promptness as honorable to the administration of Mr. Madison as was his offer to himself." The commission of Lieutenant-Colonel on the 12th March, 1812, was sent to him. He closed his Law office, surrendered his great income, as a lawyer, and accepted the commission. The offer of his services and acceptance of this commission, under the circumstances, was evidence of a patriotism like that of '76. It spoke the same language which *then* called the bravest and

best to the standards of the country, although ruin and personal danger were the consequences before them. On the 25th of July, 1812, he was commissioned Colonel of the 18th Regiment United States Infantry, and on the 18th December, 1814, Inspector General.

Shortly before the close of the war, he was associated with Generals Scott and Macomb in the preparation of a system of Infantry Tactics, for the drill of the United States Army, which was adopted by the Government, and became the guide for the militia in this State. This last fact shows the estimation in which he was held by the Government and army, as an accomplished officer and soldier. As a further evidence of his standing with the Government, the commission of Brigadier-General was about being tendered to him, when the declaration of peace induced him to resign the commission which he then held; for his services, as a citizen-soldier, were no longer needed, and he had no disposition to linger as an officer on the peace establishment.

He returned to Charleston and resumed the practice of law. In 1816, General Jackson urged upon Mr. Munroe the appointment of Col. Drayton, as Secretary of War. This showed the high appreciation which the hero of New Orleans had of him.

In 1819, he was appointed Recorder of Charleston. The Inferior City Court was that over which he was called to preside; its jurisdiction and salary had been increased, to make it worthy of such an incumbent as Col. Drayton. He held this judicial office until 1823, (as is stated in the memoir by his son, before me, but I believe the Colonel was elected in October, 1824, and took his seat in 1825,) when he was elected to Congress.* While he was the Recorder, to enable him to go on to Washington and argue before the Supreme Court the case of Bulow and Potter *vs.* The City Council, (1 N. and

* I was elected Speaker of the House of Representatives in November, 1824. Judge Prioleau, Col. Drayton's successor, was elected Recorder in 1825, and stated this fact to me. At the vacation of his seat as a Member of the House of Representatives, I declined to issue the writ, holding that the office of Recorder was not an office under the Constitution of the State. The House received my decision.

McC., 537,) he was permitted to resign, with the tacit understanding that he was to be re-elected as soon as he returned. The Honorable Mitchell King, elected in his place, resigned as soon as his mission was accomplished, and Col. Drayton was restored.

His decisions, while he was Recorder, are scattered through 2d N. and McC., 1 and 2d McC. I select, as specimens Planters' and Mechanics' Bank *vs.* Cowing, 2 N. and McC., 439; Patton *vs.* The Bank, Idem., 464; City Council *vs.* Payne, Id., 475; Thomas *vs.* Dyott, Administrator of Best, 1 McC. 77; Jackson and others, *vs.* Watt, Id., 289; Greenwood *vs.* Naylor, Id., 414; Bompfield *vs.* E. Ward, 2d McC., 182.

The more perfect acquaintance with him of my brother, Dunkin, and his better opportunity of judging of the Colonel in his judicial station, makes me draw upon him for a portraiture. He says, "For a judicial station, he was eminently well qualified, very clear in his conceptions, a well read lawyer, ripe in judgment, with large experience, especially in commercial causes, he at once imparted to the Court a confidence among the profession, and a popularity with the community which rendered this tribunal a favorite resort, both of lawyer and suitor. On and off the Bench, he was calm and dignified in his demeanor, and habitually courteous to the Bar. Altogether, he was a model Judge, and it was a privilege to practice before him. During the period of his administration in the City Court, the appeals were directly to the Appeal Constitutional Court, consisting at that time of Judges Nott, Colcock, Gantt, Johnson, Richardson and Huger. On looking over the reports of that day, it will be perceived that the ruling of the City Judge were very rarely reversed, and his report of the case, including his charge, was not unfrequently adopted as the judgment of the Court."

Col. Drayton's course in Congress was such as will *now* command the respect, even of those who differed with him. He maintained with unflinching fidelity, his hostility to the Tariff, but true and faithful as he had ever been to his country, he stood by her in, what he supposed to be, the hostile results of Nullification. He was the friend of Gen. Jackson,

and felt, like him, "the Federal Union must be preserved." With the close of the great Nullification contest, he retired from public life, and soon after made Philadelphia his home.

His son, Col. Thos. F. Drayton, informed me that his father "did not remove from South Carolina on account of the Nullification struggles and consequent estrangement of intimacies on account of political differences. That these estrangements had their influence in carrying him away at the time he went, I won't deny. But he had always resolved to leave the State whenever his mother-in-law, Mrs. Heyward died." The Colonel, it seems, had promised Mrs. Heyward, on his marriage to his second wife, her daughter, that during her life, he would not carry her daughter from her. "He always said, that the climate of the low country disagreed with him."

The close of his Congressional life was pretty much the close of his public life.

On the retirement of General Eaton from the office of Secretary of War, the appointment was tendered to Col. Drayton, but respectfully declined. He was afterwards offered the appointment of Minister to England. This he also declined, on the ground that his private fortune was not adequate. General Jackson, as his son, Col. Thomas F. Drayton, informs me, intended to have offered Col. Drayton a seat on the Supreme Bench, on the death of Judge William Johnson, "and it was," says he, "so well understood between the General and himself, that my father had made up his mind to return to South Carolina, and make Greenville his residence." "But Mr. Van Buren insisted, for political reasons, to have the vacancy on the Bench filled by Judge Wayne, and urged that Col. Drayton, having lately removed from South Carolina, his return to the State as a Judge of the Supreme Court, would be *unacceptable*. The General yielded, and Judge Wayne obtained the Judgeship."

These facts, stated by Col. Thomas F. Drayton, were new to me and most of Col. Drayton's friends. I have no hesitation in saying, that his appointment, as a Judge, instead of being unacceptable to this State, would have been highly *acceptable*. I say this without intending, in the slightest

degree, to disparage the appointment of Judge Wayne. For him, both as a man and a Judge, I have the greatest esteem.

"In 1840, at the pressing instance of many old friends, he consented to bring all the powers of his mind to bear, as President of the then collapsed Bank of the United States, of Pennsylvania, in order, if possible, to resuscitate that mammoth institution. He soon found, however, that the utmost hope of the sanguine could only be to pay the debts of the corporation, and that this could only be accomplished by the most energetic measures. As soon as he was convinced, from a thorough though rapid investigation, that the honest and manly, though unpopular course, was to place all the remaining assets of the Bank in the hands of assignees. This was done, and he retired from the presidency of an institution, where the mere routine of duty thenceforth rendered his longer supervision unnecessary."

This closed his public acts. His health had been delicate for some time, it now began to fail more rapidly, and, "on the morning of Sunday, May 24th, 1846, he died suddenly of disease of the heart, having, up to his last moment, continued in the possession of his faculties."

Thus, in his seventieth year, having nearly completed threescore and ten, the ordinary limits of life, was gathered to his fathers, the Bayard of South Carolina, of whom it can be safely written, he was without *spot or blemish.* It is only now and then that we are permitted to look upon such men. His life, rapidly sketched as it has been, will be a bright example for many of the young and good.

He was twice married. His first wife was Anna Gadsden, daughter of Thomas Gadsden; his son, Thomas F. Drayton, the President of the Charleston and Savannah Rail-Road, is her representative; his second wife was Maria Heyward; his son, Wm. Heyward Drayton, is her representative.

To give a notion of Col. Drayton, as a lawyer, I must again appeal to my friend Chancellor Dunkin. His pen gives the picture fresh from his heart:

"Col. Drayton's mind was eminently legal. His forensic

arguments were chiefly addressed to the understanding, close, concise and admirably expressed. His style was not ornate, but he had a perfect and familiar acquaintance with his vernacular language; and every sentence, whether written or spoken, was chaste and finished.

"At that time, (1811,) as I have intimated, Col. Drayton and Col. Simons seemed to me the leaders at the Bar. They were employed usually on different sides in every important case. Their deportment not only towards each other, but to every one of their professional brethren was uniformly courteous, kind and conciliatory. In this they not only presented an admirable example, but such was the influence of their high character, that any departure from professional courtesy, or any violation of professional morality, would have stood rebuked and abashed.

"While courteous to all, Col. Drayton was, to the young and inexperienced barrister, especially kind and encouraging. I well remember being present in the Federal Court, where Judge Johnson and Judge Lee were presiding, an argument was in progress on the plea of the Statute of Limitations, in which Col. Drayton was assistant counsel with a younger member of the profession. His junior had just concluded an argument, in which he had exhibited elaborate research combined with discrimination. When he closed, Col. Drayton rose and said to the Court, that his young friend had so exhausted the subject, and anticipated any views that he might have presented, that he should decline to address the Court. It is superfluous to express the effect of such a compliment on a young advocate, coming from one whose good word was almost fame."

The Chancellor adds—"He was very kind to me always, but particularly at a period of my life when kindness is most highly appreciated, and is, in truth, of most value."

I append extracts from the Charleston Mercury and Courier, the proceedings of the Charleston Bar, the answer of Judge Butler on the announcement of Col. Drayton's death, and also the obituary notice of Col. Drayton from the Pennsylvanian, and the notice of his death by the Cincinnati of Charleston. These, with the preceding memoir, will, it is

hoped, place the Colonel's unspotted memory fairly before the world:

[From the Charleston Mercury.]

"*Friday, May 29th*, 1846.

DEATH OF COL. DRAYTON.

The notice of the death of this distinguished Carolinian, reached here in the Philadelphia papers on Wednesday. On its receipt the Court of Common Pleas and Sessions, on motion of Attorney General Bailey, adjourned, as a mark of respect to one who, in his day, stood foremost at this Bar. Col. Drayton has been long absent from the State, and in such complete seclusion from public affairs, that he seems rather like the shade of one long dead, than a cotemporary. He was a high specimen, not only of ability, but of manhood, chivalry, and personal purity, and deserves to be mourned as one who has left behind him not many his equals in all these claims to reverence."

[From the Charleston Courier.]

"*May 28th*, 1846.

DEATH OF THE HON. WM. DRAYTON.

The painful intelligence was received yesterday, in this city, of the death of this eminent citizen, pure patriot, and distinguished jurist. Col. Drayton was born in this city, but enjoyed the advantages and accomplishments of a European education. Returning home, he was admitted to the Bar, ran a brilliant career, and rose to eminence in his profession. During the war of 1812, although of the Federal party and opposed to that measure, he readily sacrificed party to patriotism, tendered his military services to the Government, and relinquished his lucrative practice for a Colonel's commission in the army. After the war, he returned to the duties of the civilian, and in the year 1819, his professional eminence elevated him to the office of Recorder of the city, and Judge of the City Court of Charleston, under circumstances peculiarly honorable to him, the salary of the office having been raised to the large sum of $4,000 per annum, expressly to secure

his services. In 1826, he was elected to Congress from Charleston District, to fill the vacancy caused by the appointment of Mr. Poinsett as Minister to Mexico, and continued to serve his constituents with distinguished usefulness and ability until the expiration of the third official term in March, 1833. In our memorable party strife of 1830, 1833, he was led, by principle and conscientious conviction, to side with the Union party, of which he was the recognized leader; and such was his bearing in that contest, and the general estimation of his purity and integrity, that the eyes of his fellow-citizens, in many parts of the Union, were turned towards him as the successor of Gen. Jackson in the Presidency. In the summer of 1833, he bade farewell to Charleston, and made Philadelphia his home, where he continued to reside, engaged chiefly in the duties of private life, although not without a considerable share of public usefulness, until his death, which took place in that city on Sunday last. He died, we learn, of a disease of the heart, and was, as we believe, very little short, if any, of 70 years of age.

Col. Drayton, although long alienated from us by residence, has yet ever been cherished, and is now mourned among us as one of the noblest, purest, and most gifted of Carolina's sons. In private life, he was ever regarded as a gentleman of lofty character and high-toned honor. As a lawyer, he was distinguished for ability, eloquence and learning, and for that urbanity, courtesy and manly bearing, which tempered the battles of the Forum with the spirit of chivalry. His mind was of an eminently judicial cast, and his judicial opinions were always marked by nice discrimination, clearness of reasoning, and sound and luminous judgment; and, as a Judge, he was a model and exemplar of uprightness, impartiality, dignity and learning. His service in our national Legislature only gave a wider expansion to his fame, and there will scarcely live in history a name more venerated for worth, moral and intellectual, in our State, and the Union, than that of Wm. Drayton."

The Court of Common Pleas for this district, his Honor Judge Butler presiding, being in session when the painful

tidings of Col. Drayton's death were received, Henry Bailey, Esq., Attorney General rose, and, after the following touching and eloquent tribute to the virtues and services of the deceased, moved an adjournment in respect to his memory:

"It has devolved upon me to announce to the Court the melancholy intelligence, received by this day's mail, of the death of another distinguished son of Carolina—one equally illustrious for his public virtues, his brilliant talents, his elegant and extensive learning, his devoted patriotism, and the purity and elevation of his character. I allude to the Hon. Wm. Drayton, who closed his earthly career in Philadelphia, on Sunday last. The mention of his name calls up the most touching recollections; perhaps there is no one who hears me to whom the name of Wm. Drayton is not familiar. But to those whose memory extends to the past, the announcement of his name revives feelings, and crowds the heart with emotions, mellowed by time, and hallowed by reminiscences of the deepest interest. We remember him as the brilliant advocate, whose character shed a lustre upon the *Bar*, as the Judge whose luminous decisions exalted the reputation of the *Bench*, upon whose eloquence 'listening senates' hung with admiration and wonder, whose devoted patriotism hesitated at no sacrifice when his country demanded his services. Nor was his reputation confined to the Bar, the Bench, or the legislative assemblies of his own State. Distinguished in the councils of the nation, his name is revered through the length and breadth of the land. And wherever the name of Wm. Drayton is known, he is loved for his virtues, and admired for his abilities. Whatever differences of opinion may once have existed between himself and a portion of the citizens of this State, and however bitter the feelings which these differences may have generated, yet not only has time mellowed those feelings, but, upon the purity of motive, the high-minded integrity, and the lofty, self-sacrificing patriotism of Wm. Drayton, there is, and has been, but one opinion among all parties in South Carolina. Although for some years he has been domiciled in another State, yet he never forgot, nor has he been forgotten by the land of his birth. The name of

Wm. Drayton is inseparable from South Carolina, and his memory will ever be cherished as one of her most beloved and distinguished sons. In compliance with a custom sanctioned by long usage, and hallowed by the instance in which it has been acted upon, and which originated in feelings honorable to the Bar, and such as I trust will ever be cherished by its members, I respectfully move, in behalf of myself and my brethren, that this Court do now adjourn."

His Honor Judge Butler, after the feeling and eloquent response which follows, granted the motion and adjourned the Court:

"*Gentlemen*—I recognize the propriety of your motion, and adjourn Court in conformity with your request. Although I was not associated with Col. Drayton at the Bar, or on the Bench, I could not but be familiar with his distinguished reputation, both as a lawyer and a Judge. I have been instructed by his judgments, and have always felt the force of their authority. The beautiful propriety of his conduct in all that concerns the practice of our profession, has been universally acknowledged. He died in another State, but his fame and his elevated character belong to, and are identified with the history of South Carolina. In feeling, he was no denizen of the State. The light of his reputation was not of that meteor-like splendor, which dazzles and flashes within local limits: it was more like the simple and steady brightness of a star of the first magnitude; distance cannot destroy, nor time diminish its splendor: it is the guiding light of intelligence and truth, that will afford instruction long after he has passed from the scenes of life. I recognize, Mr. Attorney, also the force of your remarks and allusions to Col. Drayton as a patriot and a soldier. The civil strife which you have spoken of, and which, for a short time, unhappily disturbed the social harmony of our State, is a matter now only of historical recollection. I am satisfied no one deplored it more than he did, and no one entertained less than he, the bitter feelings of party proscription. Whilst he may have felt it his duty to act his own part under the influence of pure motives and his best judgment, its termination was looked to in the

spirit of a true patriot. Cæsar's remark, after the battle of Pharsalia, was 'to save the Romans, but pursue the foreigners.' In a foreign war, no one was more ready to act upon the true spirit of this sentiment than Col. Drayton: whilst he could rejoice in the domestic harmony after the strife of a civil contest, he was always prepared to visit and draw the sword against foreign interference. The reputation which he left after the late war was such, as to command the respect and admiration of his distinguished cotemporaries. It is known that Gen. Jackson, at a time which required the first order of talent and qualification for the war department, thought him eminently fitted for the high and honorable station of Secretary of War. His reputation as a distinguished jurist, soldier and patriot, entitles his memory to the honor of his countrymen in every part of the Union, but especially in his native State and city. Mr. Sheriff, let the Court be adjourned."

At a meeting of the Cincinnati, held at Lee's, Broad street, on Friday, the 3d July, the following preamble and resolutions were introduced by Henry A. DeSaussure, Esq., and unanimously adopted:

"Since the last meeting of this Society, our number has been diminished by the loss of one of its oldest and most cherished members, and our State of one of its most distinguished sons. On Sunday, the 24th May last, our honored brother member, Col. William Drayton, departed this life at Philadelphia, where, for some years past, he has resided.

In inserting on our journals the death of this virtuous and honorable man, we should be wanting in self-respect and in justice to the deceased, to omit the record of his pure and elevated character, his distinguished public services, disinterested patriotism and accomplished talents. The enrollment of the names of such men among our members, adds dignity and lustre to the character of the Society itself.

Descended from an ancient and honorable family in Carolina, who were distinguished, in its colonial history, by their ardent patriotism and devoted attachment to the liberties of their country, Col. Drayton has fully sustained the reputation

of his ancestors, and transmitted it with increased lustre to his descendants. Endowed with sound practical judgment, of standard purity in morals, decisive in action, and fearless of responsibility, he gave early indications of that future eminence which he afterwards attained.

Admitted to the Bar in this, *his native city*, he attained and ably sustained, the highest rank in his profession by his legal acumen, his brilliant talents, and the fastidious propriety of his conduct in the management of his cases.

Upon the declaration of war in 1812, he abandoned the lucrative profession he then dignified and adorned, and received from the Government the commission of Colonel in the army, in which station he served to the end of the war, and acquired the reputation of an energetic and judicious officer.

On the restoration of peace he resumed his profession, from whence he was transferred to the judicial station of Judge of the City Court of Charleston, where he presided with dignity and integrity, and exhibited such professional learning and ability, as commended his decisions to high consideration. After some years he was elected to represent this congressional district, and his brilliant and useful career in the councils of his country at Washington, have become part of the history and the pride of the nation. His voluntary retirement into private life was accompanied by the universal respect and regret of his countrymen.

Few distinguished men have had more friends or fewer enemies than Col. Drayton. His frank and manly character, noble bearing, and elevated standard of morals, blended with mild dignity of deportment, conspired to render him honored and beloved by all who could appreciate the noblest qualities of our nature.

In every station which he occupied, whether at the Bar, on the Bench, in the army, the Senate, or the retirement of private life, his conduct was equally conspicuous for the delicate proprieties of life, the decision and firmness of a well-regulated mind, for sound luminous judgment, energy of action, and for that courtesy of deportment, which constituted and adorned the most elevated character. Our object is not

to eulogize the dead, but to record his virtues as a model for imitation, and an incentive to our own members to that course in life which commands public respect.

This Society mourns the loss of a distinguished member, and sympathizes with his family in the dispensation of Providence, which has bereaved them of such a husband and father.

In token of the respect of the Society, for the memory of the Hon. William Drayton,

Resolved, That the members of the Society will wear the customary badge of mourning for the deceased.

Resolved, That the foregoing preamble and these resolutions be entered on the journals of the Society, and that a copy thereof be transmitted, by the President, to the family of the deceased.

On motion, ordered that the same be published in the daily papers of the city.

HALL OF THE CINCINNATI,
Charleston, July 3, 1846.

I certify that the foregoing is a true extract from the Minutes of the Cincinnati of this day.

Given under my hand, on the day and in the year above written.

JAMES SIMONS, *Secretary*."

"*To the Editors of the Pennsylvanian:*

Died, on Sunday morning, May 24th, at his residence in Philadelphia, William Drayton, a distinguished officer in the last war, a Member of Congress, for several sessions, from South Carolina, and lately President of the Bank of the United States.

Colonel Drayton has been closely connected with some of the most striking incidents in the annals of this country. Belonging to a family which had been highly distinguished during the Revolutionary war, he came into active life just at the time when, from his personal relations with the eminent

men who were collected in South Carolina at that era, he was as well qualified from position to represent their views, as he was from power of intellect and purity of character, to illustrate and maintain them. Receiving, in his boyhood, a *finished education in England*, at a time when colleges in this country were comparatively scarce and imperfect, he entered, at an early period, into the practice of the law at Charleston, where he soon took a leading professional stand. Attached to the army, however, by taste and association, he went into active service at the breaking out of hostilities, and acquired in that capacity a high reputation, as an officer of skill, bravery and experience Declining the commission of Brigadier General, tendered to him by the President, in 1815, as one which, after the treaty of peace, could render him of no additional service to his country, he returned to Charleston, where he resumed the practice which, four years before, he had abandoned. The letter of General Jackson, written at the time of Mr. Monroe's accession, in which, when suggesting to the President elect the importance of rallying around him men of high eminence, irrespective of party distinctions, he pressed earnestly on him, in connection with the post of Secretary of War, the name of Colonel Drayton, as that of a man, who, of all others, from the energy of his character, the power of his abilities, and the ripeness of his experience, was best qualified for that important post, is an illustration which few can refuse to recognize both of the judgment of the remarkable man by whom the recommendation was made, and of the merits of him who was thus represented.

Confined, however, at Charleston, by the claims of his profession, Colonel Drayton withdrew entirely from political life until the nomination of General Jackson, in 1823. It was then that again, though in another field of action, he appeared among the foremost and most powerful friends of his former chieftain. Elected to Congress shortly afterwards, he remained there for several sessions, and was the representative from Charleston during a struggle which, to him, as a principal actor, was perhaps the most painful to which he could have been subjected.

Originally a Federalist of the South Carolina school, deeply and thoroughly impressed with the belief, that, while the State governments were to be protected in the exercise of an honorable and independent sovereignty, the national judiciary was the tribunal which was ultimately to determine all disputes between them and the Federal authority—his distrust of nullification was increased by his personal and political attachment to the administration against which it was necessarily directed. But, on the other hand, he had voted against the Tariff of 1828, and had frequently, in his place in the House, expressed, in terms the most earnest and determined, his deep sense of its great injustice, and of the oppression which it worked to his native State. He found himself alone in the South Carolina delegation on a subject vital to the dignity of the State; and his position was not rendered less trying by the fact that he agreed with his colleagues as to the wrongs suffered by their common constituents, and differed only as to the means to be employed for their redress. The setting aside, however, by a single State, as far as she was concerned, of an Act of Congress, he held was inconsistent with the federal compact; and he accordingly found himself at the head of that small but gallant and faithful body of men who, though in South Carolina a small minority, while protesting against the oppressiveness of the Tariff of 1828, and the measures passed to enforce it, did not shrink, even in the darkest hour, from proclaiming their paramount allegiance to the Union. He remained in Congress until the close of the struggle, and then, feeling that his mission was ended, and that, by the devotion of his whole energies, and the surrender of everything which, in his personal associations, was dear, he had maintained the supremacy of the Federal Constitution. He left his native State finally and took up his abode in Philadelphia. But he experienced, at the close of the long and bitter contest in which he had been so active an agent, what few men under such circumstances could have felt, that even at the time when, in his place in the House, he was resisting the darling projects of the State he represented, there was no one who had thrown a doubt on the purity of his motives, or who had cast a shadow

on the fairness of his fame. He passed through the amphitheatre of the most vehement contest this country has known with his chariot wheels untarnished; and, when at last, folding his robes, he descended from the seat he had so long and so honorably filled, and withdrew from the State of his birth and the home of his affections, he carried with him the respect and the esteem of even the bitterest of his political foes.

Colonel Drayton lived in Philadelphia for more than ten years after his retirement from Congress; but, except in one instance, he remained firm in his determination to appear no longer in public life. When, in 1840, the condition of the Bank of the United States became suddenly obvious—when it was found that its arches were undermined, and its vaults gutted—when, out of thirty millions of capital, scarcely more than three could be discovered—the eyes of the stockholders, as soon as the first shock of ruin was over, were turned to Colonel Drayton as the man who, from the maturity of his judgment, was best qualified to guide the institution into a path of safety, and, from the greatness of his reputation, to gain for it once more the confidence of the community. But the effort was too late; the bank was broken beyond the possibility of a reconstruction, and it became the duty of its new President rather to collect its fragments, than to direct its course. He remained at its head about a year, *accepting no salary for his labors*, but serving it with a fidelity, an ability, and a single-mindedness which showed that, had he but stood at its head for a few years previous, the dishonor brought upon the nation and the community would have been avoided.

Col. Drayton's health, for the last two years, had been very feeble, though, with one or two exceptions, he was not confined for any length of time to his house. The evening before his death he was in as full possession of his faculties as he had been in the days of his highest intellectual action; and, in no degree, were his remarkable clearness of perception, his singular felicity and purity of language, or his deep and vivid interest in public affairs, abated. Full of recollections of the earlier days of the Republic, fainter, indeed, in relation to the

great Southern leaders of the Revolution, but increasing in intensity as he reached the struggle of the late war, his conversation was distinguished, in an eminent degree, by a mental grace and dignity which invested him with a peculiar attraction. Even in his old age,

> 'jucunda senectus,
> Cujus erant mores, qualis facundia, mito
> Ingenium,'——

he preserved those high intellectual characteristics which marked him at the Bar, in the camp, and in the Senate; and in his death the country may mourn the loss of a man whose patriotism was as remarkable for its purity as for its devotedness, and whose abilities, continuing to shed to the last their lustre on every surrounding object, were always consecrated to the service of those high principles from whose support, whether in danger, doubt, or turmoil, he never shrunk."

SAMUEL PRIOLEAU.

Judge Prioleau was born in Charleston, S. C., on the 4th September, 1784. He was the eldest son of Mr. Philip Prioleau, a merchant of this city, and great-grandson of the Rev. Elias Prioleau, who came to this country with his congregation, from France, after the Revocation of the Edict of Nantes. They were Huguenots. His grandfather, Samuel Prioleau, was born in this colony, and raised a large family, the descendants of whom are still numerous, and confined to this State. Judge Prioleau lost his father early in life, and was brought up with great care and tenderness, by his mother, together with his only brother, Dr. Thomas G. Prioleau, now Professor in the Medical College of this State. At an early age he was sent to Philadelphia, to the care of the Rev Dr. Davidson, Provost of the University of Pennsylvania, where he remained several years, and, after his graduation, returned to his native residence. His course through the University was always correct, and endeared him to his teachers and associates. Among the latter may be mentioned the present Professor, Samuel Jackson, of the University, the late Professor Dorsay, Dr. Samuel Patterson, Director of the Mint, Mr. Charles E. Khun, &c. On his return to Charleston, desirous of becoming a merchant, he entered the counting-house of Mr. Benjamin Booth, among the principal merchants of the city, and remained with him three or four years, until he withdrew from business. Mr. Prioleau then determined to alter his course and devote himself to the study and practice of the Law, but before commencing the study, and preparatory to engaging in it, he devoted his time and attention almost exclusively and assiduously to a course of the classics—History and Belles Lettres—for nearly two years, and was, during the time, a hard and most persevering student. Soon after, (when he considered himself sufficiently prepared to commence the study of his profession,) he entered the office of Colonel John Ward, then a distinguished and eminent lawyer, in full practice.

Colonel W. Drayton, soon after, entered the firm, and he continued with these gentlemen until he was admitted to the Bar, about 4th January, 1808, when Colonel Ward, soon after retiring, he formed a partnership with Colonel Drayton, which continued until the latter entered the army of the United States in 1811 or 1812. Mr. Prioleau then practiced alone, and, from his perseverance and attention to business, early took a favorable position with his professional brethren, and commanded a large business from his friends generally, but more especially from the mercantile gentlemen, particularly the houses of Gibson & Broadfoot, Adam Tunno, Bailey and Walter, and others equally established, who, from his previous acquaintance with commercial transactions and accounts, and intimate knowledge of risk, and law of insurance, consulted him on every occasion. This confidence, of course, not only raised him in the estimation of the community, but afforded him a large and steady income.

In 1820 he was sent to the Legislature of the State, and continued, after repeated elections, a member of that body for several years—having among his associates many of the most respectable, learned and able—as the Hon. J. B. O'Neall, John Gadsden, Thomas S. Grimké, William Crafts, Keating L. Simons, and other distinguished gentlemen—with all of whom he was most intimately connected.* In 1824 Mr. Prioleau was elected Intendent of the City of Charleston, and on the resignation of Colonel William Drayton, was appointed by the Council, Recorder of the City, which office he held until 1836,

* When the "bill to prohibit Sheriffs and their Deputies, under certain penalties, from purchasing executions lodged in their offices, and for other purposes," was on its second reading, December, 1823, Judge Prioleau and myself were standing together. A bill to exempt certain articles of property from levy or sale, commonly called the Cow Law, had been introduced by Dr. Eli S. Davis, from Abbeville, and had been referred to the Judiciary Committee, but, had not been considered. It was too late to act on it in the committee. Prioleau said to me, let us move to add the bill to the Sheriff's bill. I assented: he moved, and I seconded, the amendment. Neither of us believed it would pass, but it was received with a favor which was overwhelming. Mr. Bethel Surant, an excellent, kind member from Horry, moved to add another cow. Mr. William Aiken killed off that amendment by moving to add a bull. The bill as it stands, is the 4th Section of the Act of 1823, Acts 51, passed, and has operated for thirty-six years very well.

when, from severe indisposition, he was compelled to resign. By this lengthened sickness, he was rendered incapable of further attention to business, and his usefulness greatly destroyed. On leaving the city, he retired to the quiet and seclusion of Pendleton, where he died, in 1840.

He was twice married: In 1811 to Hannah, the eldest daughter of Major James Hamilton, of the Revolutionary army, by whom he left one son; and again, after her death, in 1818, to Elizabeth Lynch, the second daughter of Major Hamilton, and sister of the Hon. James Hamilton. By this marriage he had four children—two sons and two daughters. His widow, one son, and two daughters, still survive. Mr. Prioleau had a fondness for literature and the arts; and in 1809, in connection with Charles D. Simons, afterwards Professor of Chemistry in the South Carolina College, delivered several lectures on Electricity and Natural Philosophy. With his friends, H. S. Legaré, William Crafts and others, he contributed several articles to the Southern Quarterly Review, which, at the time, excited considerable interest. He was again active in promoting the interests of science, by the active part he took in the establishment of the Medical College of this State, and by his exertions and perseverance, and almost alone amid great opposition, succeeded in obtaining its charter for the Medical Society. Upon the necessity occurring, however, to the Faculty for obtaining a separate and individual charter for the "Medical College of the State of South Carolina," he, together with the Hon. Judge Colcock, H. L. Pinckney, W. Drayton, &c., were among it's first and notable trustees. He lived long enough to see this institution firmly established, and took pleasure in observing its extensive and beneficial influence throughout the Southern States generally.

Among other means of promoting science and the familiar interchange of opinions, he was active in the establishment of the association known as the "Literary Club," and among its earliest members we find the Hon. M. King, T. S. Grimké, John Gadsden, Right Rev. C. E. Gadsden, Samuel Prioleau, William Crafts, &c. They held weekly meetings at their several residences, and always welcomed as guests the

respectable and distinguished gentlemen and scholars of the day, and all strangers who were respectably introduced. We have frequently seen at its meetings several of our distinguished men, as Hon. J. C. Calhoun, Judge J. B. O'Neall, Chancellor Harper, Judge Butler, Lieutenant Maury, and a host of others. At this day the Club continues, has its regular meetings, and by its liberal feeling and general courtesy still receives and welcomes all guests and strangers.

Of Mr. Prioleau's domestic habits we have little to say: he was amiable and affectionate to his family and was endeared to them and his numerous friends. Mild and gentlemanly in his deportment, he was respected by the community, and, from his sterling worth and probity, was highly estimated.

His residence was on the present site of the Battery, and he was remarkable for his hospitality and attention. He was brought up in attendance to the Protestant Episcopal Church, was a constant and consistent worshiper, and died in its communion. He was long an intimate friend of the Rt. Rev. Bishop Bowen.

In addition to the foregoing, Judge Wall remarks that his acquaintance with Judge Prioleau began in 1822, in the House of Representatives of South Carolina. Mr. Prioleau was Chairman of the Judiciary Committee, of which he was also a member. The duties of chairman were more laborious then than now. Every report was prepared by the chairman; to this arduous task Mr. Prioleau devoted, successfully, his unflagging energy and talents. In 1824 I was elected speaker, and appointed Mr. Prioleau chairman of the same committee. In the important session of 1824, he discharged his arduous duties with his usual ability. He bore a large part in preparation of the Acts "to revise and amend the Judiciary System of this State," "to amend the law in certain particulars," for the amendment of the law in divers particulars, "to give jurisdiction to the Judges of the Court of Ordinary throughout the State, to order the sale or division of real estates, not exceeding a certain value; to authorize certain persons therein described to plead and practice as Attorneys and Solicitors in the Courts of Law and Equity in this State."

At this session he made his celebrated report in favor of the Constitutionality of Internal Improvement by the United States, and affirming generally the doctrines of Mr. Calhoun, Mr. McDuffie, and others, our leading politicians. Their report was not acted on at that session, but in 1825 the same subject came up, and under the report of Judge Smith the whole doctrine was reversed. See the report and resolutions in the Acts of 1825, p. 88. Mr. Prioleau was not then a member. In that year he had been elected by the City Council, Recorder. This matter is ascertained by the case of Perry, Potter & Co., *vs.* Legare, decided by Prioleau, Recorder, and heard in the Court of Appeals, in November, 1825. See the case cited in Tyler *vs.* Givens, 3d Hill, 54.

Judge Prioleau was a worthy successor to Recorder Drayton; for his decisions testify to his accurate legal judgment. They will be found in 3d and 4th McC., 1st and 2d Bail, 1st and 2d Hill.

Judge Prioleau was my intimate friend, and no finer or better man ever lived. He was a perfect gentleman in his manners, habits and associations.

His death was a great loss to the whole community, and especially to the City of Charleston.

GEORGE B. ECKHARD.

Recorder Eckhard was the son of Jacob Eckhard, a German musician, who moved to Charleston many years before the birth of the subject of this notice. Mr. Eckhard was called to the bar about the year 1820, and was associated with William Crafts. In person, he was quite diminutive and fragile—head largely disproportioned with his body; rather light complexion, and prominent features. He was not distinguished as an orator. His style of speaking was logical and clear, but not at all of a nature to excite enthusiasm. His voice was weak and harsh; but he possessed much ingenuity, and his method of speaking was of the narrative and explanatory character. No man was his superior in neatness and system. He wrote a beautiful hand, and every department of his business was arranged in the perfection of order. He soon established a reputation for strict attention to his vocation, and for integrity and punctuality, which conquered all the difficulties of want of position and high talents, and enabled him to command success where superior minds, wanting his business qualifications, failed to achieve it. He had a just and accurate way of reasoning, and an earnestness of delivery, which secured the most respectful attention. He was the idol of the German population of Charleston, as Mr. Crafts, his associate, was that of the Irish; and at one time commanded a volunteer company of stalwart Saxons—the "German Fusileers"—at the head of whom he was often observed, a pigmy among giants, comparatively. He was of extreme nervous temperament—an organization which rendered him quite susceptible to quick impulses. His disposition was amiable and kind; and he had the prudence to govern a naturally generous heart by caution; and he could be convivial without becoming the victim of licentious indulgence. He became the favorite of the professional circle which then ruled the Bar, and, on the 25th March, 1844, was made Recorder of the City of Charleston—a station which he

filled not quite a year, but in which he commanded the highest approval. He fell under that blight which prostrates genius, and terminates, early in life, the career of those who labor with the brain. His physical system, worn out by long sedentary application and excess of study, had not vigor to sustain the drafts of his mind; and nervous apoplexy took him off at an age when men begin to reach the climax of honorable position. It can be said with strict truth of Mr. Eckhard, that while he did not possess the brilliancy of some intellects, he went far beyond the point usually reached by persons of his capacity and station. He was noted for his modesty, and rarely ventured to mix with the gentler sex—a disposition to which his long reserved bachelordom was attributed. The presence of a woman in his office, which occasionally happened in a business way, threw him into a flutter from which he did not soon recover; and which produced much rallying on the part of his friends. He was so easily moved, as often to be made the object of a joke by his associates. On one occasion, a friend of his, while waiting for him in his office, employed himself in imitating Mr. Eckhard's signature; which was of very peculiar character. Shortly afterwards, Mr. Eckhard coming in, and observing his name thus written, turned pale, and spent the day in extreme agitation, warning bank officers and others with whom he had business, of attempts to commit forgery upon him.

Few men of the same success and popularity ever encountered less envy. The friendship which existed between himself and his cotemporaries was cemented by a generous candor, which induced those with whom he was in rivalry to watch his gradual progress without jealousy, and enabled him to bear applause without becoming the spoiled child of success. As an advocate, he was just, courteous and honorable; and while not one of those who are suckled at the breast of the philosophy of the Law, he had yet stored his mind with an accurate knowledge of its details, and could manage his causes with a success not always the reward of more refined and educated intellects.

The Charleston Courier of February 19th, 1845, says:—

"It is with the deepest pain and sincerest sorrow that we announce the death of the Honorable George Bryan Eckhard, late Recorder of the City and Judge of the City Court of Charleston. On Saturday morning last, he left his residence, very much indisposed, to preside at the trial of an important cause. While on his way to the City Hall, he was so much oppressed that he had to seek relief by taking a seat in an adjacent store, and while awaiting in the Sheriff's chamber the organization of the Jury, he was seized with such an oppression of breathing, that, at the urgent instance of his friends, he was led to a carriage and taken home. He was immediately put to bed, and medical aid was called in, but by eight o'clock his case was considered desperate by his physicians. He revived somewhat during the night and towards morning, but became worse on Sunday, and, about nine o'clock, A. M., yesterday, closed his useful and honorable career in the fifty-first year of his age. His disease, or rather the immediate cause of his death, is supposed to have been nervous apoplexy.

"Judge Eckhard was born in this city, on the 22d September, 1794. His father was the late Jacob Eckhard, Sen., a German musician, who came to this country during the Revolutionary war, and died at a venerable old age, much respected in our community. His mother, Mrs. Priscilla Eckhard, was a Bryan, of Virginia, born at Shockoe Hill, on James River, and is still living, at the extreme old age of eighty-four years. The Judge had two brothers, both of whom died before him, like himself, without descendants, and he was the last of his name in this country. His only surviving relations in this city and State, besides his aged and venerable mother, are a sister and two nieces, the children of deceased sisters.

"Judge Eckhard received his education entirely in this city—having been a pupil of the celebrated Grammar School of Dr. Gallagher. He was admitted to the Bar on the 4th January, 1816, and always ranked as an able and careful Counsellor, and sound and well-read lawyer. Not much endowed with the gift and graces of oratory, he was yet a clear speaker and reasoner, always admirably armed with authori-

ties, and otherwise well prepared in his cases. Care, industry and zeal, with a large share of practical good sense, were, in a remarkable degree, his professional characteristics; and as the just rewards of his talents, industry and worth, and the confidence they inspired, he enjoyed an extensive and lucrative practice. He was proverbial for the kindness and sympathy with which he regarded his juniors in the profession, the interest with which he watched their dawning merits, and the readiness with which he lent them his counsel, or the aid of his experience. As a man and a lawyer, he bore an unblemished character for honor and integrity; he was a dutiful and a tender son, a kind relative, of gentle manners and gentle spirit; of a benevolent, social and friendly nature, and full of companionable qualities, securing him a large circle of attached friends.

"Valued and valuable as he was in private, he was equally so in public life. He was an active and efficient member of various public boards and incorporated societies; among the latter of which may be especially mentioned the German Friendly Society, of which he was, for many years, the faithful treasurer, and afterwards president. Equally zealous was he as a member and officer of the benevolent fraternities of Masonry and Odd Fellowship; in the former of which he had just passed through the honorary office of Grand Master of the Grand Lodge of Ancient Free Masons of South Carolina.

"On the 7th of September, 1829, although absent from the State, and not a candidate, and, indeed, withdrawn from the canvass by his immediate friends in every daily paper in the city, he was elected by the people a member of the City Council of Charleston, and was annually reëlected to, and continued his able and efficient services in, that station until the 12th of July, 1836, when, on the elevation of the late Judge Axson to the office of the City Recorder, he was chosen the successor of that able and upright functionary in the office of City Attorney. In that office, he rendered services of great value to the city, especially in the investigation of titles, and of many disputed points of law, crowding upon him beyond

all former precedent; and, during his continuance in it, prepared the valuable Digest of City Laws and Ordinances which has been recently published by authority of Council. In October, 1838, he was elected a member of the State Legislature from this city, and continued to serve in that body, by reëlection, until his elevation to the judicial office; being emphatically one of its business members, and frequently leaving the impress of his mind and his labors on the Legislature of the State.

"On the 25th of March, 1844, Judge King having resigned the office of City Recorder and Judge of the City Court of Charleston, which he had temporarily and benevolently filled for the benefit of the family of the late Judge Axson, the lamented subject of this obituary tribute was elevated from the post of City Attorney to the vacant judicial station, by the unanimous vote of the City Council, and with the unanimous consent of the Bar. In less than a twelve-month from the commencement of his judicial career, have his labors been terminated by the sudden and unexpected stroke of disease and death; he, in a measure, sharing the fate of two of his recent predecessors, and almost countenancing the superstition of the connection of some fatality with the office he filled—Judge Prioleau and Judge Axson having been both struck down by palsy like him, in the vigor of usefulness and manhood, while incumbents of the same station. Brief, however, as was his career as a Judge, he wore the ermine with dignity, urbanity, ability and independence—giving evidence of his learning and soundness of judgment—furnishing proofs of the value, on the Bench, of those endowments and acquirements which had rendered him successful at the Bar, and putting forth a fruitful promise of usefulness and eminence as a Judge. His decisions were, for the first time, submitted to the ordeal of the Court of Appeals, at their recent session in this city; and they won him the frequent panegyric of that high judicatory, especially for the fullness and perspicuity of his judicial reports. In proof of this may be recited the following passage from the opinion of that Court, delivered by Judge O'Neall, in the case of Preston *vs.* Simons: 'Upon the

third plea, the Court concurs in the judgment of the Recorder, and is glad to have it in its power to refer to his excellent argument in support of the judgment below, for the reason of the dismissal of the motion.' The same Judge observed to a member of the Bar, about to argue an appeal from Judge Eckhard: 'Take care, one stands a bad chance who appeals from the Recorder.' In the case also of Smith *vs.* Affanasieffo, Judge Richardson, delivering the opinion of the Court in affirmation of the Recorder's judgment said: 'The questions of fact in this case were plainly submitted and properly disposed of by the Jury, and the questions of law have been so satisfactorily argued in the judicial report of the case, that this Court has but to dismiss the appeal upon the reason therein presented.' It is almost superfluous to add, that the sense of the public loss of such a man, and of a Judge of so much usefulness and worth, was deeply felt, as the following proceedings will plainly show:

"The District Court of the United States, Judge Gilchrist presiding, and the Court of Equity from Charleston District, Chancellor Dunkin presiding, were both in session when the melancholy tidings of Judge Eckhard's death were announced.

"In the former Court, B. F. Hunt, Esq., briefly stated the sad intelligence, and, in behalf of the Bar, moved an order of adjournment, as a tribute of respect to the deceased; whereupon, his Honor Judge Gilchrist responded as follows: 'I cannot do otherwise than grant the motion which you have made in behalf of your brethren of the Bar. The deceased was known to his country but a short time as one of the expounders of her laws, but he was known long enough to have established for himself the character of a learned, upright and independent Judge. As an official functionary of the law, therefore, he is entitled to every respect which this Court can pay to his memory; and when we remember the amiable qualities which distinguished him during life, our attachment to him as a man mingles with our feelings of regret on the present occasion.'

"The Court was accordingly adjourned until Thursday next, at ten o'clock, A. M. In the Court of Chancery, the

Hon. Mitchell King announced the melancholy fact, and in testimony of regret at the loss of so excellent, so able, and so useful a man—held in the highest estimation by all who knew him—moved that the Court adjourn until next day. Whereupon, it was ordered by Chancellor Dunkin, that the Court should stand adjourned accordingly."

[Charleston Mercury. January 19th, 1845.]

"DEATH OF JUDGE ECKHARD.

"We announce, with a regret that will be shared by the whole community, the sudden death of the Hon. George B. Eckhard, Recorder of Charleston. He died yesterday morning, after a very brief illness. He was an able jurist, and on the bench was distinguished for patience, courtesy, impartiality and correctness. In his manners he was the most modest and unobtrusive of men, with a great fund of good-fellowship for those with whom he was intimate. This community has great cause to deplore his death, and will not find it easy to fill his place."

[Southern Patriot, February 18th, 1845.]

"DEATH OF JUDGE ECKHARD.

"We regret to state that the Hon. Geo. B. Eckhard, Judge of the City Court, died this morning, after a short illness, in the fifty-first year of his age. Judge Eckhard was distinguished for his sound legal learning, the accuracy of his judgment, and the courtesy of his judicial demeanor; while in his social and domestic relations, his companionable qualities, amenity of disposition, and kindness of heart, endeared him to a large circle of attached friends."

[Southern Patriot, February 19th, 1845.]

"PROCEEDINGS OF COUNCIL.

"Present—The Mayor, Aldermen Deas, English, Hunter, Seymour, Ingraham, Mills, Hopkins, Brown and Mendenhall.

"The Mayor communicated to Council the melancholy intelligence of the demise of the late Recorder, the Hon. Geo. B. Eckhard.

"Whereupon, Alderman Seymour submitted the following preamble and resolutions, which were unanimously adopted:

"Whereas, it has pleased the Wise Disposer of events to remove from the theatre of his usefulness, and from the bosom of his family and numerous friends, the Hon. Geo. B. Eckhard. And whereas, it is proper and becoming to tender the last testimony of respect for his many virtues, and admiration for his devotion to duty, his unimpeachable integrity and his entire qualification for the responsible office which he filled to the satisfaction of this community and with distinguished honor to himself.

"*Resolved*, That while we humbly acknowledge the hand of the Almighty in this dispensation of his providence, we cannot withhold an expression of our deep regret for this melancholy bereavement.

"*Resolved*, That in the death of the late Recorder, the city has been deprived of an exemplary officer and esteemed citizen, and this body of a valuable auxiliary and devoted friend.

"*Resolved*, That we tender the tribute of our cordial approbation for his services, in all the relations which have connected him with this body.

"*Resolved*, That Council will attend the funeral of the deceased, and that this chamber be shrouded in mourning.

"*Resolved*, That we deeply sympathise with his family, and tender them our most sincere condolence; that these proceedings be recorded on the minutes, and that a copy be transmitted to the family of the deceased.

"Council then adjourned.

(Signed) JOHN R. ROGERS,
Clerk of Council."

The monument to the memory of the Hon. George B. Eckhard is erected in the grave-yard of the German Lutheran church. Upon it the following epitaph (supposed to be written by the Rev. Dr. John Bachman) is inscribed:

"Sacred to the memory of the Hon. Geo. Bryan Eckhard, who was born in this city, September 22d, 1794; died February 18th, 1845, in the fifty-first year of his age.

"As a citizen, he evidenced a devoted attachment to the best interests of his country, discharged with great fidelity the duties of many responsible offices entrusted to him by the confidence of the public, and at the time of his death was Recorder of Charleston and Judge of the City Court.

"He was a man of unsullied integrity; as a friend, sincere and faithful; as a brother and son, devoted and affectionate. A believer in the Christian faith, he was consoled by its promises, and died supported by its consolations.

"This monument is erected by his aged mother and affectionate sister."

On the tombstone of John Jacob Eckhard, Esq., father of the Hon. Geo. B. Eckhard, is found the following:

"This marble marks the spot containing the remains of John Jacob Eckhard. He was born in Eschwege, in Hesse Cassel, and arrived in Charleston in 1786. He was for twenty-four years organist of the German Lutheran church in this city, and afterwards, up to the time of his death, officiated as such for St. Michael's. He discharged the duties of treasurer to the German Friendly Society, for nearly thirty-three years, with unexampled fidelity. In every department of life he was conspicuous for a rigid adherence to every principle of honor and integrity, 'walking humbly before his God,' and being just and charitable to all mankind. He died on the 10th of November, 1833, in the seventy-sixth year of his age."

"The Hon. Geo. B. Eckhard was elected City Attorney on the 12th of July, 1836, having succeeded Judge Axson."

Council Journal, No. 21.

"Elected City Recorder, March 25th, 1844."

City Ordinances.

JACOB AXSON.

Recorder Jacob Axson was born in the City of Charleston on the 27th of June, 1794. He lost his father when young. His paternal uncle took charge of him, and, as far as he could, supplied a father's place. His education was committed to the care of the Rev. Dr. Felix Gallagher, whose reputation as a teacher is even yet well known. Young Axson never had the benefit of a collegiate education. His pecuniary resources were very slender: he was thus forced to rely upon himself.

He studied law, and was admitted to the Bar on the 3d of May, 1817. He immediately commenced the practice, and, like one of the old French Marshals, who, when a foot soldier, determined to be a Marshal, Axson determined to succeed as a lawyer, and he did succeed.

Mr. Axson, when young, was called to the command of a military corps, and his friend, Wm. H. Inglesby, Esq., says, "that so thoroughly had he, through the inherent force of his character, gained the affections of his men and their confidence, that, had occasion offered, his presence and words would have made his men, without stopping, do all that brave men and faithful soldiers could be expected to do."

He was a Member of the House of Representatives, possibly from 1824—in 1826 I know he was a member. His fine temper and social manners made him a favorite with every one. I have good reason to know he was an excellent member: for, as Speaker, in 1826, I made him the Chairman of the Committee of Claims. He continued a member of the House for many years.

He was a member of the City Council. On the 16th of October, 1826, he was elected City Attorney, and continued in that office until he was elected Recorder—for, in February, 1831, and March, 1832, he was acting as City Attorney, as appears in the cases of the City Council *vs.* Patterson, 1 Bail, 165, and the State Bank et al *vs.* the City Council, 3 Bail, 393. In 1832, on the vacation by Mr. Legare of the office of Attor-

ney General, Mr. Axson was a candidate, and very probably would have been elected had it not been for the excited state of party feeling. He was a prominent *Nullifier*, and in some way had so offended a prominent and worthy Union man, that he threw the whole weight of his influence against him, and in favor of one who was an ultra-Nullifier then and has been an ultra Secessionist since.

It is due to Mr. Axson's memory, as a lawyer, that I should say, from '32 to '36, I was constantly in the habit of hearing him. It seemed to me he always argued his cases with great fairness and ability. His arguments were generally short, but clear *as crystal*. His perfect good humor and love of truth made him a great favorite with the Bench.

He was elected Recorder of the City immediately after the death of Judge Prioleau, on the 2d of July, 1836, and continued in the faithful and laborious discharge of its duties until 1842, when he was struck down by paralysis. In December following, the Legislature, by an Act, (11 Stat., 238,) authorized the City Council to elect an Assistant Recorder, provided "that he should be allowed to plead and practice law, and that he should not receive any compensation." This unpaid office the Hon. Mitchell King accepted, and discharged its duties, leaving to Judge Axson and his family the receipt of his salary. This most generous act on the part of Judge King soothed the last days of a declining and finally a dying man. Such merciful charity ought not to be forgotten, *here*, and I am sure will not be, in that everlasting world to which we are all hastening.

Judge Axson died 25th August, 1843, leaving a large family of orphan children.

He had married early in life. "His wife, to whom he was most fondly attached—and" as his friend Inglesby remarks, "well he might be, for her loving and loveable character fully entitled her to his whole heart—was called away from this earthly abode before his summons came; and he was left in charge of this large and motherless family of children, among whom were several of very tender years." "So deeply did he feel his responsibility, that he withdrew himself entirely

from the society which he so much loved, and devoted himself entirely to his professional duties, and to a ceaseless care, of his little ones. Elastic, and buoyant, and hopeful, as was his natural temperament, he never got over the loss of his wife; it preyed upon him, and like a canker that corrodes and destroys the body, so this affliction gradually consumed him until a paralysis ensued, and this finished the work of destruction."

Judge Axson, though not a member, was, from my first acquaintance, an attendant on the worship in the First Baptist Church of Charleston; and Dr. Curtis—the venerable and excellent minister of the Cross, who lately so unfortunately perished in the burning of the steamer North Carolina—in his funeral discourse on 26th of August, 1843, when speaking of his intercourse with him, during his last illness, said: "He struck me as possessing, on the whole, at that time, a particularly grateful and humble mind. Its best features throughout were a penitent and earnest desire to be fully reconciled to the will of God, and to enjoy that perfect peace with him, by the faith of the Gospel, which he confessed he needed. He practiced private prayer; spoke of looking to the Cross of Christ, with occasional peace; exhibited steadily that imploring and thirsty state of mind for religious comfort—which God, as I believe, sooner or later ever gratifies—and became, as on these grounds, I trust, though a feeble, yet *a sincere believer*."

Thus have I sketched, as well as the memoranda before me enabled me to do, the life of Jacob Axson. He was a much loved friend in one service of the State—as Representative. His good-humored facetiousness and perfect honesty made me there, as well as everywhere else, "a friend, who sticketh closer than a brother."

Our subsequent official stations were such as seldom brought us together. Yet shortly before his death, in company with a common friend, I visited him at his own house, and mourned over the desolation within and around him. The sketch now made may save his name from being forgotten. If so, I shall be much gratified. Would that he had *some one*—and *it may*

be he has—to whom I could say, in the language of the inspired Psalmist, the King of Israel, "Be strong and of good courage; dread not, and be not dismayed;" and then I would add show thyself worthy of thy father, and like him thou wilt be useful and honored!

The subjoined extracts from the Mercury, Southern Patriot and Courier, will show the sense of the Bench, Bar, City Council of Charleston, and the community, of the great worth of Judge Axson, and their sympathy with his doubly orphan children:

[Charleston Mercury, August 25th, 1843.]

"DEATH OF JUDGE AXSON.

"The Hon. Jacob Axson, Judge of the City Court, died this morning after a lingering illness of some months. The deceased, in all his public and private relations, was a model of a good citizen and virtuous man. As he had passed through life without a blemish on his name, so has he won love and admiration by his amiable deportment and courteous manners. The city has lost a valuable magistrate, the regret for his loss being accompanied by deep and sincere sympathy for his protracted sufferings.

"In the Court of Equity, assembled this morning for a special occasion, Chancellor Dunkin, on motion of Judge King, after some feeling remarks of that gentleman, announcing the death of Judge Axson, adjourned the Court until Monday, as a mark of respect to the memory of the deceased."

At a meeting of Council it was, on motion of Alderman Inglesby,

"*Resolved*, That Council accept the invitation to attend the funeral of the late Hon. Jacob Axson, and that the city officers be invited to attend.

"August 25th, 1843."

[Southern Patriot, August 30th, 1843.]

"PROCEEDINGS OF COUNCIL.

"Tuesday, August 29th, 1843.

"Present—The Mayor, Aldermen Ripley, Inglesby, Hun-

ter, McDonald, Furman, Stocker, Simons, Kinloch, Hopkins, and Buist."

Alderman Inglesby presented the following preamble and resolutions, which were unanimously adopted:

"To say that Judge Axson, as Recorder of the City, was a valuable public officer, that as a Judge he had a clear, discriminating, practical mind, that he had legal acquirements, that he was diligent, just and impartial, would not be saying enough; he had concentrated upon himself the confidence and affection of a whole community, and not through the qualities we have just enumerated. Independently of his unblemished character—and we are not aware of a single spot upon his fair fame—of his frankness and manliness of manners—and this was his in an eminent degree—his peculiar characteristic was kindness of feeling. He delighted in the conciliatory and social qualities of our nature. There was something in his manner that endeared him to all: he had a kind word for every one. During a period of embittered political excitement, although his opinions were always expressed with the utmost frankness—and he, like every one else in our community, was obliged to take sides—yet he never failed to convince that he was acting under the principle of duty. As a minister of justice he was often times called upon to mete out retributive justice to an offender. Even here he had the happy faculty of impressing such an one with the fact as it really was: he was in the performance of his duty, painful as it might be.

"This trait in the character of Judge Axson was the secret of his power over the affections of all with whom he came in contact; and while his other qualities entitled him to the respect, it was his kindness that gained him the affection of all.

"*Resolved*, That, in the death of Judge Axson the City of Charleston has lost a faithful public servant, an upright magistrate and a useful citizen.

"*Resolved*, That while we most sincerely condole with the numerous and youthful family of the deceased, in their irreparable loss, we join with them in gratulation that their father

has left for their benefit, and the benefit of others, the rich legacy of an untarnished name."

[Charleston Courier, August 26th, 1843.]

"DEATH OF JUDGE AXSON.

"With sincere regret we announce the decease of the Hon. Jacob Axson, Recorder of the City and Judge of the City Court of Charleston, in the forty-ninth year of his age, after a period of protracted sufferings. The melancholy event took place yesterday, at eight o'clock, A. M., on Sullivan's Island, where the deceased had been passing the summer. Judge Axson was born and bred in our community, and won his way to distinction by native talent, industry and worth. He was a man of amiable disposition and affable manners, and marked by those social virtues which never fail to surround their possessor with a circle of attached friends. In the various public stations he was called to fill, he was distinguished by a prompt, energetic and faithful discharge of duty, and ever possessed and deserved the public confidence. He served for many years as an Alderman of the city and a Member of the Legislature. As City Attorney, and finally as Recorder and Judge of the City Court, to which office he was elected in the year 1836, he was possessed of a clear mind and strong judgment, and discharged the judicial office with ability, dignity and impartiality, and to the entire satisfaction of the Bar and the community. A little more than a year since, while in the midst of health, strength and usefulness, he was suddenly prostrated by a stroke of the palsy, from which he never recovered, and under which he suffered until the time of his death. The misfortune which then befel him, aggravated by his entire dependence on his official emolument for the support of himself and his family, enlisted the sympathy and good feeling of our entire community, and an arrangement was made by which, although disabled from duty, he continued to receive his salary in full to the day of his decease. It having been ascertained that the Hon. Mitchell King, in a spirit of noble charity and disinterestedness, was willing to discharge the duties of City Recorder and Judge,

without compensation, with the express view that the disabled and esteemed incumbent might still be provided for in sickness and suffering, the office of Assistant Recorder was created and accordingly filled by Judge King. We know of nothing that could mark more strongly than this incident, the high esteem in which Judge Axson was held by his fellow-citizens, and it must be a great consolation to them, as well as to him—whose generosity thus enabled them to do an act of beneficence to an individual without prejudice to the public interest—that the declining life and last moments of so worthy a man were thus shielded from the bitterness of pecuniary privation. In the death of Judge Axson, it is but justice to say that the Bar have lost an esteemed friend and beloved companion, and the community an able and upright Judge and useful officer; and we feel a deep and heartfelt sympathy with the large, young and helpless family who have now lost their parent and protector."

It appears, by the roll of Attorneys remaining in the office, that "Jacob Axson, Jr., signed the roll the 3d May, 1817."

[For the Courier.]

"August 26th, 1343.

"Our citizens are called upon to deplore the loss occasioned by the death of Judge Jacob Axson yesterday. The deceased was a native of this city, and educated and brought up in South Carolina. For years he had occupied some of the most honorable posts that his fellow-citizens could confer upon him. He had often served as a member of the Council of this city, as Representative in the State Legislature, was for several years City Attorney, and died holding the honorable office of City Recorder and Judge. In all these offices he discharged his duties with ability and faithfulness. Early in life he commenced the practice of law, and always maintained an excellent standing at our Bar. The capabilities of his mind, though not of the first order, were always regarded much beyond the common standard. His knowledge of the law was correct, and he possessed that industry and perse-

verance which, amounting almost to enthusiasm, caused him to be regarded, in whatever case he was engaged, as no informidable opponent. His pride was to reduce every principle of law to that of common sense—a faculty in which he always evinced great success. Before a Jury, where the question was peculiarly one for their decision, few lawyers at our Bar were masters of more ingenuity. But what rendered him particularly successful was the complete earnestness with which he threw himself into his client's case. It rarely happened a Jury could be brought to believe that one who spoke so heart-going and looked so sincerely, could be supplied from any other than a fountain of truth. The same truthfulness of feeling and directness of purpose entered into everything he did. In politics he was decided and unwavering, cautious indeed in forming his opinion, but once his mind was made up, pertinacious in maintaining his convictions, and not easily led from them by sophistries. For this reason he was regarded, by the political party to which he belonged, as one of the truest and most unwavering exponents of its principles.

As a Judge, he was fast winning that approbation of the Bar which had been anticipated for him. Generally correct in his views of the law, he rendered himself beloved by his professional brethren for the uniform urbanity with which he treated every one with whom he associated, and by the admirably good humor and fidelity with which he discharged the duties of his office, while health permitted. It was, however, as the citizen and gentleman, that Judge Axson shone most enviously. No one knew him but to love him. Alike courteous to all, there were none of his fellow-citizens who did not esteem him as the gentleman and regard him as a friend. In his intercourse with his immediate acquaintances, of which he numbered, perhaps, as many as any other man, his temper was uniformly good, and his humor and wit so unfailing and hearty as always to insure cheerfulness and good feeling. It has been often said, as characteristic of him, that if he could only see two acquaintances at daggers point at different corners, he would manage, some how or other, to

make them laugh and shake hands with each other across the way. This was his true character. His heart was made up of faith and hope, which were encircled by the most extended benevolence and charity. To those who knew him, it were a vain task to attempt retracing these recollections of him which he has so lastingly impressed upon their hearts; while to those who enjoyed not the delightful privilege of his acquaintance, our grief for his loss is too fresh to permit us to present other than this imperfect tribute to his memory. If ever the privilege was granted to any man to live without having lost a friend, the general sorrow for Judge Axson's death will ascribe such an epitaph on his tomb.

MITCHELL KING.

Recorder King, long an active and successful member of the Bar of Charleston, was born in Crail, one of the royal boroughs of Fifeshire, Scotland, on the 8th of June, 1783, on a spot of ground occupied by his ancestors, in direct descent, for some three hundred years. The Christian name of the male seniors of the family had been James for many generations. The infant—the eldest son of the eldest son—was intended to bear the usual name. An old gentleman, named James Mitchell—a distant relation of the family—and his wife, both well stricken in years, and childless, proposed to adopt the new-comer if he received their name. To this a ready assent was given, and his parents intended to have him baptized James. But his aged friends alleged that then the Mitchell, in his name, would be omitted, and the family name, James, only used. So, he was baptized Mitchell, and on their death he, by their will, became the owner of all their property He spent his youth partly in Crail, with his grandfather, and in Alloa and Kincardine—considerable towns in Scotland—in which his father and mother successively resided. In Crail he attended the school of Mr. McMinn, who had a high reputation as a scholar. In Alloa he went first to a private and select school, with a limited number of pupils, and then to the high school of that place; and, afterwards, in Kincardine, pursued his classical and mathematical studies, in an academy sustained by special subscription, under the instruction of the Rev. Alexander Davison, a gentleman of approved scholarship, a clergyman of the Established Church.

While very young, Mr. King became passionately fond of reading, and devoured everything readable that came within his reach. His pocket-money invariably found its way to the bookseller's shop, and he very soon established such relations with the friendly booksellers that when his ready money fell short of the price of a book that he wanted, they never failed

to credit him for the deficiency, which he never failed to pay. Books of mere amusement did not long satisfy him. His reading was not confined to such works as are usually put into the hands of young students, but extended to everything in classical literature, and in moral, metaphysical and mathematical science, which excited his eager spirit of inquiry. In Alloa, his chosen companions and friends were George Strathie and George Walker, both somewhat older than himself, students, and subsequently doctors of medicine. While certainly unprepared for such an undertaking, these three young gentlemen, under the name of the Spy, by Jacob Trimmerpouch, wrote a series of essays, in imitation of the Spectator. Strathie and King were the only contributors. Walker wrote a complete copy of all the essays for each of the partners. These and similar associations in Kincardine, turned our young student's mind to think of medicine as a profession. His father encouraged him, and called, with his son, on Dr. Meldrum, a distinguished physician, who had practiced in his family, to propose to the doctor to take his son as an apprentice to the profession. They were courteously received. The father stated to the doctor the purpose of his visit. The proposition was kindly entertained. The amount of the apprentice fee to be given with the student was discussed, and no difficulty seemed to exist to entering into an engagement, when the doctor incidentally remarked that he did not need or wish an apprentice, and that the fee to be paid with him was much more an object than the apprentice. This remark startled the youth, and he begged his father to take some further time to consider the matter. The negotiation with Dr. Meldrum was not renewed.

The youth returned to his former studies. His devotion to them kept him fully occupied. A friend of his family, Mr. William Bruce, a merchant, who was about to settle at Memel, in Prussia, found him thus engaged, and, after a full conversation with him, and forming an estimate of the extent of his information, advised him to seek employment for such attainments as he had made where there was more demand for them than in the overstocked market of Scotland. The advice

met the wishes and received the warm thanks of the student. He ceased to think of medicine, and turned his attention to commerce and the very extensive literature and important inquiries that form the intelligent merchant.

Mr. Bruce settled in Memel, and invited his young friend to pay him a visit. He accepted the invitation, and remained there for some months. But he was soon dissatisfied with the country. The kind exertions of his friend failed to procure him a situation agreeable to him. He returned home, and occupied himself with his accustomed studies and adding to his general information. In the spring of 1804, tired of inactivity, he determined to go to London, and to take his passage for the East Indies, in the hope of finding there acceptable employment. At that time the trade of England with India was principally carried on by large fleets of merchantmen, protected by a competent convoy. The sea was swarming with swift-sailing French privateers; and single merchantmen, unless well armed, could seldom make the voyage in safety. One fleet of merchantmen generally sailed from England in May, and another in the fall. Letters of introduction and recommendation were procured for Mr. King, and early in April, 1804, he took his passage for London, with the full assurance that he would reach London in time for the May fleet. He had a long and boisterous passage, and, on his arrival, found, to his great disappointment, that this fleet had sailed, and another would not set out until next fall. His friends in London encouraged him with the hope of obtaining satisfactory occupation there until that time. In this hope he was again disappointed. But his time was usefully and agreeably employed. He studied French with an able teacher, and, to correct his provincial Scotch accent, he, under a highly recommended master, took lessons in reading and pronouncing English. London presents innumerable objects of liberal curiosity, and his spirit of inquiry was insatiable. While he thus occupied himself, one of his friends spoke of him and his intentions to a Captain Anderson, commanding a large ship—the Castle of Hull—then lying in the Thames, chartered as a transport by the British Government, to carry military offi-

cers and stores to Malta. He was from Blairburn, in the Parish of Culross, about four miles from the residence of Mr. King's family. As soon as he learned Mr. King's disappointment, in missing the convoy for India, he immediately offered him a passage to Malta, telling him, that if he found a situation there that was agreeable to him he might accept it; and that if, in this, he was disappointed, he could certainly return to England in time for the next convoy for India. This kind offer he promptly accepted. To have the pleasure of seeing the famous fortresses of Gibraltar and La Valette, with which Drinkwater and Vertot had made him well acquainted, was an inducement not to be resisted. From his limited means he laid in a few books for the voyage, and soon found himself on board of the Castle of Hull, in a large convoy, bound for Malta. They anchored two or three days in Gibraltar roads, and he had the satisfaction of examining the fortifications and curiosities of the place. On arriving at Malta, the cargo was speedily discharged. A return cargo for the ship could not be immediately obtained. Mr. King went on shore to private lodgings. On diligent inquiry, he found that he could obtain no situation that would be acceptable to him. After considerable delay, the ship, early in September, went to Sicily, to take in a cargo of sulphur. There Mr. King remained on shore, superintending the shipping of the cargo. In the first week of October, the ship, fully loaded, returned to Malta, and there found a number of vessels awaiting a convoy to protect them for England. Nelson was then watching the French fleet lying in Toulon, and a fitting convoy was not ready. At last, in the beginning of January, 1805, the fleet of merchantmen, that had been collecting and detained for three or four months in the harbor of La Valette, sailed for England under the escort of the Arrow, sloop-of-war, and the Acheron, bomb-ketch. They were most unfortunate. After contending against strong westerly winds, they were attacked by two powerful French frigates that had got out of Toulon. The Arrow and Acheron were captured and destroyed, and the convoy dispersed. The Castle of Hull, a dull sailer, with a short crew, and a few carronades, was left to take care of herself, and,

after striving for a month longer, with no success, against the continued adverse winds, was captured—after a very unequal contest—by a Spanish privateer, and, on the 4th March, 1805, carried into Malaga. The captors behaved generously to their prisoners. Private property was respected. The ship and cargo were lawful prize. On being landed, the gentlemen on their parole were allowed to seek lodgings in the city. The sailors were conducted to the Moro Castle. As soon as he was settled in lodgings, Mr. King began to study the Spanish language, and, with his knowledge of Latin, soon made considerable progress in it. He took much interest in examining the objects of curiosity in and around Malaga. In the course of his excursions he formed some very interesting acquaintances: one of them was a highly intelligent Irish Catholic clergyman, who, with heroic Christian courage, had remained in Malaga to tend and console the sick and shrive the dying, during the whole terrible summer of 1804, when the yellow fever spread death and desolation through the city, and, in two or three months, carried off upwards of twenty thousand of the inhabitants and drove hundreds, perhaps thousands, of his brethren to the mountains for safety. Another was Mr. George Hill, an English merchant, who had long resided in Spain, and who, on the renewal of the war between England, and France and Spain, after the rupture of the peace of Amiens, had entered into partnership with George Loung, a gentleman of Boston, by whom principally the business was conducted, and by whom it was continued long after Mr. Hill's death. These gentlemen then resided together; and Mr. King, while waiting to be exchanged as a prisoner of war, was frequently at their house. In April, 1805, the English prisoners in Malaga were twice shipped in a cartel, to be carried to Gibraltar—only about seventy or eighty miles distant—to be exchanged; and twice were they driven back to Malaga. Soon after their second return, the French fleet, from Toulon, passed down the Mediterranean, towards Cadiz. The English authorities at Gibraltar, to embarrass the equipment of the Spanish fleet at Cadiz, suspended the exchange of prisoners. Spain immediately retaliated, and sent orders to her seaports,

that the prisoners, who, on their parole, had been left to the restriction of their own honor, should be forthwith put into confinement. The gentlemen who had given their parole, which they had not violated, considered themselves absolved from it by this unusual, and, as they thought, unjustifiable act. They received a friendly intimation of what was ordered against them. They nearly all lodged together in a large hotel, usually frequented by English and Americans. They found their landlord and his assistants well disposed to aid them, and, on the afternoon of the very day on which the order was received, before the public authority came to the hotel to execute it, they, with only three exceptions, had found the means of concealment and escape, chiefly in American vessels then in Malaga. Their friends found the means of preventing any very strict inquiry after them. Two of the exceptions were Captain Bream, who with his wife, an American lady near her confinement, had been captured in his ship by a letter of marque, and brought into Malaga. Her situation prevented her from being removed—Spanish gallantry could not think of sending a lady in her condition to the Moro Castle—and her husband was permitted to remain with her. They had, that very day, hired unoccupied private apartments, and had carried thither the trunks of all their fellow-lodgers The other exception was Mr. King. He had spent the day, and dined with, Messrs. Hill and Loung. In the evening, when quite unconscious of what had happened, he was about to return home, he borrowed from Mr. Hill the travels of John Davis in America; and when he returned to his lodgings the inmates of the hotel were as much surprised to see him as if he had fallen from the clouds. They informed him what had happened—that Captain Bream had carried his luggage with the rest to his new quarters, and assured him that if the authorities found him they would certainly put him under arrest. They told him where Captain Bream had gone, and advised him not to visit his new lodgings until late in the evening. He followed this advice, and, at a late hour that night, called on Captain Bream. There, to his delight and surprise, he found his good friend, Mr. Hill, sitting with Capt.

Bream and his lady, and anxiously inquiring for him. He insisted on carrying him to his house; and there he remained until he took his passage for the United States. In the meantime he occupied himself with the study of Spanish and the translation of documents in that language into English, and in occasional excursions around Malaga, in company with Mr. Hill or some other friend. It was difficult for him to obtain a direct conveyance to England, and, on the 13th of September, 1805, he took his passage in the Sally, John Warren, master, bound for Charleston, South Carolina. Captain Warren acted towards him rather as a brother than as a stranger. From the day that they sailed he began a journal of the voyage, and kept a regular log-book of the vessel's progress. Every day, at 12 o'clock, when the sun was visible, he had the use of the mate's quadrant, made his observation and computation at the same time with the captain, and then compared the result. The voyage was passed very agreeably, and added something of value to his knowledge of nautical affairs. On Sunday, the 17th of November, 1805, he arrived and landed in Charleston. Captain Warren carried him to his own boarding-house. He was engaged to be married, on his return, to a daughter of his landlady. He invited Mr. King to be one of his groomsmen, and commissioned him to request the Rev. Dr. George Buist, the Pastor of the only Presbyterian Church, then in Charleston, to perform the ceremony. In executing that commission, he had his first interview with Dr. Buist, with whom his relations soon became very intimate. In the situation of his finances, and before he could well determine what he might ultimately do, it was necessary to find, if possible, some congenial and profitable employment. After consulting such friends as he had then made in Charleston, he, in the beginning of 1806, opened a school with a few scholars, and gave himself, with his usual diligence, to his new occupation. His prospects were not brilliant. He knew the value of patience and perseverance. In the time not bestowed on his school he devoted himself to his favorite studies. To him they were a never-failing source of peace and enjoyment. Occasionally he amused himself with giving a local habitation to his pre-

dominating feelings. In that spirit he wrote a few verses and communicated them, under the signature of a Wanderer, to the editor of the Courier. Without publishing them, he, in his next morning's paper, asked an interview with their author. That interview took place. The verses, with a few remarks on them from the editor, appeared next morning in the Courier. They, at the time, produced some sensation. On the day on which they were published, Dr. Buist obtained from the editor the name of their author. He was rather surprised to find he was the young groomsman with whom he was acquainted. He sought an interview with him, and at once proposed to him an engagement, which he accepted, as an assistant teacher in the College of Charleston. The distinguished gentlemen, then trustees of that institution, had recently elected Dr. Buist principal—as the officer was then designated—with the full right and authority to select all the teachers, and to regulate and govern the establishment as had been done by the Right Reverend Bishop Smith, the first principal. On the first of March, 1806, Mr. King entered on the duties assigned to him in the college with great assiduity. He soon acquired much influence with his pupils and fellow-teachers, and the entire confidence of the principal. He felt it was time to determine on a profession or employment for life. Dr. Buist wished him to study divinity, and to dedicate himself to the church. After much anxious consideration, he concluded to study law, and to pursue that profession. Early in 1807, George Warren Cross, Esq., a member of the Bar, with whom, through a friend, he had become acquainted, hearing of his determination, spontaneously and kindly volunteered to enter his name, as a student, in his office. This offer was thankfully accepted. As the law of the State then stood for the admission of attorneys to the Bar, the shortest period of study was three years in the office, and under the direction of a regular practicing attorney, with a special proviso, that no person should be admitted "unless he shall have served a regular and diligent clerkship in the office of a practicing attorney of this State, for and during the period of one year, immediately preceding his application to be admitted." In

the summer of 1807, Mr. King was attacked by the yellow fever. He passed safely through the ordeal and speedily recovered from its effects. In August, 1808, Dr. Buist died. The Honorable Langdon Cheves, then a member of his congregation, wrote and published an able and touching obituary of him. Mr. King, not aware, before its publication, of the gratifying offering of Mr. Cheves, had prepared an humble tribute for the occasion. Some of the Doctor's friends saw it, and they required that it too should be published. Soon after, for the next commencement of the college, he wrote an address on the loss sustained by that institution, which was admirably delivered by the young gentleman to whom it was assigned. The college exercises were continued under the instructors selected by Dr. Buist, and on the same terms as before his death, until the vacation of December, 1809. At that time, one of the principal instructors opened a school on his own account. Mr. King felt it necessary to comply strictly with the letter of the law, and to spend the next year, preparatory to his application for admission, in "a regular and diligent clerkship" in Colonel Cross's office. He therefore relinquished his room in the college buildings, and hired rooms in a private house. The venerable and able Dr. S. F. O'Gallagher agreed with the committee of the trustees to superintend the school until the appointment of a head master; and the college, with competent teachers, in the beginning of January, 1810, was opened under his auspices. The years and infirmities of that good and learned man pressed so heavily on him, that he soon desired to resign the office, and the Rev. Dr. E. D. Rattoone was temporarily appointed principal. On the 10th of May he died, and the trustees immediately applied to Mr. King to take the situation until the end of the year. He was anxious to do anything in his power to serve the institution, but he was apprehensive that his acceptance of this proposal might disable him to comply with the legal requisition of serving a diligent clerkship in the office of a practicing attorney for one year immediately preceding his application for admission. He submitted his difficulty to the committee. They promptly assured him that, should that difficulty occur, the trustees

would endeavor to procure an Act of the Legislature for his admission. He asked time to consider. They acquiesced. He desired to meet the wishes of the board. He consulted two of his friends, then at the head of the Bar; and they advised him—in uniformity with his own wishes—to acquiesce in the proposition of the board. This acquiescence he immediately communicated to the committee, and, without delay, occupied the rooms in the college building usually allotted to the principal, and entered on the duties of the office. He never was employed more to his satisfaction. His labors were more of a pleasure than a burden to him. He has considered the six or seven months then spent in that college as probably the most useful period of his life. Some two or three months after he entered on these duties, the Honorable Timothy Ford, a trustee, and the Secretary of the Board, made an overture to him, whether, if the board would guarantee to him a salary of $3,000 a year, and the use of the rooms which he then occupied, he would continue to hold his office in the college, and relinquish his intention of applying for admission to the Bar. He asked, and was allowed time, to consider this important overture. It came to him from gentlemen for whom he entertained the profoundest respect. He felt that to accept it would bind him to a vocation in which, if successful, he could perhaps do more good than in any other; and from his education, and tastes, and habits, derive the highest improvement and enjoyment. But he had witnessed the fluctuations of popular favor, and the uncertainties and difficulties too often attendant on some of the best educational institutions of our country, and he longed to vindicate, if possible, for himself a position which would leave him free to follow the unbiased dictates of his own judgment. He felt deeply that, under Providence, the determination which he had then to make would most probably influence and fashion his future destiny. After full deliberation, he respectfully declined the overture.

While he devoted himself zealously to his duties in the college, he gave all his time, not engrossed by these duties, to his legal studies. His habit in studying was to read with the utmost attention, and endeavor to imprint on his memory the

important definitions and principles that occurred in every writer on law which he read. After thus spending a limited time, he would shut his book and walk about for exercise, meditating, with all the concentration of thought of which he was capable, on what he had just read; and then he would return to his desk, and task his memory to write a brief synopsis of all he wished to remember; and then he closed his self-imposed task by comparing his synopsis with the original. We have heard him say, that he believed that this exercise had been of the greatest benefit to him. During the summer, too, of 1810, three of his most intimate friends, Charles Fraser, Thomas Smith Grimké, and John Gadsden—all recently admitted to the Bar—on five days in every week, came to his rooms in the college for an hour or two, and considered questions of law chosen at one meeting, to be discussed at the next. Some one or other, and sometimes all three, of these gentlemen came well prepared to examine and illustrate the question of the day; and Mr. King had the full benefit of their research and ability. His Saturdays were dedicated to a diligent attendance at Colonel Cross's law office. Early in 1809, by the exertions, chiefly, of the able and ardent inquirer, Charles Dewar Simons, a number of the young gentlemen of Charleston, desirous of improving themselves and of promoting a love of science among their fellow-citizens, associated themselves together under the name of the Charleston Philosophical Society, and agreed to lecture successively on such scientific subject as was most familiar to the member adopting it. After the lapse of half a century, it is probably impossible to remember the names of all the gentlemen associated in this society. Robert Y. Hayne, then a student of law, was secretary. On the 1st of February, 1810—the anniversary of the society—Samuel Prioleau, then recently admitted to the Bar, delivered, in the Hall of the South Carolina Society, the anniversary oration before the citizens of Charleston. He and John Gadsden, Thomas S. Grimké, Dr. Benjamin Simons, and other members whose names cannot be recalled, delivered lectures on subjects selected by themselves, to large audiences. Mr. King delivered three or four lectures on astronomy. Mr.

C. D. Simons was ever willing and ready to supply any department which no other member could be found to undertake. The society continued active until 1811, when he was elected Professor of Chemistry and Natural Philosophy in the South Carolina College. He went to reside in Columbia, and the Charleston Philosophical Society ceased. In 1812 he perished in Hogaboo Swamp. Had he been spared to his native State, he might have done for her in science, what has been done for her in politics, by John Caldwell Calhoun.

In 1813, one of South Carolina's most gifted sons, the venerated Stephen Elliott, originated another association under the name of the Literary and Philosophical Society. That society, too, since the lamented death of its founder, has gone sadly to decay. Had the knowledge and wisdom of one great man been able to endow it with immortality, it could not have died. When South Carolina erects a monument—an Athenæum, a Calhounæum—to her departed worthies, the bust of Stephen Elliott will hold no middle place.

In Columbia, in the end of November, 1810, Mr. King was, by the Judges, admitted to the Bar. They held that he had fulfilled all the requirements of the law. Immediately as his engagement in Charleston College ceased, he opened his law office. His services in the college, his lectures on astronomy, his occasional publications, the friendships which he had formed, made him well known. The Honorable John Julius Pringle—one of our most distinguished lawyers and Attorney-General—had scarcely retired from the Bar; John Ward and William L. Smith, in the front rank of the profession, were withdrawing from it; Mr. Cheves, who had possessed the largest practice in Charleston, had resigned the office of Attorney-General, and had just been elected to fulfil the remaining part of Mr. Marion's term in Congress, and a comparatively large amount of professional business was inappropriated, a respectable share of that business found its way to Mr. King's office. At the first sitting of the Constitutional Court—as the Appelate Court was then called—his friend, Col. Cross, gave him a part in an important commercial case before that Court. The Judges were said to have spoken favorably

of his argument. In the same month, January, 1811, at the first Court of Sessions after his admission, he, as was then usual, volunteered for a defendant who had been an officer in the first Bank of the United States, and was, by the Attorney-General, indicted, criminaliter, for subtracting money from the bank, and concealing the subtraction, by simulated entries in the bank books. His friends had employed the venerable and learned Thomas Parker, and the powerful and impassioned Keating Lewis Simons—two of the ablest and oldest lawyers then at the Bar—to defend him; and they, with the courtesy for which we trust the Bar of South Carolina will ever be distinguished, promptly assented that Mr. King should take a part in the case, and requested him, as the junior counsel, to open the defence for the accused. When he closed his argument the foreman of the jury, William Crafts—the father of the distinguished orator, William Crafts—turned to his nearest fellow-juror and said to him, in a whisper loud enough to be heard by several persons around the bar: It is very clear the defendant cannot be convicted under an indictment—he has only committed a breach of trust. From that day to the hour that Mr. King retired from the Bar, he never had cause to complain of a want of business in his profession.

Mr. King attended the Courts of Law and Equity in Georgetown District, and formed intimate relations with most of the gentlemen of the Bar attending these Courts. He soon acquired a fair proportion of the practice in them. It was his invariable rule to examine carefully every legal question and every case committed to him, and to leave nothing honorable undone which it was in his power to do, to secure the just success and security of his client. It was always a deep pleasure to him to trace back to their origin the principles involved in a case, to ascertain when and how they came to be incorporated into the law, and enforcible by a Court of Justice. He was never content with the result of his inquiries unless they enabled him to form some definite conclusion. He did not confine his investigations to the writers on the laws of England—multitudinous, and learned, and profound, as they are. The *corpus juris civilis*, and the best commentators upon it, and

the best writers of Germany, and Holland, and Italy, and France, on the civil and canon, and especially on international maritime and commercial law, were embraced within the range of his inquiries. On these important subjects he collected one of the best private libraries in the Southern States. It was always equally at the service of the Bench and of his brethren of the Bar. He constantly consulted and used these authorities whenever they were applicable. To verify a quotation was a labor of love, and to detect an error in a translation, or the omission of a limitation to a broad generality, was no small triumph. In admiralty and commercial cases he was much engaged. His general reading and knowledge of nautical and mercantile affairs gave him great advantages in cases arising out of them. In the Equity and Admiralty Courts he had much practice. In conducting his business he combined great decision with great conciliation, addressing the Bench always with politeness and respect, he maintained with the utmost firmness the rights of his clients and of his profession. In the examination of evidence, he observed much courtesy; witnesses he treated with all due consideration; but an unwilling, a prejudiced, or a prevaricating witness had nothing to expect from his forbearance. He unhesitatingly used every honorable means to ascertain the truth. If, inadvertently, a mistake, either in law or in fact, was made in any statement likely to influence the judgment of the Court, he never permitted it to remain uncorrected; and no fear of consequences ever prevented him from stating, with the fullest emphasis, any conviction of his mind—sustained by the law—or the evidence that affected the merits of the case. In performing his duty, the possible consequences to himself never weighed one feather in the scale. He feared to be wrong, and he had no other fear. Inflexible adherence to this principle was probably the main ground of his success. His professional income, long, was one of the largest at our Bar. His incessant labor seriously affected his health, and made some relaxation from it indispensable. By the advice of his physician he, in the summer of 1815, made a visit to Europe; and returned, greatly benefitted by it, in time for the sitting of the Court in January,

1816. In the summer of 1819, the Bank of the United States had fallen into extraordinary difficulties. The stockholders were summoned to meet in Philadelphia. The citizens of Charleston, and of the State generally, were deeply interested in that unfortunate institution. They wished to send the Honorable William Drayton, the Recorder of the City of Charleston and Judge of the City Court, as their proxy to that meeting. The sitting of his Court could not well be postponed. He resigned the office. Mr. King was elected to it and held the Court. On Mr. Drayton's return home, Mr. King resigned the office, and Mr. Drayton was re-elected to it. On the 30th of November, 1829, the Centennial Anniversary of the Saint Andrew's Society of Charleston, he delivered an address for the occasion before that society. He, in that year, first visited the Valley of the French Broad, in North Carolina. To benefit the health of one of his family, he soon after built a retreat for them among the mountains, near Flat Rock, and there they have since usually spent the summer. Our State had then been for some time agitated by the doctrine of Nullification, and the character of the resistance that ought to be made to the law of the United States imposing a protective tariff. From the day that the minimum principle—as for brevity it has been designated—was introduced into the revenue Acts of the Union, he has been opposed to a protective tariff; and in 1816, while in Columbia attending on the Appeal Court, he repeatedly denounced the principle. He had then been long deeply convinced that the true policy of every intelligent people was, to sell whatever they had to sell at the highest and best market, to the best bidder, and to buy at the cheapest and best market, from the lowest seller. But he was also satisfied that the United States, under the Constitution and the contemporaneous construction of it by the generation who made it, had the legal power to pass such a law—a power which the intelligence of the age and the condition of our country forbid them to exercise. While the right, therefore, as he thought, was with the opposers of a protective tariff, the law was against them; and, while a good citizen ought to do everything legal to have an unrighteous law repealed, he was, until it was

repealed, bound to obey it. With the conviction, therefore, that a protective tariff is impolitic and unjust he felt constrained to act with the Union party who opposed the remedy proposed to remove it. The object of the Union party was, to unite the South in determined opposition to that tariff, with the deep conviction that their combined efforts, in strict conformity with the Constitution, could not fail of success, and were abundantly sufficient to protect their rights; and they delegated committees to wait on the Legislatures of several of the Southern States, in the name of the Union party; and to ask these States to co-operate with them in striving to bring about the combined action of the South. The Honorable Henry Middleton and Mr. King were delegated to the Legislature of Tennessee, that were to sit at Nashville, in the summer of 1832. Mr. Middleton, on his way to the mountains, was taken unwell at Greenville, in our State, and sent a message saying, that he would be unable to go, and requesting Mr. King to go alone. He did go, and executed his commission. The Legislature of that State adopted a special report on it, favoring the views of the Union party. That report was immediately communicated to the Executive of our State. But her course was predetermined. Happily our distinguished statesmen, who then represented us in Congress, at an early meeting of that body, adjusted the cause of our resistance to the Tariff, and the storm that seemed gathering around us passed harmlessly away.

In 1832, Mr. King attended a rail-road meeting at Ashville, in North Carolina. A large number of influential gentlemen of that State, and of Tennessee, were present. They were unanimously in favor of a rail-road to run from the seaboard of the South, down the Valley of the French Broad to the navigable waters of the West; and they resolved to apply to the General Government for the services of an experienced engineer, to survey the course of that river, and to report on its availability for that purpose. It was made the duty of Mr. King, as chairman of the meeting, to submit that resolution to the General Government, and, after some correspondence on the subject, the request was granted. The construction of a

rail-road, to connect her southern seaboard with the Valley of the Mississippi, had been previously agitated in the Southern, Atlantic, and several of the Western States. On the 4th of July, 1836, a general Rail-road Convention was held at Knoxville, in Tennessee, probably more numerously attended than any other similar convention ever held in the United States. The utmost enthusiasm for the undertaking prevailed. Committees to carry out the views of the meeting were appointed; charters were obtained from all the States through which the contemplated road was designed to pass; subscriptions to it, to a very large amount, were made; and in January, 1837, the stockholders met at Knoxville, elected directors, and organized the company. Mr. King took a deep interest in this great undertaking, attended all the important meetings of the stockholders and directors in South and in North Carolina, Tennessee, Kentucky, and Ohio.

In September, 1839, they met at Ashville, and, after receiving sundry reports and electing directors for the ensuing year, they, on the 19th of that month, adjourned to meet in Columbia on the 4th of December next. The dangerous illness of the president, General Hayne, caused the utmost solicitude, and alarmed all the friends of the enterprise. On the 24th of September he died—most deeply and universally lamented. He possessed the noblest qualities. South Carolina never had a truer son, or one more devoted to her well-being and honor. On his death, the Board of Directors elected Mr. King, president, during the adjournment. With great inconvenience to himself, he entered earnestly on the duties of the office, and, at the meeting of the stockholders, laid before them a full report of the then situation of their affairs. That report recommended an application to the Legislature of South Carolina for aid to assist them through their difficulties. The recommendation was adopted. A memorial was presented to the Legislature, and the aid was granted. The contemplated road to the waters of the West was then suspended, and the operations were confined within the State of South Carolina.

The professional business of Mr. King had long pressed

heavily on him. With the increase of his family and the extension of his personal relations and interests, the claims on his attention to them had greatly increased; and he began to contemplate the time when advancing years would compel him to lessen, and finally to relinquish, his accustomed labors. He had always intended to pay a last farewell to the land of his birth, and to visit several places in Europe. Early in 1840, he made his arrangements to carry this intention into effect. He revisited the old town of Crail, and there occupied the very room in which he was born, in the house yet owned by his cousin-german—his only relative in the old world, that bears his name. In September, he attended, in Glasgow, the meeting of the British Association for the Advancement of Science. He extended his tour on the Continent of Europe, and, in the Spring of 1841, he returned home.

He did not immediately retire from the Bar. His old clients often applied to him, and to them he could not refuse his services. In 1842, the Honorable Jacob Axson, Recorder of Charleston and Judge of the City Court, from severe and continued sickness, was unable to perform the duties of the office. Late in that year, Mr. King was elected additional Recorder and Judge, and performed these duties for some time after Judge Axson's death. In March, 1844, he resigned the office. In 1843, he took a part for the defendants in the very important case of the State against the Bank of South Carolina, specially reported by the Attorney General, in obedience to the directions of the Legislature. In the State Convention that sat in Columbia, in 1852, he sat as a Delegate for the Parishes of St. Philip and St. Michael. From the Incorporation of the Medical College of the State of South Carolina, he has been a member of the Board of Trustees; and from 1837, when the Honorable Charles J. Colcock retired from the Presidency of the Board, he has held that office.

In 1817, Mr. King was elected a Trustee of the College of Charleston. He has since given much time and attention to that institution. He has long acted as Chairman of the Standing Committee. In 1844, in consequence of the very

severe illness, which terminated in the death of the Rev. William T. Brantly, D. D., President of the Faculty of the College, he, at the request of the trustees, performed, for some months, the duties of the office, until the Honorable William P. Finley was elected to it. And after the death, in December, 1846, of the Honorable Henry Deas, the President of the Board of Trustees, he was elected to, and still holds, that office.

Mr. King has been twice married. He is now a widower. We had the pleasure of knowing both his wives, and we have never known a man that seemed to be happier in his domestic relations. He has, for several years, retired from the active duties of his profession; but his time is as much engaged as ever. His devotion to his studies is unabated. The claims upon him of his friends—of the educational institutions with which he is connected—of his social and family relations—of his material interests—give him enough, and more than enough, of occupation, and often compel him to leave undone what he is anxious to do. He is still deeply attached to his profession. He believes that the firmness, the intelligence, the high character of the Bar are, under Providence, the surest and the best safeguard of a just and well-regulated freedom; and that all the institutions of our country will be perpetuated in health and vigor, so long as the Bar maintain their untainted integrity and honor. These institutions, he is assured, are the best and noblest inheritance that a citizen can leave to his posterity.

Mr. King, after his services as Assistant Recorder to Recorder Axson, during his long affliction of paralysis, has generally been known as Judge King, and as such we shall hereafter designate him. His services as Assistant Recorder were gratuitous, so that the afflicted Recorder and his family might receive the benefit of his salary. The same benevolence occurred in the case of President Brantly, of the Charleston College. Judge King acted as president while that great and good man was paralyzed and sinking into the arms of death, and until his successor was appointed. These are instances of kind benevolence, which do honor to the heart of the Judge.

The Conversation Club, which imparts so much knowledge and interest to strangers who are invited to attend its weekly meetings, had its origin with the Judge—who has long been its president—and a few kindred spirits.

The Judge has made many interesting addresses, which are not mentioned in the preceding narrative. Among them may be mentioned his address before the Georgia Historical Society, which received much and deserved praise; and his address on the culture of the olive, before the State Agricultural Society, at Columbia, in the year 1846. This address was one of the most interesting which we have had the pleasure of hearing, and has, we hope, been preserved for the benefit of many of his hearers.

The Trustees of the Charleston College, in '57, discharged a duty which they owed to Judge King's eminent services in that institution, and to his great literary attainments, by conferring on him the degree of L.L. D. The same distinction, at the late commencement of the University of North Carolina, at Chapel Hill, was conferred on him, President Buchanan, and the Rev. Bishop Otey, of Tennessee. If such a degree is a great honor, it certainly was a still greater one when bestowed, without solicitation, by the great institution of North Carolina, on a great occasion, and in a greatly honored association. No man ever deserved such a distinction more than Judge King. For he is one of the finest scholars, and purest and best of men.

Judge King is blessed with a numerous family of sons and daughters; all of whom are remarkable for their love to him, and for one another, and for lives of usefulness in their respective spheres. He is a remarkable instance of prosperity resulting from diligence, knowledge and sobriety. The poor young man, cast, as it were, a stranger on our shores, by his indomitable energy, his literary attainments, and his professional success, has become one of the wealthiest and most honored citizens of Charleston. His health, strength, and length of days, he attributes truly to his perfectly temperate habits. His wealth gives him the means of the exercise of a most generous and elegant hospitality. His fine mansion, at the corner of George and Meeting streets, is always open to

the virtuous and good. To the Judges of South Carolina it has ever been as the residence of a brother, to which they have always been welcome. His intimacy with the Judges DeSaussure, Waties, Nott, Cheves, Huger, Johnson, Harper, Evans and O'Neall, has always been to him and them a source of pleasure.

Judge King's consistency as a politician has been, in our constantly changing creeds, remarkable; he has always stood by *the Constitution and the Union;* and long may he enjoy the great blessings of both.

As a lawyer, he occupied the first rank among the eminent members of the Charleston Bar. His arguments, both in law and equity, were remarkable for their learning and application. He was always listened to, by the Bench, with the most respectful attention; for they knew that truth was his object, and that he would lay before them the offerings of learning, research and wisdom.

As a Judge, he met the responsibilities and the vexatious litigation of the City Court with a clear head, a just purpose, and an honest heart. His services, *then*, "without money and without price," could not be too highly appreciated.

Judge King is one of *nature's noblemen:* kind in all his relations, just in his intercourse with his fellow-men, and offering up daily to his Saviour the sacrifice of "a broken and contrite heart," he stands now on the verge of time, to be venerated, admired and loved by his family, his friends, and all who may have the privilege to see him.

The following letter, written by Judge King, at the request of his friend, Judge David Johnson, to his son, David Johnson, Jr., advising the course of study which might be profitable to his future profession, is appended, as containing matter which is eminently useful and valuable to young men who are seeking to be lawyers:

"*Charleston, August 1st*, 1836.

David Johnson, Jr. Esq.:

My Dear Sir—From the time that I promised my much valued friend, your father, to submit to you my views of the course of study which you might find it advantageous to

pursue, with a view to your future profession, I have been anxious to redeem that promise; I have repeatedly determined to delay it no longer, and yet one thing has occurred after another to prevent me from fulfilling my determination, until I have been much disappointed and mortified by the procrastination. I have at last taken up my pen, resolved that I shall not postpone it one other day, though I may feel myself compelled to make it briefer, and less satisfactory to myself, than I intended or anticipated.

Your plan of remaining in college and pursuing your general studies, after you have taken your degree of A. B., is in the highest degree judicious, and is a good augury of your future success. When young men usually graduate, they generally are just beginning to know the full value of the advantages which they have at college, and to profit by them. If they enter immediately on the study of a profession with the preparation merely, which the usual college course gives them, I will not say that they will profit little from it, but, assuredly, their professional studies will be very apt, in a short time, greatly to impair their proficiency in their general studies, when, if they had, for some time longer, given their maturing mind to them, they might have made such progress in them, and fixed them so firmly in their memory, that their command over them would probably last through life. There is scarcely any part of a liberal education which is not valuable to one destined to the Bar. But the languages, and moral and intellectual science, claim a decided superiority, and to them ought his attention to be mainly devoted. Under the head of the languages, I include both the ancient and the modern; and in moral and intellectual science, I embrace political, moral and intellectual philosophy, logic, rhetoric, history, poetry, criticism and general literature. On these I shall offer you a few remarks. After all that has been written and said on the subject, I am deeply persuaded that there is no better exercise for the young mind than the study of the ancient languages. This is not the place to discuss the subject. It has never, to my knowledge, been discussed as it deserves to be. Experience seems most decidedly in its favor—no doubt, some men have become eminent without it—per-

haps, because they were without it. *Decipit examplar vilibus imitabile.* How many have risen to distinction by it, who, without it, never would have been known. To a lawyer, a knowledge of Latin, at least, seems indispensable. It contains the vocabulary of his science—and without it the names of his tools—of much of his necessary language, would be little better than jargon—signs without the slightest traceable connection with the thing signified. I would, therefore, recommend a diligent and continued cultivation of Latin. To pretend to point out to you the best authors, or the way in which you may study them, or the language merely as a language, I presume, is wholly unnecessary. The Greek—that noblest and richest of languages—is not so necessary for a lawyer; still he ought never to lose so much of it as he brings with him from college. To strive for more, would probably cost him more than the acquisition, if made, would be worth; and it would, assuredly, require much of his time—more than his other indispensable studies would allow him to give to it. But he may very well retain what he has got. Let him, every Sabbath, make it a point to read a few chapters in the Greek Testament, or Xenophon's Memorabilia, and make sure that he understands thoroughly every word he does read; at the end of twenty years he will probably find that he has lost little or no Greek that he ever knew. He will have little time to give to the modern languages. German is now, perhaps, next to English, or even before it—a key to the greatest number of profound original works. But I am assured that, to understand it thoroughly, requires as much time as to master the Greek; and no lawyer can afford to give that time to it. While, therefore, I should think the acquisition of it valuable, I should dissuade a student of law from endeavoring to make it. On the contrary, I should recommend to him the study of the French language. With the knowledge which you already have of Latin, you could very easily—I should say, in a very few months—so far master the French as at least to read it with great facility—very many of our legal phrases are borrowed from it. Littleton and the Year Books, and our old reporters, are written in the Norman dialect of

the language; and, however well they may be translated, an inquiring mind is always anxious to consult the original. Some of the very best writers too, on departments of the law, to which, especially in commercial questions, we have constant reference, are in French. Independently of Domat, of which we have a good translation, there are many important—highly important works—which have never been translated, and of which no lawyer in this country ought to be ignorant. We have only a translation of Pothier's Treatise on Obligations, and that, to my knowledge, is not, in every instance, accurate. He has left many other invaluable productions. D'Agnesseau, Emerigon and Valin, are without rivals in our language. Unless you have a special taste for the learning of languages, I would recommend you to confine your attention, as to the modern languages, to the acquisition of the French. The Spanish possesses much more power, and majesty, and harmony, and is, in every respect, a richer and nobler language; but offers little or no advantages to the legal student that would repay him for the time which he would have to give to it. On the whole, if the lawyer is a good Latin and French scholar, he will seldom have reason to regret his want of knowledge of the other languages.

Lord Bolingbroke somewhere says, that metaphysics and history are the two mountains which the student must climb before he can have a commanding view of the mighty ocean of the law. There is much truth in the observation. No man who is not an expert metaphysician, or who has not a mind naturally well adapted for metaphysics, will ever be a distinguished lawyer. It is emphatically a science of distinctions, and he who sees most readily and clearly the differences in things and circumstances, is best fitted for it. The ignorant may talk of splitting hairs, and sneer at distinctions without a difference, but it is because they know no better. This subtlety is not inconsistent with the most vigorous and comprehensive grasp of mind—nay, is most frequently united to it—and is itself one of the strongest evidences of that very vigor and comprehensiveness. You have already, I presume, studied Locke, and after all the labors of the Scottish school

of metaphysics—and it has done much—we have nothing that I know in the language that can supply his place. Hume, with all his skepticism, well merits a critical perusal. Brown's works on this subject are, perhaps, the fullest in our language—and they are valuable as coming, I may say, last. He has reviewed and freely criticised the labors of his predecessors. He is exceedingly arrogant and conceited, and hazards opinions which will not bear the test of severe scrutiny. But a careful reading of it, comparing his views of the opinions of other philosophers with these opinions themselves, as stated in the original works, will richly reward the student. It may seem strange, but it is no less true than strange, that I do not think we have a complete treatise of practical morality in our language, which I can unhesitatingly recommend to you. Paley, though perhaps the best, is very defective. The Principles of Moral and Political Philosophy, by Dr. Adam Ferguson, will supply many of his deficiencies, and is, by some, thought a better work. On the philosophy of morals, the very best book, with all its defects in our language, is, in my opinion, the Theory of Moral Sentiments, by Adam Smith. No book not professional, is more important to be thoroughly understood by the young lawyer; and he will find very few better models of style, or of an eloquence well suited to the Bar. I would say to you of it, '*Hunc nocturna versate manu versate diurna*'—make yourself master of its principles. You will find it a beautiful specimen of logic as well as of philosophy. In political science, you will, of course, read his Wealth of Nations: you will find much assistance from the notes of McCulloch; and, if you can find time, I would follow it by Ricardo and Malthus, and say, perhaps, the very best epitome of political economy which we have in our language, is the one compiled by Dr. Cooper: it contains more of the theory, combined with the facts and results, than you will find any where else in the same space. Connected with this subject are two works, which I very strenuously recommend to you—Dugald Stewart's Dissertation on the Progress of Metaphysical and Ethical and Political Philosophy, and McIntosh's Progress of Ethical Philosophy. They are inestimable pro-

ductions. The former has not received the approbation it richly merits. Few books are better calculated to set the mind a thinking; and that, after all, is the best characteristic of a good book. The latter has received its full share of not undeserved praise. Both are written in an admirable spirit—mild, impartial, fearless, full of information not hackneyed—full of wisdom without ostentation. They are two of the brightest gems in the crown of modern philosophy, and will, I do not hesitate to predict, shine with undiminished lustre when much of the paste of this age will be thrown away and forgotten. Logic and metaphysics are so intimately connected, that while you are studying the one you necessarily attend to the other; so that I consider them as actually blended. It is the substance, and not the mere form of logic, that is of any real benefit. It is well enough to know the names of our tools: it is far more valuable to know how to handle them. The Institutes of Quintilian, and the Rhetoric of Campbell, are books that will well reward you for the time that you may bestow on them; and I would recommend them to you. Karnes on Criticism, and Blair's Lectures, are both good books; but you will scarcely have time for them. Karnes is a far better thinker than Blair. His book has more originality. Blair has a good taste, so far as the capacity of his mind extends; but it could not rise to the comprehension of Milton, or the power to estimate his rank as a poet.

An extensive knowledge of history is of the greatest importance to a lawyer—after the history of our own country that of England—from its intimate connection with all our manners, customs and laws—will best deserve your attention. With the leading authors you are already familiar. Hume, with all his partialities and misrepresentations, contains so much profound wisdom—such a deep insight into the motives of conflicting parties—such masterly sketches of character—all in so enchanting a style, that he will ever stand at or near the head of philosophical historians. For accurate and unprejudiced narrative, there is no one that I prefer to my old favorite, Rapin; Hallam's History of the Middle Ages, and his Constitutional History of England, you ought by all means to read.

It is said by Polybius, I think, that chronology and geography are the eyes of history; and certainly no one who wishes to read history understandingly, will be without his chronological tables and his atlas within his reach. He can have but very crude and imperfect notions of the chain of events, who does not know the relations of time which they held to each other, and the places in which they happened. But if chronology and geography may be called the eyes of history, laws may well be called the spirit, the soul of history. They are the true, and I had almost said, the only true permanent memorials and exponents of the mind of the times, and throw more light on the manners, and customs, and condition of society, than any or all other sources. I cannot spare time to illustrate this opinion as perhaps it deserves, but I strenuously advise you, in reading the history of any period, to consult, so far as you can, the laws passed during that period. Read where you can their preambles and provisions; trace the causes which led to them, the manner in which they were received, the effects which they produced, how they acted on the people, and the people reacted on them. Unless history be read in this manner, it is little better than a romance. The guides in the study of ancient history are so numerous, that I would only occupy your time and my own, were I to give you my sentiments of a course of reading in that department. You can scarcely go wrong. There are, however, three books, which I rather think are not generally read, and which yet are more deserving of attention than most of those on ancient history, generally put into the hands of a student, and, therefore, I point them out to you. The Origin of Arts, &c., by President Goguet—a work originally French, but of which we have a good translation; Anacharsis' Travels, and Gillie's Universal History—not his History of Greece, which is far inferior to Mitford.

In attending to the more solid part of knowledge, we ought not to forget its ornaments; and no man can pretend to a complete skill in the English language and literature, who is not familiar with our poets. But, this is so extensive a subject, that I scarcely know, within the space to which I

must confine myself, how to advise. You ought to give some portion of your time to this study, I will not merely say the reading of our best poets—with Shakspeare and Milton especially, you ought to make yourself familiar—and to imprint select passages from them on your memory. You will scarcely have leisure to give much time to this department, but more may be done in a short time, if well employed, than you can imagine. You ought to know something of Chaucer, and Spencer, and Ben Jonson and his cotemporaries, and as much as you well can of Dryden and Pope. During the last fifty years, we have had a perfect flood of poetry; but much will scarcely live fifty years longer. Those who have had the greatest popularity, have not, in my judgment, best deserved it. Wordsworth deserves to survive Byron and Scott. His Ode to Duty, is one of the noblest things in our language. As a relaxation from severe studies, you will find a perusal of our best novels, both interesting and instructive—the extent of them is almost boundless—but every gentleman ought to know such works as the Tale of a Tub, Tom Jones, Roderic Random, Gil Blas, Don Quixotte, and very many others, which form an important department in literature, and which would furnish the mind of a lawyer, with material of great value to him. This letter would become a pamphlet equally tedious, perhaps, to you and to me, were I, however briefly, to touch on all the topics which present themselves to me. I must, I find, limit myself, and come at last to the studies strictly professional. You have already read Blackstone, Vattel, Starkie on Evidence, and Stephens on Pleading. This is a good beginning. You think of studying Grotius and Puffendorf in the originals; I fear you will scarcely find time for them. The time that you might give to them, I would much rather you would give to their masters—Thucydides, Xenophon, Polybius, Livy, Sallust and Tacitus, in the original if possible. Grotius would repay your labor, Puffendorf scarcely. He is a very heavy writer—laboring after questions of morals which no one ever doubted; to be consulted rather as a book of general principles, and especially, when joined to Montesquieu, which you have also

read, will be quite sufficient to introduce you to our Municipal Law. You have read Blackstone, but I recommend to you to make yourself a perfect master of him, so that, if possible, you may have every principle laid down by him, present to your mind, and have ready command over it. You will find even the committing to memory his leading definitions, an important and valuable exercise. Not that I, by any means, set the very high value on Blackstone that is said to have been done by Lord Mansfield. He is often inaccurate, and is not now allowed to be quoted as an authority in England. But still, he is the very best book (if an exception is not to be made in favor of Kent) that we have, to open the way to the more recondite writers. When you have given Blackstone a second perusal, I would then recommend to you, to read Wooddeson, and compare him, at every step, with Blackstone. Let Kent's Commentaries follow Wooddeson, you cannot too carefully study Kent. His book to you, is even more important than Blackstone. It is really astonishing how much he has compressed into so small a space. For, considering the mighty mass of materials which he has sifted, and the exceedingly numerous and accurate principles which he unfolds, four octavo volumes may be estimated a very small space. When you have thoroughly mastered Blackstone and Kent, and not till then, and are in complete possession of the more general technology of the law, I would strenuously recommend to you the study, the diligent, careful, minute study, of Coke's first Institute Littleton, with his, Coke's Commentaries on Littleton. This book lies at the very foundation of our law, and I would almost say that no man can be a great Common Law lawyer, who is not master of it. Coke is, by far, the greatest of our law writers. His dicta are authority, not, it is true, always correct, but so seldom wrong, that he approaches as nearly to infallibility as any one human mind can be expected to do. His works—all of them—are a perfect mine of legal learning. Every line almost, is an apothegm, an axiom, and all this embodied in so quaint, and I would say so good a style of genuine old English, and blended with such spirited remarks, and such

quiet humor, as to combine instruction with pleasure, in a far higher degree than any other of our legal classics. I would say of him, as Quintilian says of Cicero, with the alteration of a single word, Coke, (he did not usually, I believe, latinize his own name,) *jam non hominis sed legis nomen habitior. Ille se proficisse sciat cui* Coke *valde placebit.*

By the time that you have read the first Institute, you will have made such progress, that any attempt to direct your reading beyond this point, would, I presume, be unnecessary. Cruise on Real Property, and Fearne on Remainders and Executor's Devises, will, probably, claim your attention; and these, I think, will lay a deep and broad foundation for any legal superstructure you can raise on them. On Commercial Law, Abbott on Shipping, Chitty on Bills, Gow on Partnerships, and Phillips on Insurance, will well reward the time you may give to them. Jones on Bailments, though not entirely accurate—what book on law is?—presents the most beautiful specimen of legal logic in our language, and treats with much discrimination and ability, a subject of boundless application. The Acts of Assembly of our own State, and our State Reports, will require a careful examination, and in reading them, you will find it of great future value to you, if you have copies of your own, and make your notes and references as you go along. Chitty on Pleas and Pleading will occupy some of your time; and I advise you, that, in every form of action, whether *ex contractu* or *ex delicto*, while you are reading the doctrine, draw up for yourself the pleadings, from the writ to the execution; copy them in a book, and keep them by you for future use. These forms are like an experiment in natural philosophy: they show the principles in action, and make them better understood than any mere definition or description could ever do. Starkie is the best book we have on Evidence. Make yourself most familiar with the law on this subject: it is of the very last importance, and the practicing lawyer is called on for it, at the instant he may least expect it. On every other part of the law you may, probably, find time for inquiry and consideration. This must be at your immediate command. For a

legal opinion on any other matter of law, you may draw on your library, as a merchant draws on his money in bank. But, for questions of Evidence, you must, at the moment, be ready: they must be in your head, and you must know, at once, where to find them: they must be your ready cash—in your pocket—without the necessity of any draft to make them available.

Keep constantly and carefully, a common-place book, and note in it every remarkable case and observation that occurs to you. Methodical arrangement in this, is of the utmost importance. You will find many directions about the best method of keeping such a book.

Organize, if you can, a club of students, of your own standing, or older, with whom you may discuss points of law. Under good management, this exercise is invaluable; and you ought to spare no pains to secure its benefit. If you fail, after all your efforts, then adopt the custom of discussing some point aloud every day, by yourself. If you can get any one to listen to you, so much the better. Your own good mother would be no unmeet audience. Some persons might smile, perhaps sneer, at this advice. It would be, because they know no better. Experience has convinced me of its advantages.

I have said nothing to you of the Civil Law. It is not that I have forgotten it. But it is so extensive a topic, that I cannot trust myself to enter on it, and I fear I have already tired your patience. It is now near two o'clock in the morning, and I am myself, tired. But if my remarks shall be of any benefit to you, I shall think my time well bestowed, and most sincerely wishing you all success,

I am, with great regard, my dear sir,

Very truly yours,

M. KING."

APPENDIX.

JOHN RUTLEDGE.*

The following documents, connected with the most interesting period of the history of South Carolina, it is thought, will not be unacceptable to the readers of these volumes. It was shortly after the victory of Eutaw, when the freedom of the State had become a *moral* certainty, although Charleston still remained in the possession of the enemy, that these declarations of public opinion were promulgated. They indicate the feelings of bitterness and vengeance that still burned in the hearts of the men who had fought and suffered, during the long struggle of their country for independence. This famous assembly was greatly censured at the time by some, for the vindictiveness of its proceedings, in the passage of the Confiscation, Amercement, and Banishment Laws. Subsequently, however, at the first meeting of the General Assembly in Charleston, after the evacuation of the city by the British, many of the most rigorous of these measures were modified; and to their honor be it said, that the majority of the members of *this* last mentioned assembly consisted of those very men who had composed the Jacksonborough assembly, and who had voted for the enactment of the severe laws which have been just referred to.

While their blood was hot, and the enemy was within their borders, their vengeance knew no bounds.

When their cause had triumphed, and their work was done, and the country they loved was free, their hearts melted, and pity, and the spirit of humanity, pervaded their counsels and dictated their acts.

The accompanying papers were written under the first condition of feeling.

* Circumstances beyond the control of the Publishers, prevented the placing of this, and the succeeding articles, in their proper order.

The Speech of John Rutledge, Esq., Governor and Commander-in-Chief of the State of South Carolina, to the General Assembly met at Jacksonborough, on Friday, 18th January, 1782.

"Honorable Gentlemen of the Senate, Mr. Speaker
and Gentlemen of the House of Representatives—

"Since the last meeting of a General Assembly, the good people of this State have not only felt the common calamities of war, but, from the wanton and savage manner in which it has been prosecuted, they have experienced such severities as are unpracticed, and will scarcely be credited by civilized nations.

"The enemy unable to make any impression on the Northern States—the number of whose inhabitants, and the strength of whose country, had baffled their repeated efforts—turned their views towards the Southern, which, a difference of circumstances, afforded some expectation of conquering, or at least of greatly distressing. After a long resistance, the reduction of Charleston was effected, by the vast superiority of force with which it had been besieged. The loss of that garrison, as it consisted of the Continental troops of Virginia and the Carolinas, and of a number of militia, facilitated the enemy's march into the country, and their establishment of strong posts in the upper and interior parts of it; and the unfavorable issue of the action near Camden, induced them vainly to imagine, that no other army could be collected which they might not easily defeat. The militia, commanded by the Brigadiers Sumter and Marion, whose enterprising spirit and unremitted perseverance, under many difficulties, are deserving of great applause, harrassed and often defeated large parties; but the numbers of those militia were too few to contend effectually with the collected strength of the enemy. Regardless, therefore, of the sacred ties of honor, destitute of the feelings of humanity, and determined to extinguish, if possible, every spark of freedom in this country, they, with the insolent pride of conquerors, gave unbounded scope to the exercise of their tyrannical disposition, infringed their

public engagements, and violated the most solemn capitulations. Many of our worthiest citizens were, without cause, long and closely confined—some on board of prison-ships, and others in the town and castle of St. Augustine—their properties disposed of at the will and caprice of the enemy, and their families sent to a different and distant part of the Continent without the means of support. Many who had surrendered as prisoners of war were killed in cool blood: several suffered death in the most ignominious manner, and others were delivered up to savages, and put to tortures under which they expired. Thus the lives, liberties and properties of the people were dependent solely on the pleasure of British officers, who deprived them of either, or all, on the most frivolous pretences. Indians, slaves, and a desperate banditti of the most profligate characters, were caressed and employed by the enemy to execute their infamous purposes. Devastation and ruin marked their progress and that of their adherents; nor were their violences restrained by the charms or influence of beauty and innocence—even the fair sex, whom it is the duty of all, and the pleasure and pride of the brave to protect—they, and their tender offspring, were victims to the inveterate malice of an unrelenting foe. Neither the tears of mothers, nor the cries of infants, could excite in their breasts pity or compassion. Not only the peaceful habitations of the widow, the aged and the infirm, but the holy temples of the Most High were consumed in flames, kindled by their sacrilegious hands. They have tarnished the glory of the British arms, disgraced the profession of a British soldier, and fixed indelible stigmas of rapine, cruelty, perfidy and profaneness on the British name. But I can now congratulate you—and I do so most cordially—on the pleasing change of affairs, which, under the blessing of God, the wisdom, prudence, address and bravery of the great and gallant General Greene, and the intrepidity of the officers and men under his command, has been happily effected—a general who is justly entitled, from his many signal services, to honorable and singular marks of your approbation and gratitude. His successes have been more rapid and complete than the most sanguine could have

expected. The enemy, compelled to surrender or evacuate every post which they held in the country, frequently defeated and driven from place to place, are obliged to seek refuge under the walls of Charleston, and on islands in its vicinity. We have now the full and absolute possession of every other part of the State; and the legislative, executive and judicial powers, are in the free exercise of their respective authorities.

"I also most heartily congratulate you on the glorious victory obtained by the combined forces of America and France over their common enemy—when the very general who was second in command at the reduction of Charleston, and to whose boasted prowess, and highly extolled abilities, the conquest of no less than three States had been arrogantly committed, was speedily compelled to accept of the same mortifying terms which had been imposed on that brave but unfortunate garrison, to surrender an army of many thousand regulars, and to abandon his wretched followers, whom he had artfully seduced from their allegiance, by specious promises of protection which he could never have hoped to fulfil, to the justice or mercy of their country—on the naval superiority established by the illustrious ally of the United States, (a superiority in itself so decided, and in its consequences so extensive, as must inevitably soon oblige the enemy to yield to us the only post which they occupy in this State)—on the reiterated proofs of the sincerest friendship, and on the great support which America has received from that powerful monarch, (a monarch whose magnanimity is universally acknowledged and admired, and on whose royal word we may confidently rely for every necessary assistance)—on the perfect harmony which subsists between France and America—on the stability which her independence has acquired—and on the certainty that it is too deeply rooted ever to be shaken; for, animated as they are by national honor, and united by one common interest, it must and will be maintained.

"What may be the immediate effects on the British nation, of the events which I have mentioned: of their loss of territory in other parts of the world, and of their well-founded

apprehensions from the powers of France, Spain and Holland, it is impossible to foretel. If experience can teach wisdom to a haughty and infatuated people, and if they will now be governed by reason, they will have learned that they can have no solid ground of hope to conquer any State in the Union; for, though their armies have obtained temporary advantages over our troops, yet the citizens of these States, firmly resolved as they are never to return to a domination, which, near six years ago, they unanimously and justly renounced, cannot be subdued; and they must now be convinced that it is the height of folly and madness to persist in so ruinous a war. If, however, we judge as we ought of their future by their past conduct, we may presume that they will not only endeavor to keep possession of our capital, but make another attempt, howsoever improbable the success of it may appear, to subjugate this country; it is, therefore, highly incumbent on us to use our most strenuous efforts to frustrate so fatal a design. And I earnestly conjure you, by the duty which you owe, and the sacred love which you bear to your country—by the constant remembrance of her bitter sufferings, and by the just detestation of British government, which you and your posterity must forever possess—to exert your utmost faculties for that purpose, by raising and equipping, with all possible expedition, a respectable, permanent force, and by making ample provision for their comfortable subsistence. I am sensible the expense will be great, but a measure so indispensable to the preservation of our freedom, is above every pecuniary consideration.

"The organization of our militia is likewise a subject of infinite importance. A clear and concise law, by which the burdens of service will be equally sustained, and a competent number of men brought forth, and kept in the field when their assistance may be required, is essential to our security, and, therefore, justly claims your immediate and serious attention. Certain it is, that some of our militia have, upon several occasions, exhibited instances of valor which would have reflected honor on veteran troops. The courage and conduct of the generals whom I have mentioned, the cool

and determined bravery repeatedly displayed by Brigadier Pickens, and indeed the behaviour of many officers and men in every brigade, are unquestionable testimonies of the truth of this assertion; but such behaviour cannot be expected from militia in general, without good order and strict discipline—nor can that order and discipline be established but by a salutary law steadily executed.

"Another important matter for your deliberation, is the conduct of such of our citizens as, voluntarily avowing their allegiance, and even glorying in their professions of loyalty and attachment to his Britannic Majesty, have offered their congratulations on the success of his arms, prayed to be embodied as royal militia, accepted commissions in his service, and endeavored to subvert our Constitution and establish his power in its stead—of those who have returned to this State in defiance of a law by which such return was declared to be a capital offence, and have abetted the British interest—and of such whose behaviour has been so reprehensible, that justice and policy forbid their free re-admission to the rights and privileges of citizens.

"The extraordinary lenity of this State has been remarkably conspicuous: other States have thought it just and expedient to appropriate the property of British subjects to the public use; but we have forborne to take even the profits of the estates of our most implacable enemies. It is with you to determine whether the forfeiture and appropriation of their property should now take place. If such shall be your determination—though many of our firmest friends have been reduced, for their inflexible attachment to the cause of their country, from opulence to inconceivable distress, and if the enemy's will and power had prevailed would have been doomed to indigence and beggary—yet it will redound to the reputation of this State to provide a becoming support for the families of those whom you may deprive of their property.

"The value of paper currency became of late so much depreciated, that it was requisite, under the powers vested in the executive during the recess of the General Assembly, to suspend the laws by which it was made a tender. You will

now consider whether it may not be proper to repeal those laws, and fix some equitable mode for the discharge of debts contracted whilst paper money was in circulation.

"In the present scarcity of specie it would be difficult, if not impracticable, to levy a tax to any considerable amount towards sinking the public debt; nor will the creditors of the State expect that such a tax should, at this time, be imposed; but it is just and reasonable, that all unsettled demands should be liquidated, and satisfactory assurances of payment given to the public creditors.

"The interest and honor, the safety and happiness of our country, depend so much on the result of your deliberations, that I flatter myself you will proceed, in the weighty business before you, with firmness and temper, with vigor, unanimity and dispatch.

"JOHN RUTLEDGE."

To this speech the following addresses were returned by the two branches of the Legislature:

The Address of the Honorable the Senate in answer to the Governor's Speech.

"May it please your Excellency—

"We beg leave to return your Excellency the thanks of this House for your speech.

"Any words that we might adopt, would convey but a very faint idea of the satisfaction we feel on the perfect re-establishment of the legislative, executive and judicial powers in this State.

"It is with particular pleasure, that we take the earliest opportunity to present to your Excellency, our unfeigned thanks for your unwearied zeal and attention to the real interest of this country, and to testif your entire approbation of the good conduct of the executive since the last meeting of the General Assembly.

"We see and revere the goodness of Divine Providence in frustrating and disappointing the attempts of our enemies to conquer the Southern States; and, we trust, that, by the blessing of the same Providence, on the valor and intrepidity of

the free citizens of America, their attacks and enterprises will continue to be repelled and defeated.

"We reflect, with pleasure, on the steady resolution with which Charleston was defended by a small body of brave men against such a vast superiority of force, and we gratefully acknowledge the meritorious conduct and important services of the officers and privates of the militia, who stood forth in the hour of danger, and whose coolness perseverance and ardor, under a complication of difficulties, most justly entitle them to the applause of their country.

"We flatter ourselves that the blood which the enemy has inhumanly spilled, the wanton devastation which has marked their progress, and the tyrannical system that they have invariably pursued, and which your Excellency hath so justly and pathetically described to us, will rouse the good people of this State, and will animate them with a spirit to protect their country, to save their rights and liberties, and to maintain, at all hazards, their independency.

"It is with inexpressible pleasure, that we receive your Excellency's congratulations upon the great and glorious events of the campaign, on the happy change of affairs, and on the pleasing prospect before us; and we assure your Excellency, that we concur most sincerely with you, in acknowledging and applauding the meritorious zeal, and the very important services which have been rendered to this State by the great and gallant General Greene, and the brave and intrepid officers and men under his command, and to whom we shall be happy to give the most honorable and singular testimonies of our approbation and applause.

"We are truly sensible of the immense advantage which the United States derive from the magnanimous prince, their ally; we have the most perfect confidence on his royal word, and on the sincerity of his friendship; and we think ourselves much indebted to that illustrious monarch for the great and effectual assistance which he hath been pleased to give the confederated States, and by whose means they have been enabled to humble the pride of Britain, and to establish their independency upon the most permanent basis.

"The importance of the several matters which your Excellency hath recommended to our consideration is so evident, that we shall proceed to deliberate upon them with all possible dispatch; and we flatter ourselves that our business will be carried on with temper, firmness and unanimity.

"J. L. GERVAIS, *President.*"

The Address of the House of Representatives in answer to the Governor's Speech.

"We, the House of Representatives of the State of South Carolina, in General Assembly met, return your Excellency our most cordial thanks for your very interesting speech to both Houses at the opening of this season, the language of which, evidently bespeaks a heart glowing with ardent zeal for the interest and welfare of our common country.

"We want words to express our heart-felt exultation on the pleasing reverse in our affairs. On this spot, but a few months past, a military despotism prevailed, and tyranny, with lawless violence, was desolating our fair possessions; but we now, with ecstacy, behold a free government re-established, liberty—that greatest of temporal blessings—restored, and every citizen secured in the possession of his property by the firm barrier of the law of his country. This auspicious change is, in a great degree, owing to the prudence, firmness and good conduct of your Excellency.

"If anything can add to the sublime and refined enjoyment which must arise from your Excellency's own reflections, on your persevering, unabated and successful exertions towards rescuing your country from the iron band of oppression, be pleased, sir, to accept the most sincere and unfeigned thanks of your grateful fellow-citizens.

"The black catalogue which your Excellency has given of British barbarities, forms but a small part of the whole. Whenever the historic page shall be stained with their story, it will exhibit a nation devoid of faith; with whom oaths, treaties, and the most solemn compacts were considered as

trifles, who, without scruple or remorse, had abandoned all regard to humanity, honor, justice and every ennobling sentiment of the human breast. It is hardly possible to conceive any circumstance that could aggravate the atrocious wickedness of their conduct. There is not left a step in the degradation of national character to which they can now descend. The name of a Briton must henceforward be a term of reproach among all nations.

"We should betray a great degree of insensibility, and be wanting in justice to his merit, should we omit this occasion of acknowledging, with the warmest gratitude, our obligations to the great and gallant General Greene. His achievements in this State, while they rank him with the greatest commanders of ancient or modern date, will engrave his name in indelible characters on the heart of every friend to this country. Our acklowledgments are also due to all the brave officers and men under his command, who have so often fought, bled and conquered for us. The Generals Sumter, Marion and Pickens, with the brave militia under their commands—those virtuous citizens who did not despair of the commonwealth in her greatest extremity, are deserving of the highest commendation. The friendly, seasonable and effectual aid recently afforded us by our great and illustrious ally, by means of which the General, on whom the British nation seemed most to have placed their dependence, has been compelled to surrender the flower of the British army to our immortal Commander-in-chief, must greatly increase the flame of gratitude which had been before kindled in the breast of every American, and which it will not be in the power of time or accident to extinguish. We perfectly concur in sentiment with your Excellency, that, from our connection with this powerful and wise monarch, we may expect, with well-grounded confidence, that our independence will be shortly established upon an immovable basis, nor need we harbor a single fear of its dissolution.

"An union which originated from such liberal and generous motives, and which is founded on mutual interest—that best cement of nations—must and will continue. Whethe

the series of losses, disasters and defeats of the year past, will at length recover Britain from her delirium, time only can disclose; but as misfortune hitherto, instead of producing reflection and prudence, has operated to increase her insanity, we agree in opinion with your Excellency, that it is probable she will not only endeavor to keep possession of our capital, but make another attempt to subjugate the country; we shall, therefore, immediately enter upon the prosecution of the measures recommended by your Excellency, as necessary for its safety; and being fully sensible how much depends upon the result of our deliberations, we will endeavor to proceed in the weighty business with firmness and temper, with vigor, unanimity and dispatch.

"By order of the House,

"HUGH RUTLEDGE, *Speaker.*"

ROBERT PRINGLE.

Robert Pringle, one of our earliest Colonial Judges, was born in the south of Scotland, of an ancient and respectable family, about the year 1702. He emigrated to Carolina about 1730, and was, for many years, a leading merchant in Charlestown. His first marriage is thus announced in the City Gazette of the 27th July, 1734: "On Thursday, the 18th inst., Mr. Robert Pringle, merchant in Charlestown, was married to Miss Jane Allen, a beautiful young lady, daughter of Mr. Andrew Allen, an eminent merchant of this town."

His wife having died childless, he married, in 1751, the widow of Stephen Bull, Mrs. Judith Bull, whose maiden name was Mayrant. He became the father of several children, the eldest of whom was John Julius Pringle, a distinguished Attorney General of this State. A habit of great order and method is observable in his mercantile correspondence and memoranda, which are still preserved. It does not appear from anything which has been told of him, that he had ever been regularly bred to the Bar, but his general education and mental characteristics seemed nevertheless to have been such as to enable him to perform efficiently and creditably the duties of Assistant Justice of the Court of Common Pleas; to which office he was elevated by appointments continued from March, 1760, until after 1769. He died on the 13th January, 1776, aged seventy-four years. The incidents in the life of a member of the legal profession are seldom very varied or striking. But it often happens, that the great actions which attract the admiration and applause of the world, find their birth in the quiet enunciation of principles by those who are far removed, by age or condition, from the armed defence of the rights they have asserted. It is thus that a legal history must always precede the military history of every civilized people. It is thus, that the American people did not rush savagely and ignorantly into a war with the

mother country until they had sounded all the depths of their position, and tested in every way the principles they were about to defend. Few of the judicial proceedings of those early times have come down to us. But the Courts of Justice, the appointment of the presiding officers of which was dependent upon royal favor, were early sources of information of the invasions of colonial rights; and there were breathings of liberty in the addresses from the Bench, which showed how much a knowledge of the law had taught them to value its inviolability. It is with a view of adding to the legal history of the State, and of illustrating the part which the colonial judiciary took in the great struggle of the Revolution, that the following papers are inserted. The first, which is, however, last in point of time, is a charge, which was delivered by Judge Pringle, to "the Grand Jury, at the General Sessions of the Peace, Oyer and Terminer, Assize and General Gaol Delivery, holden at Charlestown, for the Province of South Carolina, on Monday, the 16th October, 1769. Rawlins Lowndes and George Gabriel Powel, Assistant Judges with me on the Bench, in the ninth year of the reign of his present Majesty, King George the Third."

This charge is interesting, not only as exhibiting somewhat the condition of the province, and the temper of men's minds at the time, but as indicating, on the part of him who delivered it, enlargement of views, an earnest and fervent patriotism, and the high principles of religion and morality:

"*Gentlemen of the Grand Jury*,—We are met here to hold the General Sessions of the Peace, Oyer and Terminer, Assize and General Gaol Delivery for this colony.

"And as custom has made it necessary to address you on this occasion, I shall give you in charge what has occurred to me, and have thought may be proper at this time.

"You are, therefore, gentlemen, chosen out of the whole body of this large, thriving, and populous colony, to represent every particular member thereof, and for their service you are summoned to appear here this day. And you have power and a trust reposed in you to present all crimes and offences whatsoever committed therein against the laws of the land,

which laws are of inestimable value, handed down to us by our brave and glorious ancestors, as the greatest blessing, and most valuable bequest and inheritance, they could leave to their heirs and posterity; as we are subject, and made obedient only to laws made by our own consent, and put in execution chiefly by ourselves.

"Trial by Jury is a right and privilege peculiar to the subjects of Great Britain, which no other nation upon earth, besides themselves, did ever enjoy, or can boast of. It is the birth-right of every British subject, and nothing can be esteemed a greater privilege, and more equitable, than to be tried by one's peers or equals, chosen from the vicinage or neighborhood where they live and reside, and to be acquitted or found guilty by their verdict.

"The old English Barons boldly told King John, when he attempted to infringe some of the privileges of Magna Charta, '*Nolumus mutari leges Angliæ*,' we will not have the laws of England altered or changed; and they were ready to support and defend them with the last drop of their blood.

"And I do not doubt, gentlemen, but that you will be very tenacious, and use your utmost endeavors to support and maintain these most excellent laws and privileges inviolate, and hand them down in their full extent and operation, as you found them, that they may remain so, unaltered, to your latest posterity. And I am to put you in mind, that some of your progenitors arrived in this country when it was a dreary wilderness, inhabited only by wild beasts, and great numbers of savages, the most ferocious and cruel of any of the human species; and notwithstanding the great hazard they ran of losing their lives, and the many hardships and disadvantages they labored under, being in the infancy of the colony and very few in numbers, yet they bravely maintained their ground, and withstood and defended themselves against the frequent assaults and attacks of the savages, though attended with a great effusion of blood, and have since, by their great industry, improved and cultivated the colony to so great maturity, that it is become the land of plenty, as well as of liberty, and fruitful, like the land of Egypt; and all this

done without one farthing expense or charge to the mother country.

"The trust and power of Grand Juries are, and ought to be, accounted the greatest and of most concern, next the Legislature. In their hands, the reputation and peace of their fellow-subjects do much consist; for, though, gentlemen, the indictments found by you, or presentments made, amount to little more than legal accusations, in order to bring persons upon their trials, there being another Jury to pass upon them, before whom they are to be heard, and make their defence; yet you ought to be very careful how you put persons upon the hazard of a trial, and endanger their lives, or at least their reputations. And I doubt not, gentlemen, but that you will have great regard, in your proceedings, to the oath that you have just now taken.

"I am to recommend to you to make all such indictments and presentments, as you may conceive, or judge in your consciences, to be public grievances and nuisances, without partiality, favor or affection. And as our Assembly is to meet very soon, it is to be hoped what grievances you present which may concern the Legislature, they will, in their wisdom, take them into their most serious consideration, and grant such relief as they may judge expedient and proper.

"Our Legislature, for good reasons thereunto moving them, have lately thought proper to make a new law against the offence and crime of horse-stealing, which offence was, by the former law, made felony, and the penalty death. But the law is now altered, and the punishment to be inflicted on criminals who are convicted of said offence of horse-stealing by the present law, is the loss of one ear and flagellation, or whipping, which I thought proper to mention to you for your better information. The offence of receiving stolen goods, was formerly only a misdemeanor, and the punishment, upon conviction thereof, fine and imprisonment. But our Assembly, by a new law passed at the last session, have now thought proper to make it felony, and the punishment, death, without benefit of clergy.

"I am, in a particular manner, to give you in charge to

make presentments of all offences against the Negro Act that may come to your knowledge; and also of all cruelties and barbarities inflicted on slaves, altogether inconsistent with Christianity, and even a disgrace to humanity; and I am sorry to mention, and take notice to you, gentlemen, that cruelty to slaves, and the putting them often to death, does very often come before this Court.

"I am also to recommend to you a strict and due observance of the Militia and Patrol Acts, which are Acts of great importance, and in which consists very much the interior quiet and tranquillity of the colony; especially with regard to our domestics, in order to prevent any insurrections or danger from that quarter; and which laws, I am credibly informed, are not properly observed and put in execution—not that exact and strict regard paid to them, which is necessary, and as the laws direct.

"The highways and high-roads, bridges, creeks, and causeways, are objects that require, and are worthy of, your particular attention and consideration, as good roads are highly beneficial, of great utility, and of *much* advantage to the community, as thereby, upon any sudden emergency, the vicinage or neighborhood can be easily and soon alarmed and collected together in a body upon their guard or defence, either to repel any attack from enemies without, or to prevent and immediately crush any insurrection that may happen from within; and if any of the Commissioners of the High-Roads are negligent or remiss in their office and duty, that may come within your knowledge or inspection, it is a duty incumbent on you to present them, without favor or partiality: for the law directs, in case of being negligent, and not keeping the high-roads in good repair, that each Commissioner be liable to a fine of one hundred pounds.

"The laudable and great industry of the inhabitants of this colony has rendered it the most opulent and flourishing colony on the British Continent of America. And its various and valuable produce increases in proportion to its number of inhabitants and extent in trade; the quantity of rice now produced annually being double to what it was twenty or thirty

years ago. What was then considered a good crop did not exceed from fifty to seventy thousand barrels, and now, for some years past, the crops of rice have been near double that quantity; so that, gentlemen, it evidently appears, that the industry of the inhabitants has been crowned with remarkable success, and as this is a land of industry and plenty, so it is to be hoped, it will likewise always continue a land of freedom and liberty; the continuance and enjoyment of which do much consist in the union and unanimity of its inhabitants. Intestine divisions and animosities are the greatest curse and calamity that can befall or happen to any nation or community, and must, in course, be the downfall and ruin of any people wherever it happens. *Frangimur si collidimur*—if we clash against one another, we break and fall in pieces. So that it is to be hoped, gentlemen, that you will, in your several stations, use your best and utmost endeavors to encourage and promote amongst all your fellow-subjects unanimity, harmony, concord, and universal benevolence, virtue, and sound morality, which will greatly contribute towards our mutual happiness; and, at the same time, gentlemen, to show your utter abhorrence, aversion, and detestation, of all manner of vice, iniquity, and immoralities, whatsoever. It is righteousness, gentlemen, that exalteth a nation, and make people truly happy; but sin is a reproach to any people.

"I am, also, to recommend to you, the promoting and encouraging of good seminaries of learning in the colony, as an object very worthy of your particular notice and attention, and which are greatly encouraged and attended with much success in some of our northern colonies—the want of which here lays this colony under many disadvantages and inconveniences; for, instead, gentlemen, of having the comfort and satisfaction of having our children educated at home, under our eye and inspection, and obtaining a liberal education amongst ourselves, we are obliged to send our youth to England, or to the colleges in the northern colonies, for their improvement in literature, art and sciences, which is a great inconvenience, besides the expense, and the occasion of money going out of the colony, and is apt to have also this evil tendency,

that youths who have their education in foreign parts, or at a distance from home, have not that natural and tender regard and attachment for their native country, as those who have their education, and are brought up at home; all which are great disadvantages, and not to the honor of the colony—especially as this province can as well afford to erect, support and maintain a college as any of the northern colonies whatsoever. The encouraging of literature, arts and sciences, in all their different branches, has always proved of the greatest utility and advantage to all civilized nations, and contribute greatly to their happiness and prosperity. And it is to be hoped, gentlemen,. that our Legislature will think it expedient to encourage, promote and cherish so very salutary and laudable an undertaking, and so conducive towards the welfare, happiness and prosperity of this colony. And it is likewise much wished for, and to be hoped, gentlemen, that our Legislature will think it necessary, and for the general welfare of the colony, that ministers may be appointed, and public schools erected for the instruction and benefit of the poor people in the interior parts of the colony, where they live in great ignorance; the want of which has, in a great measure, occasioned the frequent riots, disturbances and commotions, that have happened in remote parts for these two or three years past, and which still continue in some places, as they have of late opposed and will not suffer the King's legal writs to be served upon them, in defiance of the laws of the land, and to the defrauding of their honest creditors.

"The knowledge I have of most of you, gentlemen, will not suffer me for a moment to doubt your discharge of the great trust reposed in you on this occasion with care, diligence and integrity, as become good men and good subjects. And it is not necessary for me, gentlemen, to take up your attention for a longer time, to lay before you, enlarge, and explain in particular the several crimes and offences that may happen to come before you this session, as I am sensible of your being conversant and well-acquainted therewith, and, therefore I now dismiss you to the business of the day."

The other document, to which allusion has been made, is

the record of the proceedings of the Court of Common Pleas, in Charleston, in the year 1765-6, relative to the Stamp Act. The opinion of the Court, on this occasion, was delivered by Mr. Justice Rawlins Lowndes. These proceedings were, a few years ago, furnished to the Charleston Courier, for publication, by the officers of the Court in Charleston. The Editor of the Courier, in commenting upon them, makes the following appropriate remarks:

"The opinion of Mr. Justice Rawlins Lowndes, and his independent brethren, the Assistant Judges, in opposition to that of the Chief Justice Shinner, is an able, learned and exceedingly elaborate and ingenious judgment. We cannot help smiling, however, when we reflect that the argument of *necessity*, which the learned Judge pushed with such victorious force, against the Chief Justice's desire and effort to close the portals of colonial justice, for lack of Stamp Paper, was furnished him by the act of a band of patriot colonists, with whom he was in full sympathy, expelling that odious badge of oppression from our coasts; a necessity, superinduced by the voluntary, and perhaps rebellious course of those from whose pockets the Stamp Act was intended to exact revenue. We do not mean to impugn the law or the logic of the argument, for we think the one sound and the other triumphant, but we cannot help the thought that the fact of this obnoxious attempt at taxation without representation, had, as Judge Lowndes himself phrased it, 'united all America and made them as the heart of one man,' in resolute resistance to its enforcement, had much to do with both the law and the logic of the occasion. The historical record shows that the Stamp Paper had arrived at Charleston, in a British sloop-of-war, and been deposited under protection of the garrison of Fort Johnson. A body of volunteers from the town, however, captured the Fort, seized the hateful paper, and declared their determination to make a bonfire of the whole of it, unless the commanding officer of the sloop would pledge his honor immediately to receive it on board and forthwith to depart with it. Within the space of two hours, the required pledge was

given. The vessel sailed that very evening, with the same cargo she had brought with her, and South Carolina thus NULLIFIED the Stamp Act, forever, within her borders."

Extract from the minutes of the Court of Common Pleas, held at Charlestown, in the Province of South Carolina, before the Honorable Charles Shinner,* Chief Justice of our Lord the King, on the 12th November, in the sixth year of the reign of our Sovereign Lord, George the Third, by the grace of God, of Great Britain, France and Ireland, King Defender of the Faith, &c., and in the year of our Lord, 1765. Present—the Chief Justice.

NOVEMBER 13, 1765.

"Whereas his Honor the Chief Justice, and other officers of this Court, have come to the knowledge of an Act of Parliament, passed in the fifth year of his present Majesty's reign, imposing stamp duties, and enjoining the use of stamped papers, in a great variety of cases, particularly in law proceedings, throughout all the British American Dominions, which Act was to have taken place, on the first of this instant, November. And, whereas the Judges in the several Courts are, by the said Act, required to make such orders, and to do all such other matters and things as shall be necessary for securing of the said duties, and also all counsellors, clerks, officers, attorneys, or other persons, to whom it shall appertain, or who shall be employed or interested in the colonies or plantations, in entering, filing, recording, enrolling, writing, engrossing or printing, or in causing to be entered, filed, recorded, enrolled, engrossed, written, or printed, any matter or thing charged with a stamp duty, are enjoined, under very heavy penalties and disabilities, to pay a strict obedience and conformity to the directions of the said Act: And, whereas the officers appointed under the said Act, inspector of the said duties and distributors of the stamped papers for this province, have

* In 1 Statutes at Large this name is printed Skinner, but the original record, which we give above, has it Shinner, and so has Drayton, in his *Memoirs*.

notified, to his Honor the Lieutenant-Governor, that they decline acting in their several and respective stations, until his Majesty's pleasure, touching the carrying the said Act into execution shall be further made known, by which means no stamped papers are to be had: The Court therefore is of opinion that no business can be proceeded upon until such stamped paper can be procured."

February Term, 1766.

Rawlins Lowndes, Benjamin Smith, and Daniel D'Oyley, Esqrs., came into Court, and produced and presented, to his Honor the Chief Justice, his Majesty's commissions, appointing them Assistant Judges or Justices of the Court of General Sessions and Justices of the Court of Common Pleas, which, being read in open Court, were ordered to be recorded; whereupon the said Justices took their seats.

The Court met according to adjournment.

MARCH 4, 1766.

Present—The Chief Justice, Mr. Justice Lowndes, Mr. Justice Smith, Mr. Justice D'Oyley.

James Jordan vs. *Joseph Law*.—Mr. Bee, attorney for the plaintiff, having yesterday informed the Court that the rule to plead, taken out in this cause, had been served upon Mr. Rutledge, attorney for the defendant, and that the time for pleading was long ago expired, which being acknowledged by Mr. Rutledge, Mr. Bee moved the Court for judgment, to which Mr. Rutledge said he had no manner of objection. Mr. Manigault, of counsel with the plaintiff, then spoke very fully in support of the motion, as did also Mr. Pinckney, Mr. Rutledge, and Mr. Parsons, who, though not concerned for the plaintiff in this particular cause, said they were concerned as counsel in a great variety of causes of a similar nature. The motion was opposed by his Majesty's Attorney-General [Egerton Leigh] on account of the want of stamped papers, which still subsisted in this province; and, the matter being fully argued on both sides, the Court, having taken until this after-

noon to consider of the motion, were unanimously of opinion, that, under the particular circumstances which they are now in, and the steps which have been taken by the different provinces in America to obtain a repeal of the Stamp Act, no positive determination be given upon the point, but that the same be postponed until the next return day.

Mr. Parsons presented to the Court a petition from several of the merchants, traders, freeholders, and other inhabitants of this province, which was read and the consideration thereof postponed until the next return day.

The Court met according to adjournment.

APRIL 1, 1766.

Present—The Chief Justice, Mr. Justice Pringle, Mr. Justice Lowndes, Mr. Justice Smith, Mr. Justice D'Oyley.

James Jordan vs. *Joseph Law.*—Mr. Bee, attorney for the plaintiff, having moved the Court for judgment, upon the motion formerly made by him in this cause, the consideration of which had been postponed to this day, their Honors the Assistant Judges, by Mr. Justice Lowndes, unanimously declared it, as their opinion, for which they gave their reasons at large, that judgment be ordered for the plaintiff, agreeably to the motion, in the usual manner, as has heretofore been done, no stamp being to be had; and, in answer to the petition, presented and read at the last adjournment day, declared it, as their further opinion, that the process of this Court be issued out in the usual manner to any person, who shall require and apply for the same, that there may no longer be a complaint that justice is either denied or delayed; when his Honor the Chief Justice, at large, delivered it as his opinion, (which he desired might be entered on record,) that the Court ought not to be opened, nor business go on, until the Act of Parliament, imposing stamp duties in his Majesty's American dominions, could be complied with. Dougal Campbell, Esq., Clerk of this Court, being then called upon to do his duty and enter the order for judgment, humbly begged leave to decline paying obedience to the directions of this Court, at the same time offering some reasons for his non-compliance, which being disallowed of, William Mason, Esq., was, by the Court,

appointed to act as Clerk thereof, (until the Assistant Judges have an opportunity to represent the conduct of the said Dougal Campbell to his Honor the Lieutenant-Governor,) and directed him to enter the order for judgment, which was done accordingly; the said Dougal Campbell, from particular tenderness and indulgence, on account of his hitherto dutiful and diligent behavior in office, not being proceeded against with that strictness, which his disobedience upon the present occasion merited—a piece of indulgence which this Court will, by no means, hereafter suffer to be drawn into a precedent.

His Honor the Chief Justice's Reasons against opening the Court.

"It is no part of my business to examine into the merits of the late Statute, which has caused so great commotion in these parts; or to moot a question, which has, probably, undergone the determination of the British Parliament: I shall, therefore, confine my observations to the application lately made to this Court, by Mr. Bee, in the case of Jordan *vs.* Law, which I intend to be my answer also, to the Merchants' Petition.

The apparent tendency of the motion is, that business may be carried on as usual in this Court; and the arguments, in support thereof, are briefly these:

That it is against Magna Charta to delay or deny justice to the subject. Again, that the law requires nothing impossible, and that, by the Stamp Distributor's refusal to act, no person can procure stamp papers.

In order to support this last fact, the Lieutenant-Governor's certificate, under his hand and seal at arms, is produced as evidence, not to be disputed. The gentlemen have called to their assistance a few common-place maxims, which they have wrested to their purpose; they strained hard for it, and in my opinion, have partially applied 'em.

It is notorious that the stamp officers, as well as the stamp papers, are arrived in his province; the evidence of my senses has long convinced me of the certainty of the former fact, and

the Governor's official declaration, by advice of Council, that the papers were lodged in Fort Johnson, leave me no room to doubt the latter. But (say they) the officers refuse to act, and hence arises the impossibility, which is urged as a substantial reason why the circulation of the papers has never taken place. This may be the truth, but it is not the whole truth. I am (unfortunately) too well warranted in saying, that other causes have concurred to prevent the circulation and use of them.

If we refer ourselves for arguments to maxims of law, we shall find them uniform, consistent and compact; they are like an embattled host, each moving to one general good, under the same principles and for the same extensive ends; instead of opposing they add to each other's strength, and become firm, by an indissoluble union.

The sole question in this case is (as the Attorney-General insisted,) whether the impossibility so much urged be a legal one, or, in other words, such as can be properly ranked under any of the maxims cited for the purpose.

The law declares that no man shall avail himself of his own wrong. The like law pronounces that no man shall carve out his own remedy, and it is a principle of equal notoriety that the laws of England cannot be changed but by authority of Parliament. From these grounds, I reasonably infer that an impossibility must not be created by wrong; that, if the subject be aggrieved by law, he must be redressed by law, and that obedience is due to every Statute from those to whom it extends, until the same authority which made the Act, shall graciously see fit to alter or annul it.

If the rules and maxims of the Common Law are allowed to determine in any case, they must be so construed that they shall not interfere with or oppose each other; for it is absurd to assert "that a man shall not carve out his own remedy," and yet shall be allowed, under a different rule, to prevent, for his own private convenience, the due operation of the law. It is a principle of the Common Law that Statutes shall not bind the Plantations, unless specially extended to them; but can there remain a doubt what part a Judge ought to act,

where the law is plain and obvious? Has he a discretionary power to receive one Statute as the rule of his conduct in judgment, and reject another? Do the books of Jurisprudence authorize a Judge to explain or to give law?—and is our constitution unsettled at this day in so important and interesting a concern?

I am obliged, by the tenor of my oath, to take judicial notice of all public Acts, and it is a well-known rule, in evidence, that Juries, as well as Judges, must take notice of a general Act of Parliament without being pleaded, and Lord Chief Baron Gilbert is express in this particular, for (says his Lordship,) Judges are obliged, by their oaths, to judge all matters coming before them *Secundum Leges et Consuetudines Angliæ*, according to the laws and customs of England,) and, therefore, they can't be obliged, *ex-officio*, to take notice of a particular law, because it is not *Lex Angliæ*, a law relating to the whole kingdom. But granting, for argument sake, that the impossibility of obtaining stamps did not arise from our own act. The evidence which this Court is possessed of, as a groundwork for our proceeding in direct opposition to the law, is, in fact, as much a nullity as any act in this Court would be without Stamp Paper.

I cannot better explain the duty we impliedly owe to the laws of Great Britain, than by adopting the words of Lord Chancellor Hardwicke, as taken from Atkins' Reports, page 544. Plantations were originally members of England, and governed by the laws of England, and persons went out originally subject to the laws of England, unless in some regulations and customs, which they have a power of making. Permit me to observe, though not urged on the debate, that to assert that either House of Parliament has a legislative power, without the King, subjects the speaker to the guilt of a *Præmunire*, and it may not be an improper caution to reflect, what censure those persons may incur, who either actually or virtually deny the Legislative power of King, Lords and Commons of Great Britain over the colonies in America. I am an utter enemy to innovations, and, if there be a doubt, it is most advisable to err on the safe side, as it is more prudent to bear a

temporary evil than to transgress, in any instance, against a fundamental rule of law.

I cannot give my consent or countenance to open this Court in defiance of law. I revere our happy Constitution; it is a fair and noble structure, raised at the expense of our ancestors' blood and treasure, and I will not deface the stately fabric, in which stands the temple of true liberty, where many saints and confessors, and a whole army of martyrs have, for centuries past, been offering up glorious incense.

I am sorry to differ with my brethren, the Judges, but they will excuse me, because I do it upon principle.

Upon the whole, I do protest (as far as my power extends), against permitting business to go on in this Court upon common paper, and against all officers, ministers, counsellors, attorneys, and suitors, who shall be concerned in the same, and I do strictly forbid all persons, at their peril, to test any writ or writs, process or processors, in my name.

Delivered in open Court, the first day of April, 1766.

CHAS. SHINNER."

The Court adjourned to second Tuesday, in May next, at 9 o'clock in the forenoon.

May Term, 1766.

The Court met according to adjournment, 13th May, 1766

Present—The Chief Justice, Mr. Justice Pringle, Mr. Justice Smith, Mr. Justice Lowndes, Mr. Justice D'Oyley.

The Court, by Mr. Justice Pringle, ordered that the Provost Marshal be directed to return the Writ of Venire, when the Clerk humbly informed the Court that none had been issued. The reasons, which his Honor the Chief Justice had given, on the return day, against the opening the Court, were then ordered to be read, which being done, Mr. Justice Lowndes proceeded to deliver the sentiments of the Court, touching the said reasons in the following words, viz:

"His Honor the Chief Justice, having been pleased to order the opinion he delivered, on the first day of April last, con-

taining his reasons for being against the motion, the Court took till that day to deliberate upon, to be recorded, and some expressions therein made use of, seeming indirectly to tax the Judges, who differed in opinion with his Honor, with denying the legislative power of King, Lords and Commons of Great Britain over the colonies in America, in the judgment they gave on that occasion, which expressions the other Judges immediately objected to, as conveying a very different idea from what the judgment they gave would authorize; and his Honor having promised that the said exceptionable words should be expunged, and it appearing notwithstanding that they are not, but are made a record of Court, the rest of the Judges find themselves indispensably obliged to record, also, their adjudication on that matter, as a vindication of their conduct from any designed or implied insinuation, not supported by fact. The Assistant Judges cannot avoid taking notice of a novel and strange conclusion in the Chief Justice's opinion, wherein he would, as far as his power extends, frustrate and defeat the very end and intention of the Judges' appointment, by setting up the judgment of one Judge in opposition to that of the rest of the whole Bench, thereby inverting the order of well-known judicial determination, and establishing, contrary to all usage, a precedent that the minority shall conclude the majority; which would inevitably be the case, should his Honor succeed in the injunctions he has laid on all the officers and ministers of the Court, to disregard the judgment of four of the Judges, in preference to his own single opinion. If any of the books of jurisprudence, or any of the maxims of the law, alluded to by his Honor, will authorize his Honor in this attempt, the Assistant Judges will expect very explicit authorities in support thereof before they can possibly concur with the Chief Justice, or consent to exonerate any of the officers of this Court from the obligation of obeying the orders of the Court, always heretofore understood to be the majority of the Bench present.

The judgment, and reasons at large, of the Court, in the case of Jordan *vs.* Law, as delivered upon the last return day by Mr. Justice Lowndes, in the name of himself and all his brethren, the Assistant Judges, Justices of this Court, viz:

"It is a very unusual and extraordinary thingfor the Court to hesitate, one moment, on a motion for judgment, when al the proceedings have been regularly and properly conducted. and where the defendant's attorney, whose duty it is to see that they have been so, consents and agrees to the judgment passing. The occasion then for this obstruction to the usual and general practice of the Court, is now to be considered, and whether there is any cause existing, sufficient to justify the refusal of the motion, which has ever been looked upon, not only as a motion of course, but as a matter of right.

It has been objected, by Mr. Attorney General, in opposition to the motion, that the Stamp Act requires that judgments should be entered upon stamp paper; that the Act calls upon the Judges to act agreeably to that law, and, being a public Act, the Court are obliged to take notice of it; and that the Act was properly noticed to the Court by the Governor. These, then, are the reasons, it is to be presumed, that have influenced the Court to delay and postpone doing any business, or issuing any process, since the first day of November last, the day the Act took its commencement.

The Stamp Act does certainly, among other things, require, that, 'for every skin or piece of vellum, or parchment, or sheet or piece of paper, on which shall be engrossed, written, or printed, any judgment, decree, sentence, or any record of *nisi prius*, or *postea*, in any Court within the colonies and plantations, there shall be raised, levied, collected and paid unto his Majesty, a stamp duty of four shillings.'

And another section of the Act declares, 'That, if any person, or persons, shall sign, ingross, write or print, or sell, or expose to sale, or cause to be signed, ingrossed, written, printed, or sold, or exposed to sale, in any of the said colonies, or plantations, or in any other part of his Majesty's dominions, any matter or thing for which the vellum, parchment, or paper, is hereby charged to pay any duty, before the same shall be marked, or stamped, with the marks or stamps to be provided, as aforesaid, or upon which there shall not be some stamp or mark resembling the same; or shall sign, ingross, write, print, or sell, or expose to sale, or cause to be signed, ingrossed, written, printed, or sold, or exposed to sale, any

matter or thing upon any vellum, parchment, or paper, that shall be marked, or stamped, for any lower duty than the duty by this Act, made payable in respect thereof; every such person so offending, shall, for every such offence, forfeit the sum of ten pounds.' And there is another clause, which we shall have occasion to observe upon by and by, which declares 'that no matter or thing, chargeable with as tamp duty, shall be evidence, unless the same be marked, or stamped, in pursuance of the Act.' In answer to the objections, urged by Mr. Attorney, the gentleman who spoke in support of the motion for judgment, used several arguments, and produced a variety of cases, to show that cases of necessity are excepted out of Acts of Parliament; that the law does not require impossibilities, and will excuse where there is an impossibility of doing what is required; that the stamp distributor has forsaken his office, and that consequently no stamp paper is to be had, and no provision made in the law, in case of such a contingency, that, therefore, the law will not punish the innocent for the default or neglect of the officer; that the great Charter of English liberties forbids that justice be delayed or denied, and the fatal consequences that would ensue, should it be in the power of an inferior officer, by his neglect or omission of duty, to obstruct the administration of justice; that the King's representative, the Governor, has certified, under his hand and seal, that no stamp paper is to be had, nor has the Act been properly authenticated; that even the laws of God yield and give place to necessity; that the impossibility of performing contracts excuses the breach of them; that the Act gives no relief, in case the distributor does not act in his office, and many have been appointed without their knowledge or consent: that it is one and the same thing, in respect to the consequences, whether any distributor had been at all appointed, or being appointed refuses to act. That it is a reproach to the Parliament, to suppose they intended the subjects in America should be distressed for the default of an officer, and by the great inconveniences flowing from so long an interruption of justice. These are, we think, the general heads of the arguments made use of by the several gentlemen

of the Bar, who spoke in support of the motion for judgment, notwithstanding the Stamp Act; and the Court took till this day to give their opinion.

We cannot better recapitulate what has been said upon this occasion, and show the reasons upon which the gentlemen built their arguments, than by extracting from the case of Reniger *vs.* Fogarsa, in Plowden's Reports, such parts as are apposite and pertinent to the present system. In our law, and all other laws, there are some things that happen, which may not be prevented by foresight, nor by any diligence or possible means be eschewed and avoided; and, when any such thing happens to a man, the law will not punish him for it—for the law will not punish any man but for his own default—for, if the law should punish a man for an accident, which by no foresight, diligence or possibility could be avoided, it would be utterly against reason. The effusion of blood and killing a man are prohibited by common law, yet every man in his own defence may kill another. So by common custom of the realm, hosts shall be charged for the goods of their guests, lost or stolen, out of their house, yet, if their house be broken by the King's enemies, and the goods stolen from thence, they shall not be chargeable. Like reason will dispense with statute law. The statute of Marlbridge prohibits distresses from being driven out of one county into another; yet it is held that, where the Abbess of Wilton had a manor in one county, she might carry a distress taken in another county, in land holden of the said manor, into the same county where the manor was, notwithstanding the statute is in the negative, and this in respect of the inconvenience and absurdity that would otherwise follow. So we see that some cases shall be construed contrary to statutes, contrary to custom, and contrary to the ordinary course of the common law, and this for the necessity of the matter, and, therefore, reason maintains that such persons as do so, shall not be wrong doers. When laws or statutes are made, there are certain things, which are exempted and excepted out of the provision of the same, by the law of reason, although they are not expressly excepted. The breaking of prison is

felony in the prisoner, by 1st Edward II; yet, if the prison be on fire, and they who are in break the prison to save their lives, this shall be excused by the law of reason, yet the words of the statute are against it. So where Jurors, who were sworn upon an issue, for fear of a great tempest, departed and dispersed themselves, it was held that they should not be amerced, and that their verdict afterwards was good in regard to the necessity or the occasion, but otherwise they should have been grievously punished.

The ancient fathers of the law construed such statutes according to equity and reason, although the words did not allow of it, but seemed against it; so that, in all statutes, there are some private cases excepted out of the general provision, by equity of reason, in avoidance of greater mischief. In every law there are some things which, when they happen, a man may break the words of the law, therefore the words of the law of nature, of the law of the realm, and of other realms and of the law of God, also, will yield and give way to some acts and things done against the words of the same laws, and that is where the words of them are broken to avoid greater inconveniences, or through necessity, or by compulsion, or involuntary ignorance. That necessity shall be good excuse in all laws, and that all laws give place to necessity; for it appears from a common proverb, that necessity has no law; also, the law of God gives place to necessity, and may be broken without offence to God; and, therefore, in the old law, it was forbidden by the law of God to eat the sacred Bread, yet it appears that David, through necessity of hunger, ate the sacred Bread, and did not break the law, although he broke the words of the law, as Christ himself declares in the Gospel, because he did it for necessity; so the Apostles of Christ, for necessity of hunger, plucked the ears of corn of other persons and ate them, and, although they brake the words of the Holy Scripture, which forbid them to eat other men's goods without the will of the owner, yet they did not offend thereby. From which cases we see the law of man, as well as of God, yield and give place to necessity; *thus* the doctrine of necessity is insisted upon in the case of Reniger &

Fogarsa. Many other cases may be added, of the like import, to show that, under particular circumstances, necessity excuses from a rigid observance of the law. If a fire happens in a street, a person may justify the pulling down a wall or house of another person, to prevent its spreading; and, where several persons are in danger of drowning, one, to save his life, may thrust another from the boat's side; and these, for the necessity of the cases, cited by one of the gentlemen in his arguments. So if A assaults B so fiercely that he cannot save his life if he give back, or if, in the assault, B falls to the ground, whereby he cannot fly; in such case if B kills A, it is *se defendendo*, the party assaulted shall, by the favorable interpretation of the law, have the advantage of this necessity, to be interpreted as a flight, to give him the advantage of *se defendendo*, when the necessity put upon him by the assault makes his flight impossible not that the law esteems this necessity to be a flight; but the party, not having opportunity of flying, the law does not require of him, but excuses him in the same manner as if he had fled. Also, it is not lawful to assist the King's enemies, with money or provision, for it is an adhering to the King's enemies, and so treason within the letter of the statute of 25 Edward III.; but yet, if the King's enemies come into a county with a power too strong for the county to resist, and will plunder the country, unless a composition be made with them, such a ransoming of themselves is so far from being treason, that it hath been allowed as lawful:—First, in respect of the extreme necessity; secondly, because it is less detrimental to the county and a less supply to the enemy.—1 H. P. C., 482, &c. A number of other cases might, if necessary, be produced to the same effect, but these are sufficient to prove the general proposition, and it remains only to be considered how far these cases correspond with, and are applicable to the present question, viz.: Whether, notwithstanding the Stamp Act requires that judgments should be entered upon stamp paper, they may, in regard to our present circulation, be done without?

It is a fact of public notoriety that no stamp paper is to be

had in this province, and the Governor's certificate, under his seal and sign-manual produced in Court, confirms it, if it needed any proof. The Stamp Act, therefore, cannot, in the nature of things, be complied with, for want of stamp paper. Whatever cause this may be owing to, the effect and consequences are the same. If no business is to be done without stamp paper, and it is absolutely impossible for the Court to procure stamp paper, the inference is that the Stamp Act, in such an exigency, would oblige the Court of Law to be shut up, all business to be remitted, and the administration of law and justice to be suspended. Can it be presumed that the Parliament meant any such thing, or is there one word in the Act, from the first to the last page of it, that gives the least countenance to such an interpretation. Could the Parliament intend, by this law, to abrogate and repeal all precedent Acts of Parliament—to unhinge the Constitution of the Colonies—to unloose the hands of violence and oppression—to introduce anarchy and confusion amongst us, and to reduce us to a state of outlawry. For to be without law, and to want the means of dispensing the law, is one and the same thing; yet all these consequences unavoidably result from the position that no business can be done at all events without stamp paper, and would be the natural effects of shutting up the King's Courts. The necessity of the thing, therefore, the law of reason, the preservation and security of the province, require that such a construction should be put upon the Act as will prevent such complicated evils, and excuse even the breaking of the words of the Act, for the avoidance of as many and great mischiefs.

We have in the present case not only the necessity of the thing to excuse, but the impossibility also of complying with the Act. No power whatever can oblige to impossibilities; and a law, which enjoins a thing impossible to be performed, repugnant and against reason and common right, my Lord Coke says is void.

What greater necessity can offer itself for relaxing the words of a statute, than that they would introduce such a train of evils; what necessity can operate more strongly than that

which reduces a whole community to such a state of insecurity, and deprives them of the protection of the laws; what necessity can urge the Court more forcibly than that which would oblige them, contrary to the laws, contrary to their oaths, to deny and delay justice? If, then, things for necessity's sake, and to prevent a failure of justice are, as my Lord Coke says, excepted out of statutes, the present case ought most certainly to be deemed so. Necessity and law require that the Courts should be open, that the subject may resort thereto for justice. The Stamp Act says nothing to the contrary, only requires, under certain penalties, that the paper to be used on several occasions should be stamped, and pay a certain duty to the Crown; no stamp paper then being to be had, the non-compliance with the Act, in this particular, is to be imputed and ascribed to necessity, and the avoidance of an infinitely greater mischief.

It appears then, from the reason and equity of the law in the several cases enumerated, applied to the present case, that though the words of the Stamp Act did authorize a construction that the Courts of Law should be shut up, that even in such case the words may be broken for necessity's sake, and in avoidance of a greater mischief.

But the words of the Act do by no means infer such to have been the intention of the Parliament. A law of such a tendency, and productive of such a change and subversive of the established principles and basis of the Constitution, could not be admitted by implication or intendment, and nothing less than clear, positive and express words can justify an opinion that the Parliament had any such thing in view. The Act taken in the most rigorous sense does not absolutely prohibit the using of unstamped paper for any of the purposes enumerated in the Act, neither does it (except in one particular case,) make any unstamped paper so used, void, as will be shown more fully hereafter.

It is evident, from the Act itself, that the obligation to use stamp paper depends upon and expressly refers to a previous condition, to be performed by the Commissioners of the stamp duty; and the penal clause of the Act must be taken altoge-

ther as connected with and having relation to that previous condition (Act, page 29).

It is, indeed, altogether superfluous and unnecessary to investigate any other reasons for excusing the non-compliance with the Act—for it would be the greatest absurdity, and contrary to the clearest principles of reason and law, that any man should be punished for not doing a thing, the doing of which depended on the act and concurrence of another person, whether that person would or would not enable him to do the thing required; for it is implied in the very idea of obedience that the thing required is not only possible, but reasonable. The case, then, of not using the stamp paper being owing to the default of the Commissioners, or those whom they have appointed to distribute it, falls within the reason of the law in the following cases:

In debt for a house sold, the defendant said, that it was agreed between the plaintiff and him, that the plaintiff should pull down the said house at his own costs, and should remove it to such a place, and that then he should pay the plaintiff the said sum; and said that he was always ready to have paid the said sum, if the plaintiff had removed it, and this was adjudged a good plea, inasmuch as the contract was entire, and was not executed on the part of the plaintiff, and, also, the defendant could not compel the plaintiff to pull it down and remove it. If one grants or promises to give in marriage with his daughter so much money as T. S. shall award, it is held that, before T. S. hath awarded and appointed it, the party who has married the daughter shall not have remedy for any money. That, if one leases his land to A. for so many years as J. S. shall name, A. may not enter into the lands before J. S. hath named the number of years; for perhaps J. S. will never name any years, and then he shall never have any interest in the land.

If the condition of an obligation be that the obligor shall make all the linen the obligee shall wear during his life, the obligee must deliver to the obligor the cloth of which it is to be made. So, if a tailor is bound or promises to make a suit of clothes, the obligee ought to deliver him the cloth. If

a man be bound in £20, upon condition to pay £10 to such person as the obligee shall name by his last will, and after the obligor names no person by his will, the obligor is not bound to pay it to his executors; because the condition hath reference to his nomination. If the condition of an obligation be to pay all such costs as shall be stated by two arbitrators, by the obligee and obligor to be chosen, the obligee must choose an arbitrator, before he can show any fault in the obligor. By the condition of an obligation, a master is bound to make his apprentice free, on request, at the end of seven years; and in debt on this obligation, the master pleads that he was not requested; and it was held that, in this case, the reques, was material, being part of the condition. If a man covet nant to build a house before such a day, and, after the plague is there, before the day, and continues there until after the day, this shall excuse him from the breach of the covenant; for the law will not compel a man to venture his life for it, but he may do it after. If A. leases to B. for years, upon condition, that if B. pays money to A., or his heirs, at a day that B. shall have the fee, and, before the day, A. is attainted of treason and executed; now, though the condition become impossible by the act and offence of A., yet B. shall not have a fee; because a precedent condition to increase an estate must be performed, and if it becomes impossible, no estate shall rise. These cases evince that, where there is a previous condition, either expressed or implied, that previous condition must be first performed before a subsequent one, dependent upon it, can have any operation, and the words of a condition ought to be as strictly performed as the words of any penal statute. Now, as there is the same reason in the present case, so there is the same law. The Stamp Act makes the obligation to use stamp paper expressly dependent upon the contingency of their being first provided, and has a plain and clear reference to that circumstance of the officer's duty, and until that is done, the obligation to use it cannot bind. For, as in the case of the person who was to make the linen, and of the tailor who was to make a suit of clothes, they were not obliged thereto until the linen and cloth were furnished; so,

neither, under the Stamp Act, can any one be obliged to use stamp paper, until there is some person who will povide it. We will now consider the force and extent of the clause, which seems to take away the evidence and validity of any paper, not properly stamped, agreeable to the directions of the Act. The clause relative thereto runs thus. (*Vide* page 38.) The clause, also, necessarily supposes, that the colonies have been, from time to time, sufficiently furnished with parchment and paper, stamped or marked with the respective duties, agreeable to the directions given to the Commissioners in a preceding clause, and that the persons, having occasion to use them, may procure the same from the proper officer appointed to distribute them. It does not go so far (even if stamp paper were to be had) as to make the matter or thing, which, by the Act, is chargeable with a stamp duty, absolutely void; for not being stamped, it only suspends or postpones the efficacy and evidence of them, which, at any time afterwards, may be effectually restored, on complying with certain conditions required and enjoined by the next preceding clause, which being performed, the deed, instrument, matter or thing (though originally done without stamp paper) recovers its full force, validity and effect, as effectually as if the proper stamp had been impressed thereon at the time of the signing, sealing, or other execution, or entry, or enrollment thereof, (page 31). Nothing can be clearer than that the Parliament never entertained the least idea of making all transactions that required stamp paper void for want of stamp paper; or of prohibiting absolutely, in any situation, the use of unstamped paper; had such been their intention, the proviso would never have been inserted, as being directly repugnant and contradictory to their purpose. By the proviso, then, it is evident, that the Parliament foresaw that many cases might occur, where, through accident, neglect, inadvertence, ignorance, or some other cause, the several papers required to be stamped might want that formality, and, therefore, their wisdom suggested a remedy, that the effect of such paper might not be lost, and that the party interested might have it in his power to cure the defect. If, then, a defect in any instrument, deed, matter, or thing,

happening through a man's own default, may be cured, as it most certainly may, by virtue of the proviso aforesaid, sure, no good reason can be given why the same benefit should not be extended to cases where a man errs (if it can be called so) through absolute necessity.

The manifest intention of the Stamp Act, is to secure the payment of the duty, not to make void any writing. The words of the Act are generally all matter and things, which are subject to a stamp duty, are also within the benefit of the proviso. Whether they be private transactions between man and man, or relate to public officers, or judicial proceedings, the law makes no distinction; and, therefore, it would seem, that process, or any other transactions in a Court of Law, may be cured of any defect, owing to the want of stamp paper, as well as any deed or other instrument. Now, as it is a rule in law, that all penal statutes are to be taken strictly, and not extended, by equity, to the prejudice of those upon whom the penalty is inflicted, but shall be taken favorably for them; it would be contrary to that rule, and the equitable and genuine scope of the Act, if all persons were not allowed the full extent and benefit of the proviso in every possible case which might occur, as the law gives a right, upon payment and double duty, to any man, to authenticate what might before have been defective under the Act, and no time is limited when he is obliged to do this. Natural justice requires, under the present circumstances of necessity, that he should not be prevented from availing himself of that future benefit whenever it is in his power.

It should have been observed before, that Mr. Attorney General suggested that the cases, cited in support of the doctrine of necessity, refer to a legal necessity. It is certain, where a necessity is the effect of a man's own voluntary act, it will not excuse, as in the case of the prisoner who breaks jail, when the jail is on fire, he shall be excused; but if he himself set the jail on fire, he shall not. But it cannot be supposed in the present case, and ought not to be presumed, that the suitors of Court are instrumental in causing the necessity which has been so prejudicial to themselves; besides,

impossibilities, let them come from what cause they will, are still impossibilities; and the present occasion, which makes the impossibility of procuring stamp paper, is as much to be attributed to the act of God, as if the ship which had brought it into the province had been cast away in a storm—for nothing less than His immediate and irrisistable influence could have, as it were, in a moment, united all America, and made them as the heart of one man.

The end of the Act, which is to raise a revenue, will not and cannot be answered by shutting up the Courts of Justice; so that this expedient cannot be said to be a compliance with the law, not being the object of it, but rather a circumvention of it, and has a manifest tendency to elude the Act: for the Judges are called upon in the several Courts, "to make such orders, and do such other matters and things, for the better security of the duties, as shall be lawfully or reasonably desired;" so that the sitting of the Courts is absolutely necessary to give effect to the Act, and assistance to the persons who shall be appointed to attend in every Court agreeable to the directions thereof, to secure the said duties. Such a construction of the Act, then, as will necessarily involve in it a necessity of shutting up one of the Courts, must be absurd and ridiculous, because it would be turning the Act against itself, and making those very means, which it has appointed to assist its execution, subservient to the purpose of defeating it—for, without Courts, it will be impossible for this part of the Act, at least, to have effect.

The Courts of Law, as to every civil purpose, have been shut up full five months. This has not produced the least probability of assisting the execution of the Stamp Act. The obstacles to the procuring of stamp paper still exist. The misfortunes of the province increase; the necessities of individuals call loudly for redress. The example of the mother country, at two memorable periods, immediately succeeding the death of Edward VI. and Charles I., show the sense of the nation, that no conjunction should put a stop to the administration of laws, or interrupt the course of justice; and although it was but a few days before Queen Mary was peace-

ably settled on the throne, yet the business of those few days which had been transacted in the name of Lady Jane Gray taking upon herself the title of Queen, were allowed of, and confirmed by, Parliament; and everybody knows what diversity of forms and style were introduced into the Courts of Law and judicial proceedings, until the restoration of Charles II., unknown to the Constitution, and repugnant to the genius of the laws. And yet these, also, were confirmed by Parliament. These instances show that it is more eligible to overleap even great obstacles, than to be in the wretched situation of a state of outlawry.

Deplorable must be the state of the country where the laws afford no protection or guard for property; where disorder and confusion hold the reins; and, in a trading country, as this is, the evil is proportionably greater, as the occasion is more indispensable. In vain do we open our ports—in vain expect to follow our merchandise and pursue our commerce; for, while that vigilant watchman, the law, which should guard our city, is bound and fettered, danger from all quarters will assail us; and it may as reasonably be expected to preserve due circulation of the blood in the extreme parts of a man's body, when there is a total stagnation at the heart, as to expect peace, order, or safety, in a community, when the natural current of justice is obstructed. Besides, this being a suit, instituted before the time the Act commenced, and all the proceedings leading to judgment, having been previously carried on, it would seem that an Act, made *ex post facto*, should not be construed or strained so as to deprive the party of the benefit he had, as the law stood when he brought his action; and the case of Gilmore and the executors of Shoolter (2d Mod. 310) seems to be in point. The plaintiff recovered, on a promise made before the Statute of Frauds, although his action was brought afterwards, and that Act is express, that no action shall be brought to charge any person, upon any agreement made upon consideration of marriage, unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed, &c. The Court said it cannot be presumed, that the Act was to have a

retrospect, so as to take away a right of action, to which the plaintiff was entitled before the Act commenced; and, upon this principle, a judgment was given, not many years ago, by as able a Judge as ever sat on this Bench, Mr. Chief Justice Lee.

A person had been arrested for debt, and had petitioned for the benefit of the Insolvent Acts, before the time was expired that he could be admitted. Another Act of Assembly passed, requiring certain other terms and conditions to be performed by every person thereafter to be admitted to the benefit of the Act, and repeated all former Acts relating to that subject, and no provision was made, or exception, as to the persons who had petitioned under the former Acts. Yet the Chief Justice was of opinion that the Act should not be considered as having retrospect to such persons as had applied under the former Acts; and admitted the persons to swear off, upon the terms of the Acts he had petitioned under, although at the time they were absolutely repealed and declared null and void.

Upon the whole, seeing that some things are for necessity's sake, and the avoidance of greater mischiefs, excepted out of statutes—that the laws are so excellently fitted to the exigencies and conveniencies of Government, and full of reason, that impossibilities are not required—that Judges do sometimes expound the words contrary to the text, in order to make them agree with reason and equity—that it is absolutely necessary to the well-being of society, that justice should be administered in the Courts of Law—that it is impossible to procure stamp paper—that the Parliament did not intend, for the want thereof, to make void the several matters required to be stamped—that the proviso in the Act admits that such matters may be done without stamp paper, and provides a remedy in such cases—that judicial proceedings are within the very letter and benefit of the proviso, as well as any other transactions—that a discontinuance of process and shutting up the Courts are by no means a compliance with the Stamp Act, or authorized by it, or any wise instrumental in giving effect to it; for these reasons, and others which might be adduced,

the Assistant Judges are unanimously of opinion, that judgment be entered for plaintiff agreeable to the motion, in the usual manner as has heretofore been done: no stamp paper being to be had, and on consideration of the petition of the several persons presented to this Court, the Assistant Judges are, also, unanimously of opinion, that the process of this Court be issued out, in the usual manner to any person who shall require and apply for the same, that there may be no longer a complaint that justice is either delayed or denied.

It may not be amiss to observe a little upon what Mr. Attorney said, that this Act is a public Act, and, being properly noticed to the Court, the Judges are obliged to take notice of it. The Assistant Judges have had no occasion to enter into a discussion of these points; but it may be observed, in general, that there seems to be an absolute necessity for some regulation and reform in this particular. Nothing can be more reasonable and just than that people, who are to be bound by laws, should have the best security and evidence the nature of the thing will admit of, that those laws, which it is expected they will submit to, are really, certainly, and truly genuine laws.

The vague, uncertain and precarious manner of introducing and promulgating the laws of England among us, upon no better evidence than that they are said to be printed by the King's printer, (which may or may not be a fact,) is liable to too many striking objections, not to be alarming to the subject.

The Judges, in England, by their attendance in Parliament, and by the recourse that may be had to the Roll, may easily detect any mistake or error in a printed copy; but, in these remote regions of America, where there is no possibility of coming at the original, a mistake or design may involve us in the utmost distress. Lord Chief Justice Hale takes notice, in his Pleas of the Crown (1 Book, fol. 360) of a variance between the Parliament Roll and a printed statute, which had occasioned some mistakes in judgments given of high reason.

If printed copies, then, have been erroneous, and have misguided the Judges, in such important matters, in the Courts

at home, can it be wondered at if their authority should not be implicitly acquiesced in here, or that it should be thought expedient they should be authenticated.

Rt. Pringle.
Raws. Lowndes.
Bn. Smith.
D. D'Oyley.

Charleston, April 1st, 1766."

Mr. Justice Lowndes then further proceeded to pronounce the judgment of the Court upon the Clerk's late conduct, which was ordered to be recorded, and is as follows, viz: The Court have taken into consideration the very extraordinary and unprecedented behavior of the Clerk, on the first day of April last, in repeatedly refusing, and obstinately persisting in his refusal, to obey the order of the Court, to enter up judgment in the cause of Jordan *vs.* Law, which the Court had, after hearing arguments, upon mature deliberation, adjudged should be done; this unexampled and daring violation of the known duty of the Clerk, in open contempt and defiance of the authority of the Court, is considered as much aggravated by the presumptive pretences which the Clerk set up in justification of his disobedience, viz: That the Stamp Act did not allow him to pay obedience to the directions of the Court; thereby endeavoring to wrest from the Court (to whom, of right, it appertains to construe the laws) their proper jurisdiction, and to assume and arrogate to himself a power to supersede and control their determination, to the total subversion of all law, order, decency and decorum, not considering that, should an Act of Parliament release him from the obligation of obeying the orders of Court, or give him discretionary powers to do so, or not, as their judgment coincided with his own, that he would instantly cease to be Clerk—it being inconsistent with and repugnant to the very idea of that subordination, which, as a ministerial officer, he owes to the Court, to be exempt from due obedience to their authority. The Court have further considered the Clerk's gross neglect of duty in not issuing the *venire* for summoning a Jury, for this present Court, as was his bounden duty, both by the

nature of his office, and the obligation of his oath, and to which he was particularly enjoined by all the Assistant Judges; by reason whereof, the whole business of the Court, requiring a Jury, must be delayed and postponed until August—a time so inconvenient, on account of the excessive heat, that no business is wont to be done, to the great prejudice and hurt of his Majesty's subjects, the prevention of justice, and, in all probability, the total loss of many just demands. In order, therefore, to support the honor and authority of the Court, to enforce due obedience and regard to their orders and determinations, and to prevent the fatal consequences that will unavoidably result from a want of due subordination and subserviency in the officers of the Court, and their neglect of duty: It is ordered that Dougal Campbell, Esq., the Clerk of the Court, for his said contempt, contumacy, and neglect of duty, do pay a fine, to his Majesty, of the sum of one hundred pounds, proclamation money of America, and that the same be paid within ten days from this date.

His Honor the Chief Justice, having spoken in the Clerk's justification, and declared his dissent to the judgment of the Court, quitted the Bench.

The Clerk, being asked by the Court, if he had continued to use the seal, which had been put into his hands, on Tuesday last, by Mr. Justice Pringle, and whether or not his Honor the Chief Justice had yet consented to do business; and, to the first question, having answered in the affirmative; and, to the second, that his Honor still declined doing business—having, this very morning, refused either to sign or seal a writ of *dedimus potestatem*, for which he had been applied to at the instance of Mr. Rutledge—the Clerk was then ordered to continue the use of the said seal, which had been put into his hands by Mr. Justice Pringle, and the same was declared to be the seal of the Court.

May Term, 1766.

The Court met according to adjournment.

Present—The Chief Justice, Mr. Justice Lowndes, Mr. Justice Smith, Mr. Justice D'Oyley.

After the Jury had been impanelled, and a case of partition disposed of, his Honor the Chief Justice left the Bench.

The Clerk, having humbly begged leave to present a petition to the Court, which he had ready in his hands for that purpose, the same was ordered to be read, and was as follows, to wit:

"South Carolina—

To the Hon. Charles Shinner, Chief Justice, and to the Hon. Robt. Pringle, Rawlins Lowndes, Benj. Smith, and Danl. D'Oyley, Esqrs., Assistant Judges and Justices of His Majesty's Court of Common Pleas, in the province aforesaid:

The petition of Dougal Campbell, Clerk of the said Court, humbly showeth,—

That your petitioner is most unfeignedly sorry for his having incurred the censure and displeasure of this Honorable Court, than which, he humbly begs leave to assure your Honors, nothing which has happened to him through the whole course of his life, pretty far advanced, has ever occasioned him more real concern and uneasiness. That your petitioner, on account of the heavy loss, which he hath sustained, by means of the long-continued stop which has been put to his business, hath not had it in his power to pay the fine, which was set upon him by this Honorable Court, at the last sitting thereof, which failure he humbly hopes will not be construed into any intended contempt or disrespect; and prays that, in consideration of the late favorable turn which American affairs have most happily taken, your Honors will be pleased to regard his circumstances with an eye of tenderness and compassion, and your petitioner, as in duty bound, will ever pray.

D. Campbell, C. C. P.

Charlestown, 29th May, 1766."

The Court, having taken the said petition into consideration, and being of opinion that the Clerk's late conduct proceeded, rather from an error in judgment, than any contempt or want of respect for the authority of the Court, the fine, which had been set upon him, at the last sitting thereof, was reduced to ten pounds, proclamation money.

February Term, 1767.

Present—The Chief Justice, Mr. Justice Pringle.

His Excellency, the Governor, having sent to his Honor the Chief Justice, the copy of a minute of his Majesty's most honorable Privy Council, bearing date the 10th September last, which had been transmitted to his Excellency, by the Right Honorable Earl of Shelburne, one of his Majesty's principal Secretaries of State, and which was read in open Court, the thirteenth day of February last, ordered that the same be recorded, which is as follows, to wit:

At the Court of St. James, the 10th day of September, 1766.

Present—The King's Most Excellent Majesty; Lord Chancellor, Earl Shelburne, Lord President, Viscount Barrington; Lord Chamberlain, Mr. Secretary Conway; Lord Steward, Hans Stanley, Esq.; Earl of Cholmondely, Lord Chief Justice Wilmot, Earl of Hertford, Sir Charles Saunders, Earl of Hillsborough, Sir Isaac Bane.

Whereas, there was this day read, at the Board, a report from the Right Honorable the Lords of the Committee of Council for plantation affairs, dated the 6th of this last, in the words following, viz:

"Your Majesty, having been pleased, by your order in Council of the 30th July last, to refer unto this Committee a representation of the Lords Commissioners for trade and plantations, dated the 11th July last, upon sundry letters and papers received by them from Wm. Bull, Esq., your Majesty's Lieutenant-Governor of South Carolina, informing the said Lords Commissioners that application had been made to him, by the four Assistant Judges of the Court of Common Pleas, to suspend Dougal Campbell, Esq., Clerk of the Court of Common Pleas, from his said office, on account of his having refused to enter up a judgment of the said Court upon unstamped paper—it being repugnant to Act of Parliament; that this application had been followed and enforced by an address of the Assembly to the like effect, and the same requisition repeated by a subsequent message to the said Lieutenant-Governor. That, upon his refusing to comply with the terms of the above address, the Assembly of the said province

had come to several resolutions, and that the Court of Common Pleas had, upon their first sitting, subsequent to Lieutenant-Governor Bull's refusal of their application, fined Mr. Campbell in the sum of one hundred pounds, proclamation money, for his above-mentioned disobedience; but that the said Lieutenant-Governor had thought fit to issue his order for suspending payment of the above-mentioned fine, until your Majesty's pleasure shall be known.

The Lords of the Committee, in obedience to your Majesty's said order of reference, this day took the said representation and papers thereunto annexed into consideration, and do agree humbly to report, as our opinion, that it may be advisable for your Majesty to signify your royal approbation of the said Lieutenant-Governor's conduct upon this occasion, and direct him to remit the fine, imposed by the said Court of Common Pleas upon Dougal Campbell, Esq., the Clerk of the said Court of Common Pleas.

His Majesty, taking the said report into consideration, is hereby pleased to declare and signify his royal approbation of the conduct of the said William Bull, Esq., Lieutenant-Governor of the Province of South Carolina, upon this occasion; and his Majesty doth hereby order that the said fine of one hundred pounds, proclamation money, imposed by the said Court of Common Pleas, upon Dougal Campbell, the Clerk of the said Court, be remitted—whereof the Governor, Lieutenant-Governor, or Commander-in-chief of his Majesty's said Province of South Carolina, for the time being, and all others whom it may concern, are to take notice, and govern themselves accordingly.

ROBERT WALPOLE."

JOHN DRAYTON.

John Drayton, known as Governor Drayton, is entitled to a place in these sketches, as a Judge of the United States Court, for the District of South Carolina, and as a lawyer of the State. He was the only son of that great and greatly-to-be-revered man, Chief Justice William Henry Drayton. He states, in the biographical sketch of his father, prepared by himself, that he was twelve years old at the death of his parent, in Philadelphia, on 3d September, 1778. He had accompanied his father to that city, who placed him with the celebrated Dr. Witherspoon, at Princeton, New Jersey; how long he remained there does not appear. He completed his education, after the war, in England; and, I presume, after studying in the Temple, he was called to the Bar; and then returned to Charleston, where he commenced the practice of the law.

Dr. Johnson states, that, "by way of introduction to public notice, he became the captain of a company of volunteers, called the Cadet Infantry; and was conspicuous in the journals of that day, during the era of the French Revolution." He married, in early life, Miss Hester Rose Drayton, the daughter of Philip Tideman.

In 1798, he was elected Lieutenant-Governor, and, by the death of Governor Edward Rutledge, 23d January, 1800, he became Governor. In December of that year, he was elected Governor, to serve for two years. He was thus, in fact, Chief Magistrate of the State for three years in succession. I have no doubt he was a very useful Chief Magistrate. He was the first Governor who undertook to pass over the whole upper country, and review the militia. The people congregated in immense numbers to see him. On this occasion, he was escorted through Pendleton by a company of cavalry, commanded by the late General John B. Earle. His troop was a fine one, and many were splendid riders. The Captain him-

self was a first-rate horseman, as many, who are still alive, have seen, when he subsequently reviewed as Adjutant-General. He has often told me, that in one of his charges, while escorting the Governor, his bridle-reins broke, and he succeeded in stopping his horse (a fine animal), by stooping down, and seizing the check of his bridle-bit. He used to laugh, and say he had no doubt, that feat of horsemanship obtained for him the *pro tem.* appointment, by the Governor, of Adjutant-General.

While reviewing, in one of the mountain districts, Colonel Lawrence Manning, the Adjutant-General, persuaded the Governor to ride to a fine spring, which the Colonel knew was in North Carolina, but of which fact the Governor was ignorant. As soon as he reached the spot, Colonel Manning possessed himself of the Governor's sword, and said to him, "you are no longer Governor Drayton; you are John Drayton, as I am Lawrence Manning." It was a jest which much annoyed the Governor.

The facetious Adjutant-General, the hero of Eutaw, and the valuable officer in the organization of the militia, soon after closed his valuable life, and John B. Earle succeeded him, long to illustrate the chivalric officer of the militia, and the loved companion of every joyous and festive board.

In 1802, Governor Drayton published his "View of Carolina," a most excellent work, descriptive of her statistics, naturally and civilly, which, I much regret, is out of print; and only by the kind courtesy of a friend have I been able to see it.

In 1808, Governor Drayton was re-elected Governor, and served for two years. The Lieutenant-Governor, Major Fred'k Nance, of Newbury, was inaugurated with him, and took the oath of office. This was right and proper, and I am sorry to say, that, from that time until last December, when Lieutenant-Governor Carn was inaugurated with Governor Gist, no Lieutenant-Governor had taken the oath of office at the inauguration of the Governor; and if the matter had been properly looked into, South Carolina would not have had that officer for more than fifty years. I hope the precedent estab-

lished in December, 1858, will be hereafter followed; and if evaded, will be sternly enforced by declaring the office vacant.

The office of Governor, in South Carolina, has little power beyond that of pardon, which is often so much abused, as to lead every Governor elect, to declare in his inaugural address, that "the duty of seeing the law executed in mercy" will be very sternly exercised; and yet, poor human nature is so constituted, that errors, great errors, frequently occur, and are, I think, somewhat excusable. Error, on the side of mercy, has much that is divine to excuse it. Governor Drayton, as many of his successors, was decided in the discharge of this delicate duty. He turned out, at the solicitation of his mother, wife, and children, a notorious offender, Gabriel Stalnaker. So, too, Governor Hayne could not resist the pleading of the wife, when she interceded for the pardon of her husband, who was covered with the blood of her brother.

Governor Drayton was in the executive chair, when the South Carolina College, by the Act of 1801, was established. His recommendation and influence were in its favor. In his Carolina (1802) at pages 219–220, speaking of the organization of the Board of Trustees, he says: "A Board so respectable will necessarily greatly influence the advancement of this institution—an advancement not promoted by local views or party prejudices, but springing from the united voices upon enlightened Legislation; projected as a rallying point of union, friendship, and learning, for the youth from all parts of the State. May the kindest favor of Heaven smile on this undertaking—may no envious opposition disturb its progress —and may the thanks of a grateful people remain with all those who have been or may be instrumental in establishing and supporting this institution, equally honorable to their heads and their hearts."

The objects of this institution have been fully realized: Education has been generally diffused, and South Carolina has become a united people. The foundation and endowment of the South Carolina College was very much a lower-country measure. Tradition is, that the upper-country, with few exceptions, were opposed to it.

On 7th May, 1812, Governor Drayton was appointed Judge of the United States Court for the District of South Carolina, by President Madison. He took his seat on the 6th of July, of that year.

How he discharged his duties in particular cases, I have no means of knowing. In general, I presume, they were acceptable.

In 1821, he performed that most grateful duty to a parent, in publishing the Memoirs of the Life of his Father, Chief Justice Drayton. Like everything else essential to the honor and character of South Carolina, it is now almost unknown. The copy obtained for me, (by a friend, to whom I am under many obligations for the zeal and activity with which he served me in this work,) is the copy presented by the author to the Comptroller-General, Thomas Lee, and has quietly slumbered in the office of the Comptroller until the moths, more ambitious than our citizens, have nearly possessed themselves of the work.

If my word would have any weight, I would most respectfully say to the Legislature, re-publish Drayton's Carolina, the Memoirs of his father, Moultrie's Revolution in South Carolina, and Ramsay's History of the State, and direct copies to be given to every school in the State. Money thus expended, will be worth more than splendid public edifices. It will inform the people as to the history of the State, and give us well-informed men and women.

Judge Drayton closed his eventful and useful life on the 22d November, 1822, in the fifty-sixth year of his age. He left a family of five daughters and one son.

If to be useful, entitles a man to the commendation of good and great, then indeed, John Drayton is entitled to be so commended. Reared in the storm of the Revolution, he had, as by inheritance, that noble self-sacrificing disposition of '76, which preferred country to all other considerations.