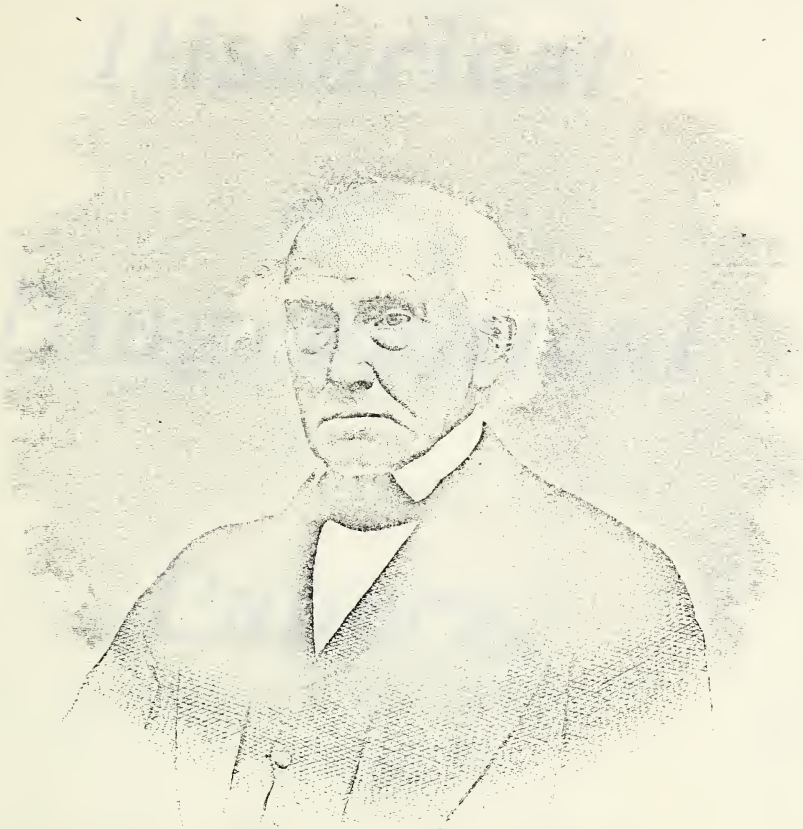

Willard Hall

Historical

and

Biographical

Papers.

Vol. 1.

pt. 1

PUBLICATION FUND OF
THE HISTORICAL SOCIETY OF DELAWARE
WILMINGTON.

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PAPERS OF THE HISTORICAL SOCIETY OF DELAWARE.

I.

MEMORIAL ADDRESS

ON THE

LIFE AND CHARACTER

OF

WILLARD HALL.

BY

HON. DANIEL M. BATES.

THE HISTORICAL SOCIETY OF DELAWARE.

WILMINGTON:

1879.

IMMEDIATELY after the death of Judge Hall, the Historical Society of Delaware requested its President, the Hon. Daniel M. Bates, to deliver a memorial address on his life and character; in compliance with which request the following paper was read before the Society on the 23d of May, 1876.

ADDRESS ON THE LIFE AND CHARACTER

OF

WILLARD HALL.

Gentlemen of the Historical Society:

There are few communities, if any, in which there do not arise, now and then, men whose lives move in a plane above the common level,—men who, besides filling, as others do, some one of the special vocations of business, seem to have it as their life-work to be ever helping the general interests of the age and society in which their lots are cast, occupying such fields of usefulness as their peculiar endowments may fit them for. To such ends as these they bestow their labors and sacrifices, often under discouragements and with little immediate fruit; being sustained in their work by hopes which reach beyond the mental vision of ordinary men. And, what perhaps is hardly of less value to society, these men set before it an attractive example of purity and unselfishness, of powers consecrated to lofty aims, and surpassing in their energy and constancy even the efforts commonly given to sordid ends; and thus, unconsciously, they

raise before the eyes of their contemporaries a higher ideal of humanity,—of its true aims and finer capacities; and so these examples invigorate and render more constant the general aspiration after a better, a nobler career than before had seemed attainable,—an aspiration to the influence of which may be traced the upward progress of human society. These are the men who help the race forward in its slow and difficult advance.

Our own community was long blessed by the presence of one of these exceptionally pure and beneficent lives,—one among the most eminent and useful of all that class of men; and now that he has been removed from among us, and while the light, which death alone sheds, still illumines his career and throws back upon his character that charm which invests the recollection of a cherished object when lost, we are prompted, by a sentiment, both just to the dead and ennobling to the living, to commemorate his virtues and great services. Doubtless, this tribute of our respect—labor as we may to perfect it—will leave us with a sense of still undischarged obligation for his services, and of unexpressed or ill-expressed reverence and admiration for his virtues. But such as it is, we now offer it:

Willard Hall was born in the town of Westford, Middlesex County, and State of Massachusetts, on the 24th of December, 1780. His father, Willis Hall, was born and died in that town; his mother, Mehetabel Poole, was of Hollis, New Hampshire.

He inherited from his ancestry a constitution singularly sound and vigorous in all its parts—physical, intellectual,

and moral. His entire organization—body, intellect, affections, conscience, and will—was healthful, active, and symmetrical,—a remarkable example of the *mens sana in corpore sano.* It is not surprising, in such a case, to find that his progenitors, in all the lines of descent which can be traced, were of strong mental and moral characteristics; that they kept even pace with the culture of the age and society in which they lived—were equals among their contemporaries, and some of them leaders of the thought and enterprise of their day. His mother was of a highly-respected and influential family settled in Hollis, New Hampshire; her father, a deacon in the Congregational Church in that place. He left a large family of children, all of whom held respectable and useful positions in society. One of the brothers became a distinguished leader in the politics of his State, and is said to have been a logical and fluent speaker.*

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* Since this address was prepared, Wm. D. Dowe, Esq., has furnished some interesting facts, well worth preserving, respecting the maternal ancestry of Judge Hall. The Pooles, from whom his mother was descended, were an ancient and honorable English family, who derived their name from the lordship or manor of Poole, in the county of Chester, where the family was seated as early as the reign of Henry III. The first of the stock, as far back as can be now traced, was Robert de Pull. The name afterwards underwent several changes, through de la Pole, de Poole, and finally it became Poole. The family were early divided into several branches. One branch settled in Ireland, where they are still lords of the manor. Of the English branches, the eldest line is represented by the present Sir Francis Poole, Baronet, of Poole, in the county of Chester. Another branch was represented by Admiral Sir Charles Morice Poole, K.C.B., of the county of Devon; and another by Sir Peter Van Nolten Poole, Baronet, of Fodenham House, county of Gloucester.

Of the American branches one, Elizabeth Poole, is mentioned as the founder of Taunton, Mass., in 1637. She was born in England in 1589, and died at

On the father's side, Judge Hall was connected with the family of the Willards, from whom he derived his Christian name, and probably the controlling elements of his character. This was an ancient English family, seated originally in the county of Kent. The origin and early history of the Willards are noteworthy, since they were not without their influence upon the family life and character through all the generations following.* Lying upon the southern coast of England, convenient for trade and commerce, fertile, and of beautiful natural features, the county of Kent became in early Anglo-Saxon times the home of a hardy, enterprising, thrifty, liberty-loving race, out of which was developed the strongest and best type of English manhood. They alone in all England, after the Norman conquest, maintained against the Conqueror the ancient rights and liberties of

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Taunton in May, 1654. The story is told that she bought of the Indians the whole territory on which Taunton was situated for a peck of beans and a jack-knife.

Another American settler of this stock was John Poole, one of Judge Hall's progenitors. He came from England in 1632, and settled at Cambridge, Mass. He held two hundred acres of land at Lynn. Subsequently he removed to Reading. His only son was Captain Jona. Poole, who was distinguished in the war of King Philip. He was President of the Council in 1675–76, and representative in the General Assembly of 1677. His daughter, Mary, married Deacon Thomas Bancroft, and became the great-grandmother of George Bancroft, the historian. Jona. Poole left an only son, viz., John Poole, who had five sons, the youngest of whom, William Poole, was the father of Mehetabel Poole, Judge Hall's mother.

* These incidents in the history of the Willard family are taken from the "Willard Memoir," published by Joseph Willard (Boston, 1858)—a book of much interest, even to a reader not connected with the family.

Saxons,—such as the freedom of their lands from the burdens of military tenure; the power to alien their lands at pleasure and to devise them by will, even prior to the enabling statute of wills; the equal descent of lands to all sons; and exemption from the degrading system of villeinage. Such liberties had their fruit in the more general distribution of property, a greater equality in the condition of the people, and a more diffused education and culture; so that by the end of the sixteenth century, as a writer of that date informs us, the revenues of Kent were greater than of any other part of England, and the people were for the most part "acquainted with good letters and trained in the knowledge of the laws." It is well ascertained that the Willard family were established in Kent as early as the conquest. They held lands as tenants *in capite* of the king, filled various stations of usefulness and honor, and had a substantial stake in society,—sharing fully its interests, enterprises, and struggles for advancement. It is also noteworthy, as indicating the moral and religious elevation of this family, that from the period of the Reformation, in every generation, it gave some of its sons to the holy office.

The progenitors of the American family of Willards were a brother and sister, Simon and Margery Willard, who, in the year 1634, came to this country and settled in Cambridge, Mass. They were among the large number who about that period forsook country, friends, home,—all that this life holds dear,—seeking, as they supposed, freedom of religious opinion and worship, but providentially intrusted with the higher mission of founding a new and better Christian civilization. It would be interesting to follow, if but a

little way, the career of Major Simon Willard, as he afterwards became; to contemplate him as a fit type of the moderate Puritan, with intense convictions but gentle spirit, of sound and enlightened judgment, and indomitable courage; to see how thoroughly he identified himself with the young commonwealth, sharing its struggles and perils, and serving it in many important trusts, as legislator, judge, and military commander in the Indian wars; how at last he died, at Charlestown, in 1676, full of years and honors, leaving a large family of seventeen children, whose descendants now count by thousands,—maintaining, in many communities and under various names, the ancestral virtues. But all that is beyond the limits and aside from the main purpose of this paper. Our present interest is in the sister, Margery Willard, from whom, in the fifth generation, sprang the subject of this sketch. She became the wife of Captain Dolour Davis. Their only daughter, Ruth Davis, intermarried with Stephen Hall, whence came the surname of the deceased, who thus in his name represented the two families of Willard and Hall. It is remarkable how vigorous and valuable were the offshoots which, within a few generations, sprang from these united stocks: such as the Parker family, which gave to Massachusetts one of her most eminent chief-justices, Isaac Parker; also the Sears family, of Boston; the Eustis family, which gave to Louisiana a chief-justice, and to the United States army a distinguished general; a branch of the Hall family, which gave to Missouri two brothers, both eminent at the bar, one of whom, William A. Hall, became a judge in that State; the other, Willard P. Hall, became the governor and afterwards a representative of the State in

Congress. To our own State there was given from the same stock one of its most useful and honored citizens and brightest examples.

Of Judge Hall's early life little can now be gathered. Enough, however, remains to show—what to us is of chief interest—that in the home of his childhood those elements of strong intellectual and moral character, which he inherited from a virtuous ancestry, found their appropriate nurture and development.

It is not unlikely that his early *mental training* received some direction from his grandfather, the Rev. Willard Hall, who resided in the same town, being for more than half a century the pastor of the Congregational Church at Westford. The grandfather is represented as an eminently pious and useful minister, scholarly and cultured, yet practical and of great decision,—a graduate of Harvard University, of the class of 1722. Dr. Payson, perhaps the most distinguished divine of that day in New England, highly estimated his acquaintance, and represented him as a man of remarkable intellectual endowments. His long ministry at Westford was one of marked success and usefulness. He evinced, even at that early day, something of the interest in popular education which so distinguished the grandson in after-years. On one occasion, when his town, considering itself excused by some special circumstances, refused to lay the required school tax, he complained to the General Court, and arraigned his own charge, though by so doing he greatly offended many of his people—not unexpectedly, either, to himself. It was not improbably the fruit of efforts such as these that in 1792 an academy was estab-

lished at Westford, and the way thus opened to the grandson for a liberal education. The *moral sentiments* of the boy, naturally strong, could not have been otherwise than invigorated by contact with such a grandfather; but the early development of that delicate moral and religious sensibility which so toned and regulated his whole character, bearing the rich fruits of his after-life, is directly traceable to the mother's hand. The moral and religious life has its basis in the affections and sentiments; and of these the best culture lies within woman's province.

Mrs. Hall was a woman of much force of character and of fervent piety,—trained in early life under the ministry and personal influence of Rev. Daniel Emerson, the pastor of her native town of Hollis. Mr. Emerson was a convert under the preaching of Whitefield, and partook largely of the fervent, evangelizing spirit of that truly apostolic man. He became himself a preacher, eminent for eloquence, learning, and for a certain indefinable moral elevation and purity, which, blended with a sympathetic spirit, bringing it into a close and warm contact with the hearts of men, was, by its assimilating influence, more effective than his eloquence or logic in moulding the religious life of his people at Hollis. It was the spirit of such a teaching and example that Mrs. Hall received and imparted to her own family life. What was the precise mould into which that family life was cast,—what its methods of instruction and discipline for the younger members,—of all this we need not inquire. In these respects families vary endlessly, each having its own proper individuality. But what it concerns us to know is that the law of this household—by which is

meant the general direction given to the aspirations, aims, and habits of the family—was based on such principles as these,—reverence for the divine, faith in the unseen, obedience to just authority, the subjection of inclination to duty, love of truth, unwearied effort for self-improvement, living not for one's self alone. Such were the germinal principles out of which grew and matured the life and character we this day commemorate. The early bloom his mother lived to see, but not the rich fruitage. She died in 1802, just as her son was entering upon his manhood.

Of Judge Hall's school and college life few incidents remain to us. It was one of hardship, marked by the determination and struggles of a lad, conscious of strong mental capacities, to develop them, with inadequate means and against difficulties and discouragements. For, his father had what are not unfrequently found associated,—a large family and small means; but, in this instance, these were associated also with noble aspirations. Writing, in years long after, Judge Hall touchingly alludes to his father's sacrifices to keep his children at the school in Westford. He also, in this connection, refers, with not a little satisfaction, to the time when, a small boy, he trudged two miles on foot to school, with dinner in his pocket—a discipline to which he ascribed largely his fitness to encounter the stern responsibilities of after-life.

As the boy grew, the academy at Westford, established mainly through his grandfather's efforts, held out hope to his maturing aspirations after an education. Here he remained two years, with such proficiency and promise as to enlist on the part of his preceptor, Levi Hedge, an interest

which ripened into a never-forgotten friendship. Mr. Hedge afterwards became a tutor at Harvard, and was the father of Dr. Hedge, at the present time a professor in that institution. The friendship of the preceptor and the aid given to his young pupil in this crisis were ever gratefully remembered. The accumulating infirmities of ninety-three years could not dim the recollection of it. Writing as late in life as August 14, 1873, to Mr. Sibley, an officer of the university, he adverts, with a touching pathos, to his early Harvard struggles, and to the friend who had sustained him. "I should like," he writes, "to hear something of Levi Hedge, to whose partiality for me I owe my education, through privations and hardships and conflict, that placed me at last in the upper current of the struggle; by which I trust I have done something for the good of others. I remember him with lively gratitude." At thirteen years of age (in 1794) he was examined and received into the Freshman class at Harvard University. But from some unexplained cause, most likely prompted by that abhorrence of the superficial which through life was one of his marked characteristics, he seems to have reconsidered his plan. He returned to the academy at Westford and spent another year in preparation for the university course. He entered the Freshman class in 1795, and graduated in 1799. Harvard was then under the presidency of his kinsman, Rev. Joseph Willard, distinguished both as a scholar and as a divine, whose administration through a period of twenty-three years was eminently successful. It may be doubted whether Harvard, at any period of its long service to the country, has given to it so many young men who have

since attained great eminence. Among Judge Hall's contemporaries at college were Horace Binney, William Ellery Channing, Joseph Story, Washington Allston, and Lemuel Shaw, not to speak of many of less note. He estimated the value of his college training all the more because it was severe,—taxing his powers to the utmost. His views of education were after the old school; rejecting, with little patience, all schemes of learning made easy, holding the true object and value of education to be, not so much to lay up some definite stock of knowledge as a sort of capital to trade upon, but rather by discipline to develop the mental faculties, rendering them vigorous and discriminating, capable of grappling with and solving the problems of life,—a discipline to be effected only by the habitual exercise of the faculties to their utmost capacity for the time being. His proficiency as a college student must have been excellent in all branches; but there is reason to suppose that his leading interest was in the ancient classics, which at that day held as yet unchallenged a predominant place in the college curriculum. His appointment to deliver a Latin oration in the Junior year would seem to mark some distinction in that department of study. Besides, his style of composition, in its purity, terseness, and vigor, bore strong traces of early and thorough classical culture. It was in later life his earnest advice to young men at the bar to continue and improve upon their classical studies by rigorously appropriating to them some small part of each day.

After graduating at Harvard, in March, 1800, he took his place as a law student in the office of Mr. Dana, then a practicing lawyer at Groton. There he realized the inesti-

mable benefit of association with men of high character and attainments in the profession of his choice. The leaders of the bar at Groton were Timothy Bigelow and Samuel Dana, both lawyers of more than a local reputation. Judge Hall, in later years, recalling some of the incidents of this interesting period of his life, thus wrote of the men who were his youthful professional models: "The offices of Mr. Bigelow and Mr. Dana were nurseries of lawyers. Mr. Bigelow," he writes, "was a man of great ability and elevated moral and religious character. His speaking was rapid—rapid to a fault; but it was earnest, energetic, and full of matter. He filled the circle in which he moved; but on the broad extent of his State and nation he never attained to the eminence that was his due. Personal idolatry, so rife now, was then unknown. Mr. Dana was a good lawyer, a graceful speaker, with a melodious voice, an interesting gentleman. He abounded with anecdote; there could be no more entertaining companion." Mr. Dana filled many high official positions,—was President of the State Senate in 1807 and 1808; a member of the State Constitutional Convention in 1820–21; Representative in Congress in 1814–15; and finally Chief-Justice of the Circuit Court of Common Pleas in Massachusetts from 1811 to 1820.

Of Judge Hall's proficiency in legal study, and his full qualification for the profession of his choice, the sequel affords, perhaps, the most impressive evidence; but it may not be amiss to record the testimony of Judge Dana, in a remark made to his pupil many years afterward. Said he, "When you left my office, I had not a misgiving concerning

you. I was as confident of your success as a farmer is of a crop from a well-cultivated field."

After a three-years' course of study in Mr. Dana's office, in March, 1803, he was admitted to the bar of Hillsborough County, New Hampshire.

We reach now, in this rapid sketch, what is the critical period of a young man's career,—his first assumption of the responsibilities of manhood. It is true that the value of good natural parts is great; the advantage of early right culture is hardly to be estimated; but, after all, there is in every man a self-determining will, which makes him the ultimate architect of his own character. To Judge Hall, that juncture in life at which the determinations and purposes are fraught with such weighty issues seemed more than ordinarily perplexing. He was without money,—with no resource for the future other than a profession as yet untried. At his own home the bar had become crowded, and, under the keen competition between the younger members, there had begun to creep into the profession questionable practices, such as he not only would not adopt, but the contact of which he could not endure. He must seek a sphere of professional life more congenial to his nature. But where to find it? The question was perplexing. Writing to his tried friend, Levi Hedge, he says of himself at this juncture,—

> "The world is all before me,
> Where to choose my resting-place,
> And Providence my guide,"—

words to which he recurred in a letter written at the age

of ninety-three years, as he then expressed it, "with a most feeling sense of their truth and verification."

While thus revolving in his mind the uncertain future, there fell under his eye a speech of the elder James A. Bayard, then in Congress. His attention was arrested by some observations of Mr. Bayard, in which he represented the bar of Delaware as of high moral position, and the practice as reasonably remunerative. To use his own expression when relating the circumstance to the writer of these lines, in a casual conversation, years ago, "he slept upon that speech." In the morning his determination was reached, and following his decision with that promptness of action which marked his life, he, the same day, addressed to Mr. Bayard a letter so characteristic of the man, and so expressive of his situation, prospects, and impulses at this interesting crisis, as to warrant its preservation. Under date of October 9, 1802, at Groton, he thus addressed Mr. Bayard,—

"SIR,—Perhaps I intrude upon moments devoted to better purposes. Perhaps to comply with my request would be a waste of your time and attention. If so, pardon the presumption which urges a distant stranger thus to address you, and bestow not upon him that consideration to which he professes no claim.

"I was born in Westford, in the commonwealth of Massachusetts; was educated at Harvard University, in Cambridge, and am now reading law with Samuel Dana, Esq., a gentleman with us eminent in his profession, probably to you unknown. In this part of the country three years'

uninterrupted study completes a law education. By this rule I shall finish mine in March next, and shall in that month be admitted to the bar in this county. In this part of the country there are too many lawyers in proportion to the law business. This disproportion has occasioned many low practices (among some lawyers) in a profession which I expected was worthy of the esteem and respect of society. On this account I shall seek some quarter where the prospects of the profession are more promising than with us. From some observations made by you on the floor of Congress, I have been induced to wish a settlement in the State of Delaware. The circumstances, prospects, and encouragements of the profession in that State are the objects of my inquiries. I would request you, sir, to give me some information relative to these points by sending me an answer to this letter. You will thus assist a man to set out in life and confer a favor which may cost you little trouble, but which may do me great service, and which a grateful mind shall never forget.

"This request is made on the score of universal philanthropy. Compliance will lay an obligation on one from whom there is small prospect of return, and can have no reward but the reflection that you have increased the happiness of a brother of the human race, and added one to the number of those who bless God for giving you existence.

"I am, sir, with respect, yours,

"WILLARD HALL."

"The gentlemanly and favorable answer of Mr. Bayard,"—so afterwards wrote Judge Hall of this incident,—"induced

me to make choice of this State for prosecuting my profession." Let us pause in our narrative to acknowledge, even though at so late a day, the service rendered to our State by the encouraging reply of Mr. Bayard to this stranger,—a service certainly not the least in all its consequences among those for which his name has been so greatly honored. Judge Hall always held his memory in grateful remembrance. Writing of him on one occasion, he thus testified his own appreciation of Mr. Bayard's high character: "His was not," writes the judge, "a noisy fame; but no man's was more solid. Those who knew him held him in the highest estimation,—a man of elevated principle and commanding intellectual power." . . . "Of the bar of his State he was the pride, and most justly; he was an ornament of that of the nation."

Admitted to the bar in New Hampshire in March, 1803, with no delay he left his father's house in Westford, April 7th, and, travelling the whole distance on horseback, he reached Wilmington, Delaware, on the 16th of the same month. Finding Mr. Bayard absent from home, in attendance upon the spring sessions of the court in Georgetown, he pursued his journey to that place, where he presented himself to Mr. Bayard, and also to Mr. Rodney, with letters of recommendation from the late Harrison Gray Otis, of Boston, and with the certificate of his admission to the bar in New Hampshire. Upon motion of Mr. Bayard, and on a favorable report of his qualifications made after an examination by Mr. Bayard and James P. Wilson, then at the bar in Georgetown (afterwards a distinguished divine in Philadelphia), he was admitted an attorney and counsellor of

that court, and in the following month of May settled at Dover for the practice of his profession.

The bar of this State was at that day adorned with men of commanding ability, held in high confidence of the people, some being of national reputation, whose names were the pride of the State. Among its leaders were James A. Bayard, George Read, Cæsar A. Rodney, Nicholas Van Dyke, and James P. Wilson, with younger men of great promise, such as James Rogers and Louis McLane, Thomas Clayton and Henry M. Ridgely, Thomas Cooper and Peter Robinson. It was among such men he stood,—young, a stranger, without family prestige, without fortune, without experience, without friends, without as yet a name; but bringing to his profession a guaranty for success better than all these, viz., elements of character and professional qualifications such as the necessities of society demanded, and which were certain when discovered to be called into requisition. His success, though slow, was progressive and enduring, bringing in due order and season professional patronage, the respect of the bar, social position, wealth, and honors, and,—what he no less rejoiced in,—opening to him wider spheres of usefulness.

As a counsellor at the bar, he became distinguished for his legal learning, sound judgment, and such fidelity to a trust as made the client's interest all his own. In argument, his method was to grasp firmly the governing principles of the case in hand and to present them lucidly and forcibly, compelling conviction. He has been represented by the elder lawyers as being, on occasions, eloquent; yet few, if any, had less of the common arts of oratory. His

eloquence was that of an earnest mind, itself possessed by overmastering convictions, which, when great interests were at stake, expressed themselves without art under the promptings of a refined and cultivated nature, and commanded, as he always sought to do, not so much the applause of his hearers as their assent. In all professional transactions he was singularly painstaking, conscientious in devoting his whole energy to any business, without measuring its importance, and for one trait especially distinguished, viz., a marvellous faculty of being always ready. It was once the remark of the late Chancellor Ridgely, made from the bench, that he had never called a cause of Willard Hall's in which the answer was, "not ready." Qualities such as these could not be long confined, except through his own choice, to the limits of a professional career. Hardly has he ceased to be a stranger and become well settled at the bar, when he is called to stations of public trust. In 1812 he was appointed Secretary of State under Governor Haslett, which office he held during the Governor's term of three years. Soon afterwards, in 1816, he was elected, together with Louis McLane, to represent this State in the Congress of the United States; and he was re-elected to the same station in 1818. Congressional life was distasteful to him; he wearied of it; his energies, though untiring, and his capacities for usefulness, though of the highest order, sought a more congenial exercise in quieter spheres of duty. So, after two terms, he declined a further service in Congress, and returned to professional life. In 1821 he was again appointed Secretary of State under Governor Collins. In 1822 he was elected a member

of the State Senate; and on the 6th day of May, 1823, on the decease of Judge Fisher, he was appointed by President Monroe District Judge of the United States for Delaware District. Soon after this appointment he removed to Wilmington, where he resided until his decease. He retired from the profession, as he has himself expressed it, "wearied with twenty years' labors and anxieties; toiling, as he had, harder for his clients than they would work for themselves; and feeling more deeply than they felt for their own interests." The appointment was an eminently fit one, whether considered in its bearing upon the man or the office. To him, it brought relief from a profession harassing to a sensitive temperament, with a congenial employment for the future, and much leisure for maturing those plans of larger usefulness which he had already begun to meditate. To the office, the appointment brought a judge combining in a rare degree all the requisites of learning, exalted purity, dignity, and the public confidence.

He held the office of district judge through the exceptionally long term of forty-eight years, retiring from it in December, 1871, in his ninety-first year, with faculties still unimpaired, except that bodily infirmity had disabled him from protracted labor. How he discharged the duties of his high station—with what promptness, diligence, impartiality, ability, and dignity—with what singular affability to the bar and tender consideration for the convenience of every one except himself—need not be described among the people who were so long witnesses of these qualities. His judicial administration was eminently conservative. Though possessing an exquisite sense of justice, and ever

anxious to bring into harmony the law and the right of the cause before him, yet he was never known to warp the rules of law, much less to be drawn into the error of judicial legislation. The justice of the particular case, whatever his desire to serve it, he could never set against the higher interests involved in the certainty of the law as a rule of conduct for society. He regarded the common law as a system of principles, embodying not the wisdom of one man, nor even of one generation, but the collected wisdom of ages, the fruits of the matured experience of society; and he held it to be the duty of the judge to declare and administer the system as he finds it,—not, it is true, without some necessary development and new applications of its principles to the multiplying interests and varying conditions of a progressive society, but without overturning rules once settled, and upon which the faith and transactions of society have come to rest. Changes in these he wisely left to the legislative function. He heard cases brought before him with unwearying attention,—an attention quickened not so much by his courtesy to the bar, though in that he was exemplary, as by his anxiety to arrive at the truth and justice of the case. And, under the like anxiety, his administration of the rules of practice and procedure was extremely liberal and free from technicality, never excluding a suggestion which promised in any degree to elucidate the questions at issue. In trials at *Nisi Prius*, his naturally clear apprehension and thorough early legal training enabled him promptly and satisfactorily to dispose of the questions which arise for immediate decision. Of important or doubtful questions, held under advisement,

his examination was always painstaking and thorough; but his written opinions exhibit rather the results than the processes of investigation. He was usually content to enunciate the governing principles of the case, without elaborate discussion, and to apply these principles to the facts presented for his adjudication. And this he did with perspicuity and cogency, such as usually commanded assent, but always respect. What is said of Mr. Webster might be well applied to him,—that his statement of a case was an argument. A marked characteristic of his legal judgments was a robust common sense, and such a simplicity of style and expression as to make them not difficult of comprehension by an unprofessional mind; also a freedom from all affectation of learning, although his opinions were pervaded by that maturity of view and conclusiveness of reasoning which only sound learning and mental discipline impart in a high degree. To speak here of his impartiality and inflexible justice would, to those who knew his unique, unapproachable purity, seem almost a reflection. Worn by him, the judicial ermine, the symbol of a spotless purity, seemed rather to receive than to impart lustre. It will be quite safe to add that no act of his long judicial administration encountered criticism save one. That was the discharge by him, in the year 1866, under a writ of *habeas corpus*, of certain prisoners held at Fort Delaware by the military authorities of the United States, under a conviction and sentence by a military commission, upon a charge of murder committed in the State of South Carolina. The murder was charged to have been committed upon soldiers of the United States army while in service; and on that

ground, although the prisoners charged with the murder were themselves not soldiers, but citizens (three of the State of South Carolina and one of Georgia), and although the civil authority had been re-established and the courts were open, they were held to be answerable to the military power. They were tried by a military commission in South Carolina, convicted, and sentenced to death. The sentence was commuted by the President of the United States to imprisonment for life at the Tortugas, and they were sent by his order to Fort Jefferson, in Florida. Thence, under another order from the War Department, the prisoners were removed, in August, 1866, to Fort Delaware. While there, in custody, relief for them was sought by a writ of *habeas corpus*, bringing them before Judge Hall. It was insisted for the prisoners that the proceedings of the military commission were in violation of their right as citizens, under the constitution of the United States, to a trial by a jury in the civil courts. The question was certainly a grave one, presenting nothing less than a conflict of jurisdiction between the civil and the military power of the country. It called him to the highest, most delicate, and most difficult of all the judicial functions,—that is, to sit as an arbiter, not between citizen and citizen, nor between citizens and the government, but between the government and the original sovereignty of the people embodied in the fundamental law of the constitution. For, it must be observed, the case in its main issue—an issue rising high in its interests and consequences above the desert or the fate of the prisoners—was a trial of the strength and value of the constitutional guarantees for personal liberty. In

the late struggle for the preservation of the Union against the great rebellion, it would have been a marvel of moderation in the government, unparalleled in history, perhaps impossible under the necessities of the crisis, not to have strained at some points its constitutional authority—not to have trenched somewhat upon the safeguards set up by the constitution for the rights and liberties of her citizens.

In such a crisis it is only the judicial power which can interpose on behalf of the citizen, and recall the erring department of the government to its constitutional orbit of power; and hence the integrity and firmness of the judiciary in upholding, in every emergency, the paramount authority of the fundamental law may be considered the crucial test of the security and value of our political institutions. Probably never in the history of constitutional government has the judicial function been subjected to a more severe trial than under the exigencies growing out of the late rebellion, one of the most marked instances of which was the case brought before Judge Hall. No citizen more highly than he estimated the value of the Union, nor more loyally sustained the government by all his influence in the struggle for its preservation, nor more heartily rejoiced in its final and complete success. Nor could he, with indifference, find himself placed officially in conflict with his government, nor be insensible to the gravity of the question. "I feel," he says, in announcing his opinion, "the peculiar burden of it." But he could neither fail to see nor shrink from declaring, that under the constitution, which was the supreme law of the land, the persons before him, being

citizens,—not belonging to the army or navy of the United States,—could not be held under sentence of a military commission, but were amenable for their crimes only to the civil tribunals. The dangerous assumption that for an alleged offence against soldiers they should be themselves the judges, while the civil courts were open for redress, was but a cobweb to his legal discrimination. "This assumption," he says, "is neither logical nor legal. In so small a body comparatively as the army, so associated, and united with so much in common, there must be an *esprit de corps*, that in cases of collisions with citizens will not allow us to expect impartial justice, while the broad ground of citizenship is liable to no such objection." He then proceeds, with his wonted perspicuity and force, though at the close of his eighty-sixth year, thus to set forth the origin, scope, and value of those safeguards so anxiously provided by the constitution for the protection of the citizen against illegal acts of power. "Our government," he declares, "is a government of law, both National and State. This is its distinctive character, the element of its freedom, constituting its excellence, and insuring its permanence. The fundamental principle, upon which rests the objection taken for the prisoners to the cause of detention set forth in the return in this case, has come down to us from remote times, marking as noble the men who asserted it, and exalting in historic estimation the generations in which it has been maintained. With the general principles of freedom it specially had occupied the minds of the extraordinary men contemporaneous with the original settlement of these States, and in subsequent times to and immediately

following our Revolution; it led to this Revolution, gave it its form and spirit, and inspired the institutions growing out of it. It was diligently studied, under instructive experience, and carefully framed and embodied in the organic laws of the States of the Union,—the conventions of the people, when adopting the constitution, exacting as a condition that the explicit assertion of this principle should be added to the original draft and established as fundamental law. We read it as thus established: 'No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger;' . . . 'nor be deprived of life, liberty, or property, without due process of law.' 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed.' Such language, so used and sanctioned, cannot be a dead letter; such enactments must have force. They are where we find them, placed there with great deliberation, because the lights of experience had manifested that the people needed them for protection and safety." The enunciation of these principles—perhaps the most important within the range of constitutional law—was among the last acts, perhaps the last important act, of his judicial life; and, rightly considered, was its crowning glory. To the honor, be it added, of the Executive Department, it acquiesced in the authority of the constitution judicially declared; and thus, so far at least as *its* action could go, it was shown that a great and powerful government, able to

subdue armed rebellion against its just authority, could submit itself to the fundamental law which had created it and defined its powers.

The business of the District Court during Judge Hall's term of service was of limited amount. The draft from this source upon his attention was light, leaving him much leisure. But let it be noted that from his entrance upon the office until he was quite disabled by age, his leisure from judicial duty was devoted mainly to the service of the State in other fields of labor. To some of these we must now advert. In 1824, shortly after his appointment as judge, he was requested by the Legislature to revise and digest the statutes of the State. It was an undertaking of great labor—one requiring much discrimination and legal judgment. The laws then extended through six large volumes, and were greatly confused in consequence of the fact that on all important subjects of legislation the original statutes had been, from time to time, amended, supplied, and varied. It became necessary to ascertain the existing law by collating all the statutory provisions relating to the particular subject, and then to embody the result in a bill or chapter, prepared for the purpose, in clear, legal phraseology, repealing all former acts *in pari materia.* The work was completed in 1829, reducing the six volumes to one octavo volume; and this so far served the object proposed, that during the twenty-three years which elapsed before another revision was made in 1852, it has been truly said that "not a difficulty in practice, nor a vexed question, nor a perplexity, was occasioned by the work. The Legislature, at its session in

1830, acknowledged the service by a vote of thanks to Judge Hall, "for the very able and faithful manner in which he had acquitted himself of that important trust."

To another and perhaps higher trust he was called in the year 1831, by his election as a delegate from New Castle County in the convention convened to frame a new constitution for the State. He received then a rare and impressive testimony of the universal confidence and high estimation of the people, in that for this, perhaps the highest of all political trusts, he was placed on the ticket of both parties and chosen without opposition. The leaders of that convention, with whom he was to be a co-worker, were such men as John M. Clayton, James Rogers, and George Read, Jr., representing, with himself, the best talent and experience of the State. In the distribution of the work of the convention there was assigned to a committee, of which he was the chairman, the duty of drafting the provisions relating to the Executive Department of the State. It would be superfluous to say how this duty was discharged. Material amendments of the old constitution touching this department, were reported by the committee; all which, of importance, were approved and adopted save one. That was a provision subjecting the executive appointment of the higher officers—judges, attorney-general, and register of wills—to the concurrence of the Senate, leaving unrestricted the appointment of all other officers. This check on the executive power was urged by Judge Hall as an important security, approved by all experience, against unadvised or mistaken appointments to offices involving very grave interests. After much discussion his views prevailed. The provision

was adopted, and stood as a part of the proposed constitution until the close of the session, when, on the final vote upon adopting the amendments as a whole, this clause was stricken out without discussion. Whether the convention wisely reversed its first conclusion, must be treated as at least an open question. It was, however, to the reconstruction of the judicial system that the labors of the convention were chiefly given; that being in fact the controlling purpose for which the convention had been called by the people. The old system, formed after the English model of having two law-courts of concurrent jurisdiction, in addition to a court of chancery, had been found to be cumbrous, expensive, and more than was requisite for the law business of the several counties, after the accumulated litigation consequent upon the Revolutionary period had been disposed of. The old system could not be modified; a total reconstruction was determined upon. A wide field was thus opened for suggestion and discussion, resulting in the proposal of several and very diverse systems. It should be noted as significant of the thorough and disinterested attachment of Judge Hall to the State, and of his abiding solicitude for the honor and prosperity of the bar, that although now permanently separated from the profession and excluded from any part in the judicial system of the State, whatever it might be, he devoted his best powers to a subject so deeply involving the welfare of his former profession as well as of the people. "I feel upon this subject," he says, in his usually earnest manner, when first addressing the convention in relation to it, "more anxiety, probably, than upon any other worldly matter." He, together with some other

professional delegates, supported what is known as the *one judge* system, vesting the whole judicial power of the State in three judges, one to reside in each county. His views were certainly maintained with ability and force; but the convention was not prepared for so great a transition as to accept three judges instead of nine, the former number. The present system of five judges was adopted; and, doubtless, it was a wise medium. Few reported discussions upon constitutional questions will be found more interesting or instructive than those then elicited by this subject.

This rapid survey of Judge Hall's official career by no means sums up the whole service rendered in his long and useful life to the State of his adoption and cherished affection. It is even doubtful whether his unofficial and purely voluntary services, though less conspicuous, were not more valuable and far-reaching in their influence. Other men, qualified and willing, might have been found to serve successfully in public stations—as Secretary of State, Legislator, Congressman, Conventional Delegate, and Judge; but who would have supplied his place as the founder—the ever watchful guardian of our system of free schools? the organizer and maturer of the present excellent system of public-school instruction in this city? A fruitful chapter in his life and labors is here opened; one which, though it presses hard against the limits assigned to this sketch, must have more than a passing notice. Truly may it be said that his life and the life of the school system—its growth and prosperity—have been so interwoven that neither can be appreciated without the other.

General primary education was a part of the fundamental

policy of our State, early adopted and steadily adhered to, even through great difficulties. The constitution of 1792, framed just after our people had emerged from the struggle for independence, expressly enjoined upon the Legislature "to provide for establishing schools." The Legislature of 1796 made its first essay in that direction by an act setting apart certain revenues of the State, to be invested as a fund for common-school instruction. By the year 1817, the school fund had accumulated to an amount sufficient to yield an available income; and then the Legislature began to consider how they might use it. The scheme first attempted was to apply it to the education of poor children, through the intervention of trustees appointed throughout the counties. Few, however, of our people were found willing to have their children schooled as paupers; and so this effort failed, as it should have done. No further attempt was made for some years toward framing a general school law. The subject was new and perplexing; in other States there had been as yet little experience in educational systems to guide us; our own efforts had been only tentative, resulting in discouraging failure; public opinion was, as yet, unformed, and full of conflicting views; the work was one of much necessary detail, offering points for endless diversities of honest opinion, not to speak of the cavils of ignorance and prejudice. Certainly, under such circumstances, the task of taking up the subject *de novo*, in a large and comprehensive spirit, and of working out in all its details a system which should be at once efficient for its purpose and in harmony with the genius of our people, was not an easy one then, however it may seem now. Evi-

dently, the one thing needful was a man of ability, experience, courage and patience,—that patience which springs from a generous, self-forgetful enthusiasm for the public welfare,—a man so qualified, and willing to make this his own exclusive work until it should be fully accomplished. The exigency was happily met. In 1822, Judge Hall became again the Secretary of State, appointed by Governor Collins. Among the measures of State policy which it was the constitutional duty of the Governor to present for the action of the Legislature, the school question was the one measure of most urgent interest. We know not, except as they may be inferred, the reflections which at that juncture were working in the mind of the Secretary of State,—whether his own early struggles for an education, and its well-proved value to him, had wrought an exceptionally exalted estimate of its importance to all; whether gratitude to his adopted State, which had so cherished and honored him, had begun already to develop that devotion to the welfare of its people which so distinguished his after-life; whether he was prompted by a sense of duty to the Governor as his constitutional adviser; or whether, as is more probable, he was impelled by all these considerations—certain it is that the Secretary then took up the interests of popular education in this State with a grasp which relaxed only after fifty years of labor, and under the infirmities of great age. It became, thenceforth, truly his life-work. He matured, and the Governor, by a message to the General Assembly, presented, and with great force of reasoning recommended, what in principle and outline became, and still remains, the school system of this State. The scheme pro-

posed the division of the counties into school districts, with legal authority in the qualified voters of each to establish and maintain free schools; each district to receive a fair distributive share of the income of the school fund, upon the condition of its raising, additionally, a sum adequate, with the dividend from the school fund, to maintain a school. The scheme, as explained and enforced by the Governor's message, so far harmonized conflicting opinions as to promise a practical solution of the long-vexed question, how to make the school fund available; and so, at a subsequent session of the Legislature, Judge Hall was requested to mature the plan in further detail, and to embody it in a statute. The result was the school law of 1829. Since that time the system has been, of course, revised, modified in details, adjusted in some points to the results of experience; and, as it is to be hoped, its efficiency has been much improved by the act of the last General Assembly, providing for a State superintendent and board of control, with power to supervise the methods of instruction, and to raise the standard of the qualification of teachers. But, in its essential principles and general framework, the system of 1829, devised by Judge Hall, remains, after a trial of now half a century, well approved by experience and by the public judgment.

The distinctive, fundamental principle of this system is that it is the people who educate their children, and not the State for them. To the people themselves, voting in the school districts, is intrusted the power and the responsibility of determining whether they will have a good school, or an inferior one, or no school; the State granting a substantial aid in the equal division of the school fund, but not

coercing the action of the people nor divesting them of their proper responsibilities. Whether this, or the contrary system of compulsory education under the direct and exclusive control of the government, is most in harmony with the genius of republican institutions; which of the two systems is best adapted to educate the people themselves by forming them to habits of reflection and judgment upon interests of highest concern, quickening their faculties, broadening their views, and disciplining them to patience and effort; and which of the two systems is most likely to form the generations educated under its influence into thoughtful, self-relying, liberty-loving citizens,—*citizens*, not *subjects*,—these are questions not now to be discussed. They are only referred to in order to suggest that they received from the framer of our present school law many years of thoughtful reflection, with an attentive observation of the practical working of the two systems in this and in other countries; the results of all which are given, with fulness and force, in his annual reports made through a series of years as superintendent of the schools in New Castle County.

It is very far from an adequate estimate of the service of Judge Hall to the cause of popular education in this State to regard him only as the founder or organizer of the school system. That was but the commencement of his labors. Not content only to frame and inaugurate the system, he watched its operations with ceaseless vigilance, encouraging effort, conciliating honest dissent, shaming selfish cavils and narrow prejudices, studying to the utmost detail the practical working of the system, seeking legislation to remedy

its defects and to improve its efficiency. He was the ever-ready adviser of school commissioners and teachers, even in the selection of school-books and the adoption of the best methods of instruction. His care of the schools was paternal. The father of a family does not with more solicitude and watchfulness provide for the education of his children. In New Castle County, where his personal influence was more direct and operative, he organized an annual school convention, in which delegates from the districts met and discussed the interests of the schools, and reports were made of their progress. These reports he examined in their minutest details, classified their results, and published them in pamphlet form with the proceedings of the convention, and with his own observations upon the then present condition and necessities of the schools. These pamphlets he took means to circulate in all the districts from year to year, as a means of diffusing information and quickening interest in the subject. The office of superintendent of the public schools for New Castle County, which during all these years he held under a commission of the Governor, was hardly more than an honorary appointment, being without emolument or any defined duties. It was not needful either to quicken his interest in the schools or to add to the weight of his personal influence on all questions touching their welfare.

Another field of labor in the cause of popular education, quite distinct from the one just contemplated, not less laborious but perhaps more speedily fruitful of results, was, in 1852, opened to him in Wilmington. Under the original school law of 1829 this city was divided into ten districts.

But it soon became apparent that to meet the needs of a city population the better policy was to *concentrate* means and effort rather than to divide and localize them as in the country districts. Accordingly, under the provisions of an act of the Legislature, passed in 1833, nine of the city school districts were consolidated into one, for which, by uniting the school dividends of all, one large school-house was built at the corner of French and Sixth Streets, with two rooms,—one for boys, the other for girls,—each containing one hundred and twenty-five seats. Certainly, a small beginning was this, falling far below the real needs of the city; yet its very inadequacy served to provoke discussion, to stimulate inquiry, to excite aspirations for better things; and so it prepared the way for the organization of the present Board of Education in 1852. The principle earnestly maintained by Judge Hall in the discussions of that period was, that an elementary education at the public expense should be extended to all who might desire it. He enforced it both as a duty to the young and on grounds of high political expediency. His argument was, that "of all productive power, that of mind is most fertile, not only as manifested in improvements and enterprises, but in contributing to the general comfort and prosperity, in innumerable and frequently imperceptible ways. But for bringing this power into exercise there must be mental culture, the loss from the want of which is incalculable, as well to the community as to the individual." These wise and liberal views prevailed, though against no small discussion and differences of opinion; and with the approval of the people, in town-meeting, the act of 1852 was framed. It

provided for a board of twelve citizens, to be elected by the people, who were expressly charged by the act to enlarge the school accommodations until they should include all children for whom their benefit was desired, and were empowered to raise by taxation, through the City Council, the sums required for the purpose; with power also to the City Council to borrow the money requisite immediately for the building and furnishing of new school-houses. Very grave and responsible powers were these for the raising and disbursement of large sums of money; but it is grateful in these days to note that during the twenty-five years of its exercise the fidelity of the Board to its high trust, or of any member of it, has never been impeached; and that its determinations, although sometimes drawn into question, have in the general results received the public approval.

The policy of the Board was to provide commodious and attractive school buildings, located in convenient parts of the city, and to employ teachers of superior ability. It proceeded cautiously but persistently, as necessity required, and as its means warranted, both to increase the extent of school accommodations and to provide some schools of higher grade. The hindrances and oppositions it encountered at some stages, its gradual progress, and final complete success, there is not time now to trace, interesting though this would be. Suffice it to say, that starting in 1852 with one school building, containing two rooms, two teachers, and sittings for two hundred and fifty scholars, there are now, according to the report of 1874–75, seventeen buildings, containing ninety-eight rooms, ninety-eight teachers, and over six thousand enrolled scholars. The

public-school property has now an estimated value of $173,395.20. The system embraces the several grades of primary-, grammar-, and high-schools, all in vigorous and successful operation. Connected with the system, as valuable auxiliaries, are the teachers' institute and the normal school, adapted to the improvement of teachers, both in scholarship and in the methods of instruction. The night-school, for the benefit of those who are by day-labor debarred from the advantages of the public schools, which was originally a voluntary organization of a few benevolent citizens, has been brought within the operations of this Board. A more steadily progressive, solid, and enduring success has seldom, if ever, attended any educational enterprise. It is a grateful reflection that he whose labors entered so largely into the foundation of our system of public-school instruction was spared to see the noble superstructure that has been raised upon it, though himself withdrawn from the work for some years by the infirmities of age. On the evening of the 28th of March, 1870, he met for the last time the Board of Education, over which he had presided since its organization, in 1852. He then announced in few words the necessity, through age, of his retirement; received from the Board, by a unanimous, rising vote, its testimony, given "in the name of the people of the city of Wilmington," to "his untiring, faithful, and efficient service in the cause of education in the State of Delaware and in the city of Wilmington;" and thus, with the simplicity and unostentation so characteristic of his whole life, he closed the long record of his forty-eight years of service to the educational interests of this State, commencing, as we have seen, while he

was Secretary of State, in 1822. Doubtless, none will be so able to appreciate and ready to acknowledge the inestimable value of his services as the men who, succeeding him in these labors, have thus far built so well upon his foundation.

It is an infirmity of our nature that the mind, while intent upon accomplishing some leading scheme of usefulness,—one exacting much thought and labor,—is liable to lose its grasp upon other objects perhaps hardly less important. The philanthropy of most men spends itself upon some special schemes of benevolent action, in which, from early education or the associations of after-life, they may happen to become interested. A few there are—and of these Judge Hall was one—in whom a Christlike love of humanity becomes an exhaustless spring of philanthropic effort, which will find its outflow through whatever channels of good-will and usefulness are opened to it. Hence, the same yearning for the intellectual and moral improvement of society which sustained such protracted and toilsome efforts for the schools as one means to this great end, inspired no less an interest in the effort to supply at all times the Bible to destitute families,—a cause quite kindred, in its ultimate aims and results, to that of common-school education. To the Delaware State Bible Society Judge Hall gave forty-eight years,—we do not say of membership, but of service,—being thirty years its president. During all these years he carried its interests in his mind and on his heart; met once a year, in one part of the State and in another, a few kindred spirits; set before them in an annual report the operations of the society, the claims upon it, and its re-

sources; suggested methods of work; held high the standard of duty, and encouraged to renewed effort. In all those thirty years the society never met without him save once, when he was detained at home by sickness; and then, so missed by his associates was the accustomed presence and guidance, that their sense of his absence was expressed upon the record of the meeting.

A noiseless, unpretentious, unobtrusive agency,—to the mass of our people unknown, and by many who know it unappreciated,—the Delaware State Bible Society has now for a period of sixty-three years offered itself as a channel for Christian benevolence in the circulation of the sacred Scriptures; proposing, as its chief purpose, the supply, from time to time, of all the destitute within the State, through agents charged to search them out, and not only to leave the Bible with them, but to endeavor to enlist their interest in its saving truths. Further, it has offered itself as an auxiliary to the American Bible Society in its wider field of disseminating the pure Word of life throughout all countries. But beyond all this,—a result hardly less important, though incidental and secondary to its main objects,—the society presents before the world the only organic, visible unity of the whole Christian body,—that unity which was the one blessing invoked, as the sum and spring of all blessings, by the Redeemer of mankind in his last prayer on behalf of his people, of all the ages: "that they all may be one; as thou Father art in me, and I in thee, that they also may be one in us." We need not further allude to the history of this society or endeavor to trace the fruits of its efforts. It is enough to express the conviction, profoundly felt by its

members, that whatever measure of efficiency and usefulness it had attained was largely due to the labors, counsels, and example of its late president; and that to a body few in numbers, with an arduous work, slender means, and many discouragements, such a loss is quite irreparable.

It is natural to suppose that labors for the general intellectual and moral improvement, such as have been reviewed, were more congenial to Judge Hall's tastes and better suited to his endowments; yet he does not appear to have withheld himself from any scheme of benevolent effort, directed to the material welfare of society, in which he could usefully co-operate. A marked example, sufficiently illustrative of the breadth of his philanthropy, was his long and active connection with the Wilmington Savings-Fund Society, as its president, from its organization in 1832 until he was disabled from this service by great age; a noble charity, faithfully and usefully conducted, without profit to those engaged in it, for the sole benefit of persons of small savings; a service rendered to this community for now over forty years, the fruits and value of which it is quite impossible to estimate.

The Delaware Historical Society was probably the very latest social institution with which Judge Hall connected himself, being then in his eighty-fourth year, far beyond the limit at which ordinary men are held discharged from public service. But, at the organization of this society, he (together with Mr. Rogers, of New Castle) alone survived to connect the present generation with the public men of our early State history; and more for the eminent fitness of his association with the objects of the society than to add, at his advanced age, to the list of his life-long labors for the

public, his connection with the society as its president was earnestly desired. Who so fit to preside over the interests of an association having it in charge to collect, preserve, and perpetuate the honorable memories of our State history than one who, though not native born, had given to the State a far longer and more varied service than any, even of the sons of the soil; had equally with any shared its honors and confidence, and given to it his affection? He readily acquiesced in the desire of the society; and for his remaining years gave to it the prestige of his revered name, the help of his influence, and, until disabled by failing health, the encouragement of his presence.

Although from childhood Judge Hall was of strong moral and religious sentiments, it was late in the course of an ordinary lifetime that he connected himself with the Christian Church. Yet to him was given the rare blessing of being spared to fill up a larger measure of labor and usefulness in the church than is often accomplished, even by those who enter its service in early life. He became a member of the Hanover Street Presbyterian Church, March 8, 1827. Soon after, September 23, 1829, he was elected a ruling elder, the office most influential and responsible after that of the pastor. This office he held until his death. He was once, if not oftener, a delegate to the General Assembly of the Presbyterian Church. In all those exigencies which arise, more or less, in the history of every church, through the long period of his active membership, over forty years, his counsel was invariably sought, and usually it prevailed, but always was respected. With him membership in the Christian Church implied nothing short of an entire self-

consecration to the service and disposal of its Head. Therefore, in all its privileges, observances, duties, and methods of usefulness, he engaged with a hearty and unwearying zeal. Always, and with scrupulous punctuality, he was present in the Sabbath assemblies for public worship, the week-day meetings for religious exercise, the sessions of the elders and the Sabbath-school. In the latter he taught a succession of Bible classes through the long period of over forty years. That his instructions and example deeply moulded the religious character of many of the young men thus brought into weekly contact with him, and gave a happy direction to their future career, not a few, now filling honored and useful positions in the church and in society, will gratefully acknowledge. There was no post of labor or of sacrifice in the church where his aid and sympathy were not felt; there was no channel of its benefactions into which his benevolence did not find an outflow; not one of its interests but was animated, strengthened, and made more prosperous and fruitful by his influence. Even now that his labors have ceased and his venerable presence been withdrawn, the memory of him, the impressions left by his counsels and example, his name, with its almost hallowed associations, still linger in the church,—an influence potent for good to this generation at least. But let it be here noted that any bare statement of his labors and activities in the church, abundant as they were, can afford only a partial view and an inadequate estimate of his Christian character. For these were but the outward and visible fruits of an inward and unseen life; the life of faith and hope, of love and patience, of conflict and self-discipline, of prayer and study

of divine truth; a life filled, in his case, with rich and profound experiences, which would be interesting and instructive, but are hardly within the proper scope of the present sketch.

We pass on to observe that the eminent usefulness of Judge Hall's life, although more conspicuous in his co-operation with organized schemes for social improvement, was not at all exhausted by them. On the contrary, he was ever ready to aid by his presence and counsels other movements for the welfare of society such as were outside of his own proper sphere of activity. There is in the history of many, perhaps of most measures for social improvement, a period of early struggle, in which the seasonable countenance and support of those who are venerated for age, experience, and tried wisdom may influence, perhaps decide, the doubtful question of success. In all such exigencies he was the quick resort and the ever-ready helper. Was a school for apprentices about to be organized, and in need of encouragement? He brings the best fruits of his culture into a lecture designed to impress apprentice-boys with the value and efficiency of self-help; to attract them by many bright examples of self-made great men. Was a commanding influence needed to revive an expiring public interest in the Delaware Academy of Natural Sciences? It is promptly rendered in a lecture exhibiting, with all his wonted force and learning, the incalculable practical benefits of science to the interests of daily life. Is he desired by the literary societies of Delaware College to honor and instruct them by an address at one of their anniversaries? Advancing age and many engagements, so generally felt

to be an exemption from such service, were no barriers against that ceaseless flow of sympathy for young men in the pursuit of an education, which probably had its spring in the recollection of his own early efforts for that blessing. Such are but samples of the promptness and generosity with which, through a long life, he always responded to these just claims of society upon men of culture. In another direction, also, his exhaustless philanthropy found its exercise. He was always a close observer of the current of public events, and was especially sensitive to the prevalence of opinions or of practices prejudicial to the moral welfare of society. Against these were directed from time to time some of the best productions of his pen. Such was his pamphlet upon the demoralizing effects of lotteries, issued in 1846, before public opinion had become determined against this evil. Such, also, was his "Plea for the Sabbath, addressed to the Legal Profession," which, read in connection with his address on the same subject before a convention in Baltimore, held in 1844, presents an exposition of the design, obligations, proper observance, and beneficent fruits of that day, to individuals and communities, of singular force and instructiveness. To none of the great moral and social movements of his day was he indifferent. Each engaged his deliberate attention. He considered them in their origin, aims, tendencies, and probable results; formed his own conclusions, and upon these alone he acted. If from any of these movements he withheld his support, or if he fell behind in the change of direction or purpose which social movements sometimes take, it was never from indifference, but always

from conviction. To the temperance cause, as a measure of social reform, appealing to the moral sense of men, he gave from the first an ardent support, which he never withdrew. The subject of American slavery engaged his earnest reflections before it had agitated the country at large. He supported from conviction the scheme of African colonization. He was for many years president of the Colonization Society in this State. The march of events has evolved, and the nation has accepted, a contrary solution of this long-vexed question; but a result so unforeseen, and before it was accomplished so impracticable to human view, detracts nothing from the honor due to the philanthropy, patriotism, or judgment of those, including many of the best and wisest men in the nation, who were ready to accept what seemed at the time the best hope for the colored man.

In the wide and comprehensive range of his philanthropy, taking in, as we have seen, so many of the multiform interests of society at large, he missed no opportunity to do good in private and personal relations. Young men, especially, brought within the sphere of his influence, found in him an ever-ready and most judicious counsellor—one never obtrusive or officious, but always accessible and interested. Such offices of good-will are, from necessity, private; and the full extent of his usefulness in this direction can never be known. But since this sketch was undertaken a few instances have come to light. To a gentleman who, in youth, had been his Sunday-school pupil, and whom, in after-life, he saw pressed by the burdens and exposed to the perils of heavy business enterprises, there came, quite unexpected, written

by his hand, a body of counsels worthy to be written in gold, adapted to the exigencies of the career which had been the object of his friendly watchfulness. Another, the son of a friend, who had left home young to set out upon a business life, was followed by a letter of general advice, written in his old age, at great length, and with much care. Such examples cannot be isolated; for they show the strong drift of a beneficent spirit, which, in a world of weakness and error, must find not a few calls for its exercise.

Thus much for what may be called the outer life of the subject of this sketch. We will not needlessly invade the sanctities of his private life, rich as it was in much that would interest and instruct. Let it be enough to know that a character so beneficent in its relations to the public could only be of happy influence in social and domestic life; that his household was the home of the domestic virtues; the seat of intelligence, refinement, and purity; a centre of genial, social intercourse; an exhaustless spring of a hearty, generous hospitality. It was a happy feature of his private life that it affords little of striking incident for a memoir. Its current through all the years of his long career, after he emerged from his early struggles, was singularly even and tranquil, broken by few, if any, vicissitudes except the sundering of family ties, which, soon or late, must come to all. Early after his admission to the bar in Kent he was married to Miss Junia Killen, daughter of the late Chancellor Killen,—a lady, as tradition portrays her, of beauty and accomplishments. She died in the year 1824, leaving to survive her a daughter and only child, the late Mrs. Lucinda H. Porter, who was a striking representative of the mother;

and who, it may be the more on that account, became through life an object of affection and trust on the part of the father almost more than parental. The two families were as parts of one. His daily morning visit to her house was among the most unvaried habits of his life. Her children successively received their rudimentary education in his study. The first breach in this happy and long-unbroken circle, by the decease of Mrs. Porter in 1869, was a shock from which, received as it was in his old age, those nearest him saw that he never fully recovered, although he suffered in silence. In 1826 he was married to his second wife, the companion of his later years, who still survives him,—of whose excellencies it would be superfluous to speak in this community.

It has been a much easier task thus far to collect some incidents of Judge Hall's life, and to sketch an outline of his services to society, than it will be now to present any just and accurate view of the man. There can be no life-like portrayal in words of an individuality so marked and original. Let it suffice, then, to recall some of his leading characteristics, leaving it to the memory of those who knew him to supply much that must be found lacking.

In person he was rather below the average stature, slightly built, with naturally a quick, active movement, indicative of purpose,—of some great purpose in life,—which, if not always before his mind, was ever present as an inspiration. His countenance was strongly expressive both of intelligence and benignity. His whole aspect has been, for a generation or more, exceptionally venerable, such that one could not pass him without a conscious sentiment

of reverence. In demeanor, he was at once grave and cheerful, equally removed from austerity and levity,—a happy balance, not frequent nor easy to be maintained, springing in him from the mingled influence of his large comprehension of life in its serious aspects, on the one hand, and of his abiding trust in an overruling Divine providence on the other. His bearing to other persons was invariably courteous,—his courtesy not so much resting in conventional forms of politeness as springing from refined sentiment and a spontaneous outflow of good-will. In conversation he was, for his age and the deference so justly paid to him, singularly unassuming,—seldom leading it, never engrossing it; as ready to receive as to impart information; to hear as to suggest opinions; following always the flow of conversation in channels easy and congenial to others, and even to old age infusing into it a charming freshness and vivacity. His conversational resources when drawn out were rich and very instructive; for on subjects of general interest, not technical, his knowledge was both varied and thorough. His habits of life were systematic and exact. His system, however, was not a servitude to precise rules and methods, but rather the outworking of an orderly mind; the easy application to the detail of life of fixed principles of right doing. In one thing he was pre-eminent,—that is, his rigorous punctuality to engagements, springing from his acute sense of justice to others. He would rob no man,—no more so of his time than of his money. He was never behind the hour appointed for an engagement, nor did he linger after the business was accomplished. It may be doubted whether he was ever

absent from a sitting of the court, a church meeting, or any appointment for business except under a controlling necessity. His leading intellectual characteristics were a quick and clear perception, which left nothing obscure to his mental vision, coupled with a sound and cautious judgment; and from these resulted his strength of conviction and mental independence. These intellectual qualities, connected with others supplied by his moral nature, such as his patience, self-control, and his enthusiasm in the pursuit of a great object, made him the master of any subject to which he gave his powers. He was through life a student, inclined to subjects of study rather practical than speculative,—chiefly such as bore more or less upon the important interests to the service of which he had consecrated his life. Yet the attractions of closet study did not abstract his mind from current events and interests, with respect to which, and the changes and progress of opinion on great social, political, and religious questions, he kept himself in information well abreast with his times. It was a happy fruit of these habits of study, reflection, and contact with the interests of society, that his mind, like an ever-flowing stream, never stagnating, continually drawing in new elements of thought, preserved even to old age the freshness and vigor of its faculties.

The crowning excellence of Judge Hall's character—that which gave it at once its strength and beauty—was the absolute supremacy of the moral sentiments. Their influence pervaded his entire manhood, exalting his aspirations, purifying his motives, invigorating his will, regulating, harmonizing, and directing to their proper ends all his powers.

It is quite impossible here to delineate in full his moral traits. Let it suffice to recall only two or three of those, the most characteristic and influential upon his life. One of these was *his invincible abhorrence of moral evil*,—an abhorrence not based upon any calculations of its baneful influence upon human happiness, nor alone upon the prohibitions of the Divine law, but springing from the irreconcilable antagonism of a pure nature. It is not enough to say of him that a proposal swerving from the strictest rectitude could not, under any guise, have been entertained; rather we should say it could not have been made; in such a presence it could have found no standing-ground. Another trait, which none who knew him can ever forget, was *an inexorable sense of duty*, which allowed no concession to indolence or self-indulgence, no discrimination between one class of duties and another; which knew no grades in obligation. It did not spend itself in occasional acts of conspicuous heroism in duty, with which even common natures may be inspired; but it was evinced equally in an unwearied attention to the dry routine exactions of daily life; it quickened his diligence as well in attendance upon a church committee or savings-fund board as at a term of court.

A type of character so strongly ethical, so sternly self-regulating, may, to superficial view, seem lacking in tender sentiment. *Not so.* Great and strong natures have their root in acute sensibilities. A life of such noble aims, so filled with benevolent labors and generous self-sacrifices, could have drawn its inspiration and sustaining power from no other source than a delicate sensibility to all claims springing out of his relations to others and the

conditions of life around him,—the claims of affection and friendship; of sympathy with sorrow, weakness, and necessity; of charity and good-will to all men. To all such just claims upon his sensibilities he had a heart keenly susceptible, and, as need be, a hand always responsive; although of his feelings and beneficences he was not demonstrative to public observation. But we must hasten to note only one more trait in this remarkable character, *i.e.*, *his self-abnegation.* This gave cast and coloring to his whole life. Its influence was traceable throughout in the simplicity of his habits; in his abstinence from all that could minister to mere self-indulgence; in the almost too great lack of self-assertion in his intercourse with men; in his freedom from any, even the least self-consciousness in duties which brought him conspicuously before the public—in performing all which he ever lost himself in the cause or interest which he had in charge. But in nothing was this trait of his character so strongly exemplified as in his inclination to those fields of philanthropic effort which were as yet uncultivated, bearing little or no fruit, unattractive, and discouraging, where, as a pioneer in the march of improvement, he could only hope, by long and patient toil, to clear away the obstacles of old prejudices, break up the soil of public opinion, sow the seed of wise counsels, and leave it to others to gather the full harvest of his labors. With all his great resources for public usefulness and influence, he never sought what is allowed to be the object of a noble ambition, *i.e.*, to link his name and memory with the final and complete success of some grand, conspicuous measure or institution for the social welfare. It is

true that the school-system of this State has come to be regarded as a monument of his labors and philanthropy. But it was not for this result he toiled so long and earnestly. In the retrospect of his long career, the solace of his declining years was not his wealth, reputation, success in the common objects of life,—not alone the affection of those he had loved, nor the veneration of all who knew him; but it was what he expressed in the letter to Mr. Sibley, of August, 1873, before referred to, "I trust that I have done something for the good of others." Out of the exact adjustment and balance of his moral and intellectual elements there sprang a calmness of judgment, a mental independence and self-poise, which held him unaffected by those agitations which now and then disturb the even course of society,—beclouding the judgment of men, and sometimes exciting their passions,—not unfrequently wrecking fortunes and character, and generally leaving few persons wholly unharmed. No public excitement could unsettle his self-control or sway the even tenor of a life so implicitly submitted to the joint direction of a sound judgment and tender conscience. The same right balance of his intellectual and moral constitution inspired also a calm serenity and cheerfulness under such vicissitudes in life as he was called to meet, which, however he might suffer under them, left unbroken his peace and unimpaired at all times his powers for usefulness. Yet, doubtless, he was not without infirmities. For human virtue is a treasure held "in earthen vessels," and often under the ever-active energy of strong virtues is felt the weakness of the vessel. And again, with our limited capacities, the earnestness which intensifies

effort in some lines of duty tends to relax the attention due to obligations equally important. But, though fully recognizing the truth that infirmity is inseparable from human nature, an acquaintance with Judge Hall for more than forty years—somewhat intimate for twenty-five years—has not enabled the writer to trace wherein such infirmity casts its shadow upon the portraiture of character which, in the writing of this sketch, has been so often present to his contemplation.

A character such as we have now contemplated, if not brilliant, is far better,—it is *beneficent.* If it does not dazzle, it does more,—it *enlightens*, *invigorates*, and *purifies*, in all its influences. If it lacks those strongly-salient traits which catch the eye and command for the moment a livelier popular interest and notoriety, this is because of its exquisite symmetry, of that full and harmonious development and even balance of all its powers and sentiments, which impart to character pre-eminent beauty, strength, and value. It is this precise type of character, as illustrated in the career of one who was, perhaps, in all history, its most eminent example, which the poet so fitly exalts to its just grade when he says,—

> "Minds strong by fits, irregularly great,
> That flash and darken, like revolving lights,
> Catch more the vulgar eye, unschooled to wait
> On the long curve of patient days and nights
> Rounding a whole life to the circle fair
> Of orb'd completeness; and this balanced soul,
> So simple in its grandeur, coldly bare
> Of draperies theatric, standing there
> In perfect symmetry of self-control,

Seems not so great at first, but greater grows
Still as we look, and by experience learn
How grand this quiet is, how nobly stern
The discipline that wrought, through life's long throes,
This energetic passion of repose."

We must not forget, though but for a moment, to contemplate the old age of Judge Hall. It had this one rare and beautiful feature, that to the last he kept himself in sympathy with the age with which he was moving, and generously and justly appreciated the steady advance of society. It was not his habit, either to dwell in memories of the past, or in visions of the future life so near him; but what remained of his powers he gave earnestly to the proper interests of the present. It was a sentiment profoundly felt by him, and sometimes expressed, that he had nothing to do with death until it should come; that his present concern was how to live. Thus, he seemed to grow old in little else than in the decay of that which alone is perishable,—the body. The natural force and freshness of his mind, the warmth of his affections to those whom he had loved, and his interest in the objects for which, in the vigor of life, he had labored,—all these remained to the last little, if at all, impaired, except in the loss of service of his physical organs.

On his ninetieth birthday, December 24, 1870, a friend called to offer him the usual congratulations. It was a cold, inclement day. He was found standing in his study, with overcoat and hat, ready to brave exposure in order to respond to a request of a few ladies for his counsel in some scheme of benevolence. He had already let go his long

hold upon those associations, the labors of which drew too largely upon his now failing strength; and it was a remaining much cherished solace to render an occasional service in any useful enterprise. But even this satisfaction he was soon compelled to forego.

In the winter of his ninetieth year, the rapid decay of his physical powers, connected with a disordered and sometimes distressing condition of health, withdrew him from all activity; and it was only left him, that having so long and faithfully discharged the active duties of life, he should now for the few remaining years exemplify, as indeed well he did, its passive virtues. With varying conditions of health, but steady decline of strength, he lingered through several years, awaiting, with patient submission to the Divine will, his expected change,—the end of his toils and suffering, the fruition of his hopes, the great reward of his faith and devotion. The change came to him on the evening of the 10th of May, 1875, as gently as sleep comes to an infant.

Gentlemen of the Historical Society,—Our tribute to the memory of our late president, such as we can make it, is now paid. But shall we not linger, if but for a moment, and for our own profit draw briefly the great lesson which such a career teaches,—that is, the value of a single life in which all the powers of the man are husbanded, trained, and exerted to the supreme end of usefulness? True, the results of such a life are not susceptible of measurement or calculation. For he wrought not in marble nor on canvas; not on material things, bringing out from them the noble creations of art or genius, such as the St. Peter's of

Michael Angelo, the Transfiguration of Raphael, or the Tubular Bridge of Stephenson. These are works which remain as witnesses to the eye of the beholder of the power of the master minds which created them. But *he* wrought upon society, upon minds and hearts; and of such labors the results are subtle, dispersed, not easily traceable, not at all to be measured or computed. Such labors are the bread cast upon the waters, lost to human view, though having the promise that it shall be found after many days. Still, though the blessings to humanity resulting from such a life cannot be followed and summed up, but little reflection is needed to impress us with their certainty, their richness, and their value. Consider a single striking fact in the career which has been before us. In the course of that long life of public activity,—not less than seventy years, the whole allotted term of human existence,—of all those great channels through which healthful and purifying influences are diffused throughout society there were none to which he did not efficiently contribute. The bar, of which he was long a member and leader; the administration of public justice, in which he bore a part for near half a century; our State legislation, which he largely moulded in revising and digesting our statute-laws, not to speak of the weight of his opinions, at all times when known, upon general measures of legislation; our fundamental State institutions, in the framing of which he shared in the convention of 1831; our system of popular education, his exclusive and perhaps his greatest work; the systematic supply of the Bible to every destitute family, in which he co-operated for nearly fifty years; the Christian Church, in which, for a like period, he was an effi-

cient laborer; to whatever any or all of these great agencies have, during half a century, accomplished for the life, order, purity, and progress of society, he was a large contributor. But then, again, apart from these special services to the people among whom his lot was cast,—nay, rising above them all, was the ceaseless though silent influence of character, working through all the channels of his intercourse, acting upon society at every point of contact with him,—the influence of that unconscious exhibition before men of a full and complete manhood—so rare, so difficult—in which a sound and healthful physical organization renders its due obedience to the intellectual life; and that again holds itself in subordination to the moral sentiments, under the supremacy of which last all the powers and affections of the man are held in their full and harmonious exercise, and are directed efficiently to their proper ends. By the attractive force of such examples of a higher manhood, set before one generation and another,—perhaps more than by any other direct influence,—the race is being drawn nearer to that one only perfect humanity, in its final and full conformity to which will yet be verified the deep significance of that wonderful declaration, "And I, if I be lifted up from the earth, will draw all men unto me."

It is that feature of Judge Hall's life, now before us, which explains the peculiar sentiment towards him by which, in the estimation of his contemporaries and the memory of his survivors, he has been somewhat set apart from other good and great men prominent in the history of our State. Other great names are honored; his is revered. Other names are mentioned with admiration for those who

bore them; but the remembrance of him not so much gratifies a just pride in his career as it stirs our aspirations after a better life for ourselves. What is this but our instinctive recognition in him of a higher ideal of manhood,—of life, its true aims and end? and who can estimate the value of a life which, had it done no more, presented to its contemporaries so exalted an ideal, and commanded for it an homage so universal and profound?

Yet one thought more. If the results of labor in the more direct intellectual and moral culture of society are not, like the great works of art or genius, visible and susceptible of measurement and valuation, they are at least more enduring, since they are reproductive,—and that without end. The temple, the statue, the painting, great structures for public utility, are not self-propagating; and at some time they themselves must perish, leaving nothing but their memory behind. But the work done in instructing and elevating the minds and hearts of men reproduces the like fruit upon other minds and hearts; and this process continues, with ever-enlarging circles of influence, from one generation to another, throughout the whole upward progress of humanity,—an influence which, though not to human view traceable in its courses, nevertheless goes on, forever unspent.

PAPERS OF THE HISTORICAL SOCIETY OF DELAWARE.

II.

ADDRESS

ON THE

HISTORY OF THE BOUNDARIES

OF THE

STATE OF DELAWARE.

BY

HON. JOHN W. HOUSTON.

THE HISTORICAL SOCIETY OF DELAWARE.

WILMINGTON:

1879.

The following paper was read by Judge Houston, on the invitation of the Historical Society of Delaware, on Thursday, February 21, 1878.

ADDRESS ON THE HISTORY

OF THE

BOUNDARIES OF THE STATE OF DELAWARE.

GENTLEMEN OF THE HISTORICAL SOCIETY:

I have selected for the subject of my address on this occasion the history of the early and primitive questions in relation to the coterminous boundaries of this State and the States of Maryland and New Jersey, respectively. For, notwithstanding they have long since been practically and definitively settled, as we think, and Delaware, the oldest State in the Union (I say so, because she was the first to enter it), has now been in the undisturbed possession of all her present domain for more than a hundred years on the one side, and for nearly two hundred years on the other, yet, I am extremely sorry to say that, small as it is, the whole world, it seems, is still not fully satisfied that we are justly and rightfully entitled to quite all of it. Now, I must admit that it is not very pleasant, if it is not positively painful, to be obliged to make, at this late day, such a public confession; but for the melancholy proof of the

statement which I have just made I have but to refer you on the one hand, to the fact that the great State of New Jersey has actually sued us, within a year past, for a little piece of land entirely covered with water, and not much larger than the Pea Patch, before the highest tribunal in the country, where it is now pending; and on the other hand, to the interesting and elaborate address of an eminent citizen of the State of Maryland, delivered before this Society a few years since only, upon the original validity of the Lord Baltimore's title to the whole of it, under the royal grant contained and described in his letters patent for the Province of Maryland. I must, however, do New Jersey the justice to say that she is this time seeking, it seems, to recover water with its incidental rights of fishery, rather than land, or mud merely, as in the Pea Patch case. Now, before a tribunal of conscience and equity jurisdiction, my first defence to her present claim would be, that she already owns and is surrounded by more water than any other State in the Union, and has no further need of any more of that unstable element, until a second flood comes. And the same remark may be made with regard to fish also. And on that subject I would add, that it is unfortunately but too well known to all her neighbors that her remarkable and innate affinity for fish is already too strong and selfish, particularly as to shell-fish, and always has been; and that it ought not to be encouraged in this liberal and enlightened age of the world, and in a country like ours. Her claim is therefore clearly unconscionable, I think, on both of these grounds.

Although the questions presented are separate and dis-

tinct from each other, one historical review will include both from the time the one in relation to the boundary between this State and New Jersey arises, which was some fifty years subsequent to the origin of the other in relation to the boundary between this State and Maryland; but in the consideration of the latter we must necessarily commence the review with the date of the first settlement by a Christian people within the limits of our State, and with the date of the letters patent to Lord Baltimore for his Province of Maryland, together with the petition on which they were issued, and the terms of it, describing the lands applied for in it, and which were granted to him pursuant to the description. For upon these facts alone that question originally depended.

Prior to that period, and even to the discovery of our bay and river, or of any part of our coast from the capes of the Chesapeake to Cape Cod, the English had discovered and claimed all the coast of New England north of the latter cape, and had also discovered and claimed all the coast from the capes of the Chesapeake to the coast of Florida; and although the intervening portion of it had not yet been actually discovered by any English or other European navigator, the Crown of England had already made grants to its subjects of the whole country, extending from North Carolina to the northern limit of New England, with a view to the speedy colonization and settlement of it; and under one of those early grants to the London Company, by name, the colony of Jamestown, Virginia, had been planted on the southern shores of the Chesapeake Bay as early as the year 1607, and three thousand miles of its

shores, and of the rivers flowing into it, had been explored as early as the year following. In the year following that, or in 1609, the fearless and intrepid navigator, Captain Henry Hudson, an Englishman, but then sailing under the flag of the United Netherlands, and in command of a ship belonging to the Dutch East India Company, in seeking the capes of the Chesapeake with the view of touching at Jamestown for provisions, missed them, and bearing northward along the coast, in full view of the land and the long line of lofty forests in full leaf which then overshadowed the solitude of the unknown shore, on the 28th day of August in that year discovered for the first time in the annals of history the capes of the Delaware, which he entered about noon, and, after spending the rest of the day and night on the bosom of our bay, sailed early the next morning, and, still standing northward along the coast, in six days afterwards discovered and entered the Bay of New York. He lingered there for several weeks, and long enough to explore the surrounding shores and the Hudson River as high as the site of the city of Albany.

The report of his discoveries, which reached Holland before the close of the year, produced such an impression in Amsterdam and other cities, that steps were promptly taken by individuals on their own account as private ventures, to open a direct trade with the natives of these newly-discovered regions, and commencing as early as 1610, they had established in five or six years two very considerable trading-posts and settlements, the principal one on Manhattan Island, and the other on an island in the Hudson not far below the site of Albany; and as small forts of rude

and primitive construction were speedily erected for the defence of the posts and the stores and goods kept in them, the former was named Fort Amsterdam and the latter Fort Orange. In the mean while, the Delaware Bay and River had been explored as high as the mouth of the Schuylkill, and the Connecticut River had been added to the Dutch discoveries soon afterwards, and the Hudson and the Delaware had already been baptized in their conception and their language as twin rivers, by the name of the North and the South River, respectively. As early as 1620 the English had planted another colony at Plymouth, in Massachusetts, and from the date of the first occupation by the Dutch of the intervening country between that and Jamestown, in Virginia, they had persistently denied their title to it, or any part of it. In 1611, Lord Delaware, governor and captain-general of the Jamestown colony, before any intelligence of Hudson's discoveries had reached the colony, sailed thence in the month of March in that year for the West India Islands on account of his health, which was much impaired, and, encountering heavy head winds soon after leaving the capes of the Chesapeake, was driven northward, when the capes of a new and entirely unknown bay to any one on board the ship were discovered, and which they entered, and where they remained for a day or two, anchored under the lee of the southern cape awaiting a change in the wind, and which in honor of his lordship was then named Delaware Bay, and which it has retained ever since among the English. It is a little remarkable that, being so near the capes of the Chesapeake, and particularly with the activity and enterprise which had been so early

exhibited in the exploration of the shores of that bay, the discovery of ours should have been so purely accidental in both instances, and even more so in the second than in the first.

I do not deem it necessary for my purpose to notice the Dutch settlement or colony planted by Captain Cornelius Mey at Nassau on the Delaware River, near Gloucester Point, in 1623, because it was on the eastern side of the river and not within our limits, and could never have had any material bearing on the question involved between the Province of Maryland and the three lower counties on the Delaware which now constitute our State. Besides, I have reasons for believing that there were Dutch traders settled on the Hoorn Kill, now Lewes Creek, as early as 1622, although no colony or regular settlement transplanted from Holland had been founded there so early as that date. There was a permanent native settlement or Indian village on the banks of it when the bay was first discovered, and according to the description we have of the creek fifty years afterwards, it deserved to be called a river instead of a creek, with a fine roadstead within the mouth of it for the ships of that day of all burdens, and none like it for safety in all the bay, the right channel for sailing up the bay passing it, and only two leagues above Cape Henlopen; for being within so short a voyage of Fort Amsterdam, and as the sole object of those early Dutch adventurers was trade and traffic with the natives, chiefly in furs and peltries, and game of all kinds was then abundant in the surrounding regions, the opening of such a market would soon attract the notice and attention of the natives and the traders alike, and

draw them to that Indian settlement for such purposes. That a casual intercourse of that kind first sprung up at a very early period between that point on our shores and the Dutch traders on Manhattan Island and the Hudson, I think there can be no question, and which not only warrants the opinion I have expressed, that there were such settlers there as early as 1622 or 1623, but it accounts for the more important fact that the Hoorn Kill soon began to attract the attention of a class of gentlemen in Holland who looked to a larger business that might be established there with success and with much greater profits, as they imagined, than any trade with the natives there or on the Hudson could possibly afford to such as were engaged in it. And it was this that led such men of means as Messrs. Godyn, Blommaert, Van Rensselaer, De Vries, and a considerable number of others of like intelligence and means in Amsterdam and other cities in Holland, as early as 1629, to form a private company, or copartnership, to purchase all the salt-marsh skirting our side of the bay-shore from Cape Henlopen to Bomby Hook Roads, for the purpose of establishing a whale-fishery on our bay, and in connection with it, and as a part of the enterprise, to plant a Dutch colony on the Hoorn Kill. They, or some of them at least, also probably aspired to the honor and dignity of becoming in time Dutch patroons on the shores of the Delaware, and they would have well deserved the full fruition of their ambition had they succeeded in the undertaking. But as Dutchmen generally move with care and caution in all great enterprises, I have no doubt they were a good while in gradually growing ripe for such a

grand oil speculation, and I have as little doubt that there were at that day a good many large fish in the Delaware Bay, and among them not a few whales of very respectable proportions. They had enjoyed the undisturbed possession of its waters for so many ages that such a thing was certainly possible. But I suspect that the Dutch traders I have spoken of, and the Dutch sailors who had become familiar with our bay prior to that time, had been so long indulging in stupendous fish-stories both as to the multitude and magnitude of them, as to have quite upset for the time the mental balance of those gentlemen. It is certain, however, that they embarked in the enterprise with the confident expectation of making a success of it, and De Vries, who had filled with credit to himself a post of respectability in the military service of the Netherlands, and had recently returned from a protracted residence in the East Indies, was selected and solicited to assume in person the management of the enterprise as the director-general of the colony. They also had sufficient encouragement in their undertaking and influence with the Dutch West India Company, which despatched three ships early in the spring of 1629 to Fort Amsterdam, to procure an order that on their arrival there one of them should proceed with an agent of theirs to the Hoorn Kill to complete the purchase of the salt-marsh mentioned from the Indians of the village. The ship arrived there as ordered in the latter part of May, and on the first day of June in that year the purchase was duly made, and the sale was afterwards acknowledged by a delegation of the Indians of the village before the director-general and council of the New Netherlands,—

the general name which all their territory had now received, —in Fort Amsterdam, on the fifteenth day of July, 1630. And to show still further the extent and magnitude, as well as the gravity and importance of this great enterprise in the estimation of the projectors of it, they soon after purchased from the Indians on the other side of the bay a long and narrow strip of land extending from Cape May several miles up the shore, and which would look as if they even contemplated making a *mare clausum* of the Delaware Bay, so far, at least, as the business of whale-fishing in it was concerned; and when we consider the characteristic trait of the Dutch at that day, and what rigid monopolists they were in regard to trade in all their foreign possessions, it is not a violent presumption perhaps to impute such a motive to them. They were well informed, however, although none of them had ever visited America up to that time, of the character of the tract they were about to purchase, that it was an almost continuous body of salt-marsh, extending from Cape Henlopen to the mouth of the river, between forty and fifty miles in length, with a mean breadth or depth back to the mainland of from two to three miles, and that it, of course, skirted the whole bay-shore on its southern side; and therefore it has occurred to me that, with the sanguine hopes and expectations then evidently entertained by them in regard to the results of their immediate undertaking, there was probably an ulterior design also on their part ultimately to reclaim it by embankment, and which was by no means a visionary conception in the minds of such men bred and born in Holland. And had it been the destiny of that remarkable race to which they belonged to retain

permanently the dominion which it had then so recently acquired in certainly one of the very finest regions in America, may I not ask how long would that vast expanse of salt-marsh have been doomed to look both to heaven and man in vain for such an improvement?

There is some uncertainty as to the year in which the colony first projected and planted within the limits of our State arrived on the banks of the Hoorn Kill. There is no doubt, however, that it was as early as the spring of 1631, although De Vries himself, the director-general of it, in the incidental allusion to the massacre of it by the Indians, contained in his letter of indignant protest and remonstrance written some ten or twelve years after that event, and addressed to Director-General Kieft of the New Netherlands, and then residing at New Amsterdam, against the design he had formed of slaughtering the Indians at Pavonia in revenge for the brutal outrages perpetrated by them on the Dutch settlers in that vicinity, speaks of it as having occurred in 1630. The passage to which I refer is brief, and I will repeat it: "Consider, sir, what good will it do? We know that we lost our settlement at the Hoorn Kill in 1630 by mere jangling with the Indians, when thirty-two of our men were murdered." De Vries came with it as director-general and in command of the expedition from its departure from the shores of Holland. His birth and residence was in the little city of Hoorn in that country, a seaport on the Zuyder Zee, and it is said that he conferred the name of Hoorn Kill on the creek in honor of it. The colony certainly consisted of a small Christian community of European settlers expressly formed and organized for colonizing that portion of the

southern shores of the Delaware Bay, and which was not only done with all the regularity and method usual in such cases, but its arrival on our shores was preceded by a larger purchase of land from the natives for the purpose of its plantation than had perhaps occurred before in the history of any of the English or Dutch settlements. Including De Vries, it must have numbered on its landing at least thirty-three men, to say nothing of women or children. A general storehouse and a stockade fort, named Fort Oplandt, was erected on a well-selected site on the northern bank of the creek, not far above the mouth of it, and a body of land adjacent to it, pronounced by enthusiastic Dutch admirers several years later to be the best in all the New Netherlands, was laid out for the habitation and cultivation of the settlers, and named Swandale in compliment to the natural rights of the large number of swans that were now to be dispossessed of it as a favorite bay-side resort for them at that season of the year. But De Vries was obliged to leave it before the close of the summer and return to Holland on business connected with the enterprise. He had gained from the beginning of the settlement the esteem and respect of the natives, and left it with relations of entire concord and amity subsisting between them and the colonists; but for reasons on which neither history nor tradition sheds any further light than we have from the brief passage which I have just read from his letter referring to it (for the account given of it to him by a native on his return to the Hoorn Kill was evidently a fiction of the Indian's imagination purely), they were suddenly assailed and totally massacred by the savages before the fall of the leaves of that season,

while at work in their fields, with the exception of two, who were butchered with like barbarity in the storehouse. If it occurred in 1631, the intelligence of it must have reached De Vries very soon after his arrival in Holland. He was, however, so shocked and discouraged by the disaster that he was unable for a considerable time to pay any attention to business; and yet there is no doubt of the fact that he was back again at the Hoorn Kill with several new colonists from Holland early in December, 1631, prepared to enter by the opening of the next spring upon his novel experiment of whale-fishing in the Delaware Bay, and on what is now called Lewes beach, and which was industriously prosecuted through the spring, summer, and fall of 1632, not without some success, for a considerable quantity of whale oil was shipped by him during the season to Amsterdam, but the business having proved more expensive and less profitable than was expected by him, it was not resumed the following year; and early in the spring of it De Vries himself removed to the North River, where at a later period he found congenial employment in establishing several Dutch settlements, but retaining his interest in the lands purchased at the Hoorn Kill and on our bay-shore until the sale of it by the copartnership to the City of Amsterdam in 1635.

If I have detained you too long with this tedious and protracted detail of the plantation of De Vries's colony, as it has generally been styled, on the Hoorn Kill, the great historical importance of it will excuse me when I inform you that it was the sole fact on which the question of title to the three lower counties on the Delaware, now constituting our State, between Lord Baltimore and the Dutch of the New

Netherlands in the first instance, and subsequently between his lordship and William Penn, originally and finally depended for its solution during a period of just one hundred years thereafter, or up to the year of 1732, the date of the first agreement entered into between their respective heirs-at-law for the amicable settlement of it by mutual compact between the conflicting claimants. For, with the exception of that settlement, and with all the light and information which the most patient and thorough historical research and examination has in the mean time shed upon the subject, I am constrained to say that there is no good reason for believing that there was a solitary Christian, or child of civilization, within the limits of what now constitutes the State of Delaware, or anywhere west of the Delaware River, on the 20th day of June, 1632, nor until nearly six years after that date.

In the due course and order of historical events which now follow in quick succession, I must next pass from the shores of the Delaware to those of the Chesapeake. In the year 1632, George Calvert, Baron of Baltimore, having three years before visited the English settlements in Virginia, and made some exploration of the Chesapeake Bay, presented a petition to his Majesty Charles I. for a grant of lands in that region of the country lying between the 38th and 40th degrees of north latitude, in which he stated that it had not up to that time been planted by any Christian people, although it was then inhabited in some parts of it by a certain barbarous people, having no knowledge of Almighty God. The application was graciously entertained, and a royal order was given for the preparation of letters

patent for the grant pursuant to his petition, and which were soon afterwards prepared with a recital referring to his petition and the representation contained in it, that it was a region of country hitherto uncultivated, and partly occupied by savages having no knowledge of the Divine Being, and with the boundaries of it described as all that part of the peninsula or chersonese lying in the parts of America between the ocean on the east and the Bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory or headland called Watkin's Point, situate on the bay aforesaid, near the river Wighes on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north which lieth under the 40th degree of north latitude from the equinoctial where New England is terminated; and all the tract of that land within the metes underwritten, that is to say, passing from the said bay called Delaware Bay in a right line by the degree aforesaid unto the true meridian of the first fountain of the river of Pattowmac, thence verging towards the south unto the farther bank of the said river, and following the same on the west and south unto a place called Cinquack, situate near the mouth of the said river where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called Watkin's Point.

It was well known at that time that a right line drawn as described, from Watkin's Point on the Chesapeake Bay due east across our peninsula to the ocean, would be directly under the parallel of the 38th degree of north latitude. No

part of the Delaware Bay, however, is as far north as the 40th degree, nor is any part of the Delaware River below the city of Philadelphia. And this clearly shows that his lordship was mistaken at the very outset as to the distance in degrees from Watkin's Point to Cape Henlopen, and could not have known that the 40th degree of north latitude would include within his grant not only the whole of the peninsula north of Watkin's Point, and the whole of the Delaware Bay, but also nearly one-half of the State of New Jersey. But this may be in some degree accounted for by the well-known fact that even British sovereigns and British noblemen at that day supposed that a degree of latitude, as far north of the equator as those named in the patent, measured but sixty miles to the degree. For it is but reasonable to presume that Lord Baltimore dictated the description of the boundaries embodied in it. Before, however, the patent was issued Lord Baltimore died, and pursuant to the order of the king the necessary alterations were made in it, and on the 20th day of June, 1632, the patent was issued to his eldest son and the heir-at-law of his title and estates, Cecilius, Lord Baltimore. It was named in the patent the Province of Maryland at the instance of the king in honor of the queen, Henrietta Maria.

I deem it proper here to observe that by the law of nations as then recognized by the maritime powers of Europe, and which the recent discovery of the New World rendered more important than it had ever been before, that no discovery and exploration merely of a new island or a new country inhabited by barbarians only, even when followed by a formal grant or cession of it from the sovereign under

whose flag or auspices it had been made, could confer any right or title to it upon the discoverer until he took possession of it, or some part of it, but when that had been done his title would commence from the date of his grant; and that possession should follow discovery to give a title in all such cases.

Lord Baltimore had contemplated on the receipt of his patent visiting his province in company with the first settlers despatched to it, but circumstances prevented it, and under his authority and appointment his brother, Leonard Calvert, conducted the expedition organized for the purpose of taking formal possession of it under his letters patent, and of planting the first settlement under it in the province. It consisted of some two hundred Englishmen, the most of them possessed of considerable, and a few of very handsome means, the design being to found a miniature government in the province on the model of the British constitution, with an order of nobility possessing large landed estates. The expedition sailed from England in a ship named the Ark and a pinnace belonging to Lord Baltimore of about fifty tons named the Dove, and after a tedious voyage by the Canary Islands and the southern passage of that early period, arrived in the Chesapeake, and made their first settlement on the Potomac River, not far above the mouth of it, and between it and the western shore of the bay, at a place which they named St. Mary, on the 27th day of March, 1634; and Leonard Calvert now assumed the office of first governor of the province.

Virginia had long prior to the date of Lord Baltimore's patent, claimed not only the whole of the Chesapeake Bay

and the regions surrounding it, but even as far as the 41st degree of north latitude, and as early as 1627 the governor of that colony had granted to one of the early settlers of Virginia, William Clayborne, who had been a member of the council and the secretary of the colony, authority to discover the head of the bay, or any part of Virginia lying between the 34th and 41st degrees of north latitude, and in 1631 Charles the First had granted him a royal license to make discoveries and to traffic with the natives, under which he had in that year with a party of men from Virginia taken possession of Kent Island in the Chesapeake Bay, and almost in the centre of the Province of Maryland, and had established a trading-post on it, and had been so in possession of it from 1631 until the arrival and settlement of the first provincial colonists under Governor Calvert at St. Mary's. The first question, however, that was raised as to the legal right and title of Lord Baltimore to the territory designated and described in his patent was between him and the authorities of Virginia, and went to the whole of the grant, for by them the validity of it was denied *in toto.* The legal controversy which arose out of it between them ultimately went to the privy council of the king for adjudication and settlement, but they declined to entertain it, and left the parties to their remedies by due course of law. Clayborne had also from the first repudiated and refused to recognize the validity of the grant and the authority and jurisdiction of the government of the province over Kent Island, and the governor having within one year after the settlement issued an order for his arrest, a hostile collision occurred between their respective armed forces, consisting

of two small vessels sent against him by the governor, and one cruising under the orders of Clayborne, in which one man on the governor's and several on Clayborne's side were killed. The latter, however, was defeated, and was obliged to flee for refuge to Virginia, whereupon commissioners were sent from the province to demand him of the colony, but the governor of it refusing to surrender him, the assembly of the province proceeded to seize and forfeit his property on the island, and he was also indicted, tried, and convicted in his absence of the combined crimes of murder, piracy, and sedition. He afterwards went to England and presented a petition to the king, Charles the First, setting forth his grievances and praying for the redress of them, which, with the testimony produced in support of them, made such an impression on the mind of his Majesty that he severely reprimanded Lord Baltimore for having, contrary to his commands, dispossessed him of Kent Island and slain several of the inhabitants of it. Nevertheless, in the following year the lords of the committee of the privy council of the king for trade and plantations rendered a report in favor of Lord Baltimore's title. And yet even this did not terminate the angry strife and contention, for serious political disturbance and commotion afterwards arising in the province, Clayborne, who had in the mean time returned from England and retaken possession of Kent Island, availed himself of the occasion to manifest his spirit of resistance again to the authority of the proprietary, and the effort of the governor to dispossess him not only failed, but Clayborne and his partisans, with the aid of the political malcontents referred to, compelled the governor of the province in turn to flee

for refuge to Virginia, and thereby gained for a time the complete control of the government of it. This occurred in 1645. But Governor Calvert returned with a sufficient military force to re-establish his authority in 1647, and Clayborne was again driven from the island. Two years later the execution of Charles the First followed, and the Commonwealth of England was established under the protectorate of Oliver Cromwell, and in 1652, commissioners having been sent from England to Virginia and Maryland to reduce them to obedience to the Commonwealth, with whom Clayborne was associated, he again regained possession of the island. The authority of the proprietary and his government in the province was now completely superseded and suspended, and upon the effort of Lord Baltimore to recover it, the most serious collision and conflict of arms which had yet occurred in the province ensued between his forces and those of Clayborne and his political partisans in 1655. It was successful, however, although it was not until the year 1658 that the authority and government of his lordship was completely restored in his province.

Among the many evils and misfortunes resulting to his lordship from such a state of affairs in his province was the notoriety which it gave from the start to the question in regard to the validity of his grant, and the unfavorable impression which it produced upon the mind of the king himself on discovering for the first time, under such painful circumstances, the melancholy fact that such a grave and fatal mistake had been committed in issuing the royal patent to him on the faith of the representation contained in the application, that there were none but Indians or barbarians

then inhabiting any part of the territory solicited and granted; and I think it will hereafter clearly appear in the further development of the history of the question that his lordship's interests in the province never recovered from the unfavorable effects then produced in the highest places in England by the discovery of this grave and serious blemish in the very inception of his title.

I will now return to the history of the settlements on the Delaware, and after having traced the history of events on the Chesapeake, so far as it is necessary for my present purpose to notice them, from the year 1631 to 1658, the first remark which I have to make on returning to our own shores is, that there is a singular coincidence, in the chronology at least, of the principal events in the cotemporaneous history of the two States during that early period, notwithstanding the marked difference in the European races which they respectively concern. In the first place, the first civilized settlement within our limits, and the first similar settlement within the limits of Maryland prior to the date of Lord Baltimore's patent, were almost simultaneously made by different European races and under different European sovereignties; and while our history is subsequently characterized during that period by strife and contention of a higher historical grade and dignity between rival European races for the possession of and dominion over our territory, so far as the epochs or eras (if they deserve such an appellation) of each is concerned, they were almost as simultaneous, although during the greater part of that period the settlers on the Delaware and the settlers on the Chesapeake within the limits of Maryland had no intercourse, or acquaintance

even, with each other, and knew about as little of each others' troubles or disputes as if they had been settled on the opposite sides of the equator, and thirty-eight or forty degrees from it. Both the Dutch and the Swedes knew from the time almost of their arrival within our limits, of Jamestown and Virginia, and of the claim of that colony to all the territory on the Delaware, but I question if any one of either race had ever heard of either St. Mary's or Kent Island until after they had ceased to attract any particular attention on the Chesapeake. De Vries was fully informed of the English claim by the governor of Virginia on his visit from the Hoorn Kill to Jamestown in the summer of 1632, and the Swedes learnt of it in like manner when their first expedition touched at Jamestown in 1638, on their voyage from Sweden to our shores.

The first event which I shall have occasion to notice in the cotemporaneous history of the two States, after the settlement of De Vries's colony on the Hoorn Kill, is of the date of 1638, and which occurred during the progress of the first controversy between Lord Baltimore and Clayborne in regard to his title to Kent Island, and in the same year in which his Majesty rebuked his lordship for dispossessing him of it. The Dutch West India Company, which had been incorporated by the States-General of the United Netherlands as early as 1621, for the purposes of colonizing the Dutch possessions in this country and promoting trade and commerce in all the regions of the New Netherlands, as those possessions were then for the first time formally denominated, had so long neglected to make any settlement, or to take actual possession of any part of the

country on the western side of the Delaware above the mouth of the river, that it ultimately led to an effort on the part of one of the original promoters and most active members of the company, who had become dissatisfied with the management of its affairs, to find some other power in Europe to undertake the enterprise, and it was such a motive that prompted Mr. William Unclincx, of the City of Amsterdam, to repair in 1624 to the court of the young and able sovereign of Sweden, Gustavus Adolphus ("of ever-blessed memory," as the venerable Campanius invariably and reverentially styles him whenever he has occasion to mention his illustrious name in his Delaware diary, written several years after his untimely and lamented death on the battle-field of Lutzen), and to submit to him a plan for the formation of a Swedish West India Company, for the express purpose of colonizing the neglected regions on the Delaware. That young and magnanimous monarch embraced the flattering overture, I apprehend, with too much ardor and alacrity to inquire sufficiently into any mere legal impediments or obstacles which might lie in the way of such a grand and noble proposition; or, if he did so, the specious and wily Dutchman and shrewd ex-member of the Dutch West India Company may have soon satisfied him that there were no obstructions of that nature in the way of the enterprise, and that the Dutch company already had more land than it either wanted or needed north and east of the Delaware. A West India Company similar to that in the Netherlands was accordingly incorporated and organized without delay in that kingdom; and with the animated spirit and enthusiastic emulation now abroad in behalf of

the measure, and the influence of the king's example, who subscribed with royal liberality to the stock of it, princes and prelates, noblemen and commoners, and men of all classes, as well as ladies of the highest rank, vied with each other in responding with like promptitude and liberality, to the cordial recommendation of their sovereign in behalf of it. It was the first novelty of the kind perhaps, which had ever caught and captivated the fancy or imagination of the Swedes to such a degree, and compared with which, to them at least, according to the accounts we have of it, the enchanting hues and evanescent splendors of all later South-Sea bubbles must have seemed but pale and dim. Before, however, all the necessary preparations had been completed by the company for the despatch of the first expedition of colonists from Sweden to the Delaware, their young and gallant king, who was now acknowledged and hailed with universal acclaim by the Protestants of Germany as the royal champion of their cause, was suddenly drawn into the vortex of that memorable religious conflict of nations known as the Thirty Years' War in Europe, and all further proceedings by the company and the government for the plantation of the colony were interrupted and suspended, until several years subsequent to his fall in the battle before mentioned, in November, 1632, after a rapid series of brilliant and surprising victories terminating in that of Lutzen, although he lost his life in it, which has rarely, if ever, been surpassed in the wars of Europe. But, as if forewarned by some presentiment of his approaching doom, amidst the perils and vicissitudes of the war in which he was about to engage, he had prepared in advance a last will and testament, con-

taining particular instructions in relation to the guardianship and education of his only child and heir to his crown, a young and tender daughter, and with it another paper addressed to his prime minister, Chancellor Oxenstiern, a man of great ability and virtue, as well as devotion to his king and country, enjoining upon him in any event or contingency which might befall him personally in the war, as a duty not to abandon this great enterprise in which he felt so much interest, but to see the design of it fully carried into execution pursuant to the directions given in the paper, and in accordance with the views which he had often before communicated to him on the subject. But it was not until after the war in which he fell had been terminated with the brilliant success with which it had been begun, under the able ministry of Oxenstiern, and the command of generals in the field worthy of the school in which they had been trained under their late king, and not until five years after his demise, that the chancellor was prepared to enter upon the discharge of the grave duty thus enjoined upon him. Since the death of the king the government of the country had been vested in a council of regency during the minority of the young queen, of which Chancellor Oxenstiern was president, and who was also one of her guardians.

The interesting gentleman from Amsterdam and dissatisfied ex-member of the Dutch West India Company before referred to, and who had been so successful in originating this rival company at the court of Sweden, had also by this time passed from the stage of action and the scene of his glory to

The undiscovered country, from whose bourn
No traveller returns.

And yet, strange to say, just about this time while Chancellor Oxenstiern was preparing to institute active proceedings in the undertaking, another gentleman from Holland, of still greater eminence, and still more familiarly acquainted with the affairs of the Dutch West India Company and their possessions in the New Netherlands, turns up in his place at Stockholm and the court of Sweden, and also submits a plan for colonizing the western banks of the Delaware, under the charter of the West India Company of that country, and modestly suggested his willingness to assume the duties and responsibilities of conducting their first colony to our shores as the director-general of it. And this distinguished Dutchman was no other than Peter Minuitt, Esq., late director-general of the New Netherlands under the Dutch West India Company, from 1624 to 1632, eight consecutive years. He had, of course, during that time become very familiarly acquainted with all their possessions, and their title and claims to the same, both on the North and the South River, knew all about the settlement of De Vries's colony on the Hoorn Kill, was director-general and president of the council of the company when the Indian delegation from the village there appeared before it in Fort Amsterdam in 1630, to acknowledge the sale of the salt-marsh from Cape Henlopen to the mouth of the river to the Dutch purchasers before mentioned, and was still in office and residing there when the colony was massacred. He had, however, been removed from office without his own approbation and consent by the company in 1632. The

chancellor was very favorably impressed with his manners and address and general intelligence, and particularly with his familiar knowledge of the geography of the region, its soil, climate, and resources, and the character and relations of the aboriginal races, or Indian tribes, inhabiting it, and even esteemed himself fortunate in finding a gentleman so admirably qualified to fill the responsible position for which he had so generously tendered his services; and he was accordingly in due time appointed director-general of New Sweden, that name having already been conferred on the country designed to be settled under the charter and grant of the company, and to be held and considered as an appendage to the crown and kingdom of Sweden.

The first expedition formed for colonizing it consisted of some fifty settlers duly provided and furnished for the purpose, which embarked from Sweden under the immediate command of the director-general, Mr. Minuitt, in an armed ship of the navy and a transport, and after a protracted voyage of several months by the southern passage and a short stoppage at Jamestown, in Virginia, entered the capes of the Delaware on a bright and balmy day in the month of April, 1638. They came in with a fine breeze from the southeast and all sails spread to it, and gliding directly past the mouth of the Hoorn Kill, stood up the bay some fifteen miles farther, when the anchors were dropped, the sails were furled, the boats were got out, and the whole community was in due time rowed ashore at a much less convenient and inviting landing-place, but in a perfect transport of rapture and delight, to refresh and regale themselves for a few hours on that genial and delicious day, upon what

is now termed Mispillion Point. It is a long, low, flat, and sandy cape jutting well into the bay when viewed from Cape Henlopen and the beach of Lewes and the mouth of the creek, and could have possessed even at that day no attraction beyond the fine view which it commanded of the crescent curvature of the western shore towards the Hoorn Kill and Cape Henlopen, the whole of the bay below and the ocean vista through the capes, of which one would suppose they had already seen enough in the last five months to be sick of the sight of it for as many more at least; and yet so charmed and enchanted were they with the spot, that they could find no term sufficiently graphic and poetical to express their unbounded admiration of it short of Paradise itself, and therefore they at once named it Paradise Point. There was one, however, in that happy company, I apprehend, as he stood in their midst and looked towards the Hoorn Kill and recalled the recollection, yet fresh in his memory, of the massacre of the Dutch colony planted there, and of the sale of the very land then beneath his feet to the founders of it with his own sanction and approval but a few years before, who must have been wholly unable to so far surrender himself to the common illusion prevailing around him, as to have felt for a moment that he stood on anything like holy ground, so far, at least, as he was concerned; and that was Peter Minuitt himself, the commander of the expedition, and now the director-general of New Sweden.

But the site of their first settlement in this country had been selected before their embarkation from Sweden, and resuming their voyage up the Delaware, they entered your beauti-

ful river, the Christiana, even then, by the broad expanse of its waters, at least more deserving of being so called than now, and sailing on some two miles or more, landed upon its northern bank, on a firm and fast foundation in nature, if not in law, at a place then named and ever since called, I believe, The Rocks, and which furnished a very convenient wharf for the purpose already made to their hands. And now as we survey in imagination, at this late day, all the virgin features and picturesque beauty of the natural scene which here opened for the first time to their astonished vision, what must have been the measure of their admiration and delight when they compared and contrasted it with the scene which they had just left below! And if but the day before they imagined themselves almost in heaven, must they not have thought this nothing less than a sudden translation to the very empyrean of the gods themselves, if any of them had ever read of such place in classic story! Minuitt had never visited the locality before, so far as we are informed, but that he had learned of it from some one who had seen it, and who was capable of portraying the scene to him with some degree of justice and fidelity, there can be no doubt—the winding Christiana with its green meadows on the one side, the rocky banks and the water-power of the romantic Brandywine on the other, their confluence in the foreground of the landscape, and flowing with united volume in full view to the broad bosom of the majestic Delaware; all this and doubtless much more had been faithfully depicted to him, and he certainly exhibited as much good taste as sound judgment in selecting it for the site of his first Swedish settlement within our limits. This settlement,

the second made within the limits of our State, became in the spring of 1638 the feeble beginning of your fair and beautiful city of Wilmington, and which is all that was required to crown and adorn the natural embellishments and advantages of the original site with the flowers, fruits, products, and structures of art, labor, culture, commerce and manufactures, civilization and Christianity, to make it what it has since become, one of the fairest and finest cities of its class in our whole country.

The first thing in order after they had landed upon its banks was to find a suitable name for your river in their own vernacular tongue. And where or in what language could they have found one more beautifully appropriate on such an occasion than the chaste and sweet and sacred name of Christina, in honor of their fair young queen, sole daughter of the house and heart of their beloved and lamented sovereign, still as much a martyr to the sacred cause of their religious faith, as a glorious monarch in their estimation, then in the twelfth year of her minority, and an object of tender regard and solicitude to every loyal Swede the world over? She was only six years of age when her father fell at Lutzen, but was now pre-eminently distinguished for all the brilliant bloom and promise which so well beseemed the rosy dawn of such a splendid career and destiny as then lay in prospect before her, only to be, to the grief and astonishment of all her subjects, so soon and so strangely and mysteriously darkened, disappointed, and with thickening clouds overcast after ascending the throne, as never was that of queen or royal princess before or since in the history of the world. But as a just and meri-

torious tribute to the memory of her better and brighter and more happy days, is it not to be regretted that it was not retained in all its pristine purity and beauty as the true name of it to this day?

The next thing was to erect a fort on the banks of it at or near The Rocks, on which the name of Fort Christina was bestowed, and which became for many years afterwards the only name by which the settlement formed about it was called and known. The director-general had his permanent residence in it until his death, three years afterwards. He had hardly begun to build it, however, before he received, from the director-general of the New Netherlands residing in Fort Amsterdam, a formal and solemn protest against the intrusion, encroachment, and aggression by the Swedes upon their territory on the South River, and asserting in the strongest terms their unquestionable right and title to the whole South River of the New Netherlands, both the upper and lower parts of it, and denouncing the consequences of his own conduct against him to the last extremity. But Minuitt neither replied to it, nor paid any attention to it. The former, however, proceeded forthwith to repair and regarrison the Dutch Fort Nassau, on the opposite side of the Delaware River, just below Gloucester Point, and to maintain it in a proper state of defence. A few other sparse and scattering Swedish settlements followed the first, but all of them, on the same side of the Delaware, were made above the Christina, and between it and the mouth of the Schuylkill, chiefly in the vicinity of Upland or Chester, and what is now marked on our maps and called the Lazaretto, but none whatever were made below the Christina, although

the colonial authorities of New Sweden claimed to have acquired, as early as 1642, the Indian title, by purchase from the natives, to all the country west of the Delaware from Cape Henlopen to the falls at Trenton, and that they had rightful dominion and jurisdiction over it.

A controversy, however, not only at once arose between the Dutch and the Swedes in regard to their respective rights and claims to the territory, but a more serious dispute and contention soon followed it in relation to the trade with the natives on the Schuylkill and the western side of the Delaware above Fort Christina, and the control of the navigation of the Delaware River in connection with it, the Swedes progressively and practically growing bolder in the assertion and exercise of both, as rights exclusively belonging to them, and which were sometimes attended with acts of violence and gross aggressions upon the Dutch; and for these pretensions on their part it was found that the position of Fort Christina, being below that of the Dutch Fort Nassau on the eastern side of the Delaware, afforded them material support and advantage. This consideration at length induced Peter Stuyvesant, who in the mean time had been appointed by the Dutch West India Company the director-general of the New Netherlands, and had taken up his residence in New Amsterdam, as the settlement at Fort Amsterdam was now named, to make his first visit to the South River and to Printz, then governor of New Sweden, and residing in some state on Tinicum Island, with a view, if practicable, to effect some accommodation of these increasing difficulties, and if not, to erect a fort on the same side of the Delaware and below Fort Christina,

to counteract the advantage which the Swedes had derived from it in the dispute about the navigation of the river, and also to recover without any further hostile movement or demonstration the command of the river and the dominion of the whole country on the western side of the bay and river from the Christina to Cape Henlopen. He failed, however, in the first object of his visit, and as the whole country from the Christina to the Hoorn Kill was still an Indian wilderness, he made a hasty but sufficient survey of the river to satisfy himself that the point of land on which New Castle several years afterwards grew into a settlement of so much note and promise, as not only to eclipse the feeble and flickering lustre of Fort Christina, but even to excite serious apprehensions at New Amsterdam at one time that it was about to become what Carthage had been to Rome, so far as the embryo city of New York was just then concerned, was the true strategic point for the erection of the fort which he had now resolved to build for the purposes which he had in view. The municipal government of the City of Amsterdam now held the legal title to the Hoorn Kill and all our bay front from Cape Henlopen to Bomby Hook Roads, and as he knew very well that the Swedes could not pretend to any title prior to theirs to that portion of the country below, he convened a general assembly of all the Indian sachems inhabiting the country from the Christina to the mouth of the river, and after learning from them that they had never sold any part of it to the Swedes, he concluded a contract with them for the purchase of it on behalf of his company, and proceeded, without delay, in the year 1651, to erect a fort on

the point I have mentioned, and to garrison it with a sufficient Dutch force to hold it against any the Swedes could then bring against it, and which he named Fort Cassimer. A few Dutch settlers soon collected about it, and it became from that date the third Christian or civilized settlement within the limits of our State. Fort Nassau had also been abandoned on the erection of Fort Cassimer, by the removal of the garrison from it to the latter post.

The West India Company of Sweden had formally protested against these proceedings of Stuyvesant, and their governor, Printz, after having repeatedly admonished them in vain of their danger from them, and of the necessity of their taking more decisive steps to recover the ground which they had lost by the erection of Fort Cassimer, had at length resigned the office, and was shortly afterwards succeeded by John Claudii Rising, under the title of director-general of New Sweden, and who became, for a brief period at least, all that his name imports in our language. Both the Dutch and the Swedes had long entertained serious and growing apprehensions of the designs of the British government upon the whole territory of both companies, under their asserted claim, from the beginning of its settlement, of a superior title to it; and Rising's official instructions, therefore, particularly admonished him to proceed in his administration of affairs in New Sweden with the utmost prudence and circumspection, and to avoid by all means any breach of friendship with either the Dutch or the English, as a breach with the former might afford the latter an opportunity to seize Fort Cassimer, and that it was better for them that it should continue in the possession of the Dutch than

fall into the hands of their more powerful and dangerous neighbors in that country. He was, however, to employ every peaceable method in his power, without resorting to any hostile act, to induce the Dutch to abandon and relinquish Fort Cassimer to them. Whether he had secret instructions of a contrary tenor does not appear, but it is, at least charitable, for his sake to presume that he had from the course which he immediately afterwards adopted. He embarked from Sweden in an armed ship, with military officers and troops and settlers on board, amounting in all to some two hundred and fifty men, and arrived in the Delaware in the latter part of May, 1654. On ascending the river and approaching Fort Cassimer the ship was prepared for action, and rounding to opposite the fort, fired a salute and signalled to it to send an officer on board, which was soon done by the commandant of the fort, and upon his arrival on board Rising informed him who he was, and at once demanded the surrender of it as on Swedish ground, and with it the surrender of the river also, as a part of their possessions. The officer from the fort and his boat's crew having been delayed in reaching it on their return, and receiving no answer to his demand in the mean time, the next morning he landed a military force from the ship, and as much by surprise as by force stormed and seized it without resistance at the point of the sword and the bayonet. He did not propose to take any prisoners of war, as none had been declared, or any intimation given of his hostile intention previous to the demand made for the surrender of it, and he therefore, after suddenly overpowering and disarming the Dutch garrison, chased them out of the fort at the

point of the bayonet, and took possession of it, and garrisoned it with his own forces. He also proceeded soon afterwards to improve, enlarge, and strengthen it, and to change the name of it and of the small settlement which had formed about it to Fort New Amstel. And as a fit conclusion to this brilliant achievement by way of surprise, he immediately communicated by letter to Governor Stuyvesant the first intimation he had of it, informing him of what he had done, but intimating that he could have no further correspondence with him on the subject, and that any discussion or negotiation in regard to the matter must be referred to their respective sovereigns. For my own part, I do not think that Stuyvesant ever thought of replying to that letter by means of paper, pen, and ink, but, on the contrary, that his only thought from that moment was how to get even with him in the way of mutual surprises in that line of business, so that Rising should have nothing to boast of on that account when it should be finally settled between them. In a few days after the capture of Fort Cassimer, Rising took up his permanent abode in Fort Christina, and made it not only his headquarters, but the seat of his government as director-general of New Sweden.

The indignation produced in Holland by this bold and hostile invasion of their possessions here was intense and general, and the immediate effect of it was to reduce the long pending controversy between the two companies and the two races in this country to the usual and last resort in such cases, the arbitrament of arms. Stuyvesant was promptly ordered by the company to prepare to recover Fort Cassimer and to reduce the Swedes to entire obedience

to their authority and government with whatever force might be necessary for the purpose, and with as much despatch as practicable. Meanwhile corresponding preparations were made for the emergency by the company in Holland, and even recruiting stations were opened and drums were beaten for recruits for days in the City of Amsterdam for the great war that had at last broken out between the Dutch and the Swedes in America. All Dutchmen were excited everywhere. Delaware was at stake, and nothing short of the speedy and complete subjugation and conquest of New Sweden would now satisfy the universal expectation. But the coolest man among them all perhaps, on either side of the ocean, was Governor Stuyvesant. He had neither forgotten that surprising march which had been stolen upon him by the dashing hero of New Sweden, nor that short and surprising letter, in which he had condescended to apprise him of it. Stuyvesant was an old soldier by profession, and had learnt the art of war in a subordinate station in the Low Countries, and had served with some distinction and lost a leg in battle in other regions on this side of the Atlantic, and who now begun in his heart to realize and cherish some of

> "That stern joy which warriors feel
> In foemen worthy of their steel,"

in anticipation of the pleasure and the opportunity which he would soon have of surprising Rising in turn by stealing a similar march on him. He accordingly set to work with as much secrecy as coolness and calculation to make all his preparations for a combined military and naval ex-

pedition of entirely unnecessary proportions against New Sweden, his only points of attack being Fort New Amstel, late Fort Cassimer, and Fort Christina, neither of which contained a garrison of more than thirty or forty men, and with a military force at his command quite equal in numbers to the entire population of the Swedish settlements on the Delaware, women and children included. And yet, he conducted all his preparations for the occasion with so much patience, prudence, and circumspection through a period of nearly one year, that Rising received no intimation of them at Fort Christina, except by admonition from friendly Indians towards the last, who, it seems, had learnt more of what was going on in New Amsterdam than he had; and who, even then, seemed never to have apprehended or imagined that the object of such an expedition on Stuyvesant's part was anything more than the recovery of Fort Cassimer and the country below the Christina.

The Dutch West India Company had promised Stuyvesant from the first assistance in vessels, munitions, and soldiers from Holland, and had directed him to impress into his service, at their expense, any vessels in the New Netherlands that the occasion might require, and had already sent over to New Amsterdam one man-of-war and two other ships, with men and munitions, whilst Stuyvesant, by hiring and impressment, had added four others to the number, and among them a French privateer, captain and crew, which had been hovering on the coast in pursuit of prey on the commerce of any nation the King of France was then at war with, and had just come into New Amsterdam for water and stores. And with this formidable Dutch

armada, as it may well be called, considering the era, locality, and destination of it, consisting of seven sail, and containing from six to seven hundred men in all, he sailed for the capes of the Delaware on the 5th day of September, 1655, which he entered the next morning, with his flotilla well in line, but spent several days in the lower part of the river in marshalling and arranging his military forces preparatory to landing them in sections, with their proper officers and colors, at their place of destination. Rising was now at Christina, but had learnt enough from the sources which I have mentioned a short time before this, to do the best he could to prepare Fort New Amstel for the impending crisis, and to order the commandant not to allow the fleet to pass it, if he could prevent it, or without firing upon it. Both orders, however, he flatly disobeyed, for, after getting under way again, the fleet ascended the river, and the whole of it passed the fort without any effort on his part to arrest or prevent it, and came to anchor above it, out of reach of its guns. And now ensued a display of military genius, skill, and science on the part of Stuyvesant, considering the overwhelming superiority of the force, land and naval, under his command, which must have amused Irving very much in his young days of authorship, and tempted him, in his burlesque history of New York and Delaware at that early period, to present the gallant hero and Dutch conqueror of New Sweden in such a ludicrous and comical aspect in the fictitious pages of the simple and venerable Dutch historian, Diedrich Knickerbocker, as to give great offence to his descendants in New York at the time of its publication. For it would really seem from the excessive

amplitude of his preparations for it, and from the slow and exceedingly cautious manner in which he proceeded to take both Fort New Amstel and Fort Christina, weak and feeble as they were, that he was actuated all the time by the supreme and humane desire and intention of achieving the conquest without anybody's being possibly hurt on either side. And such was in fact the result. He at once summoned the fort to surrender, but the commandant not complying with his demand, he landed all his troops out of reach of cannon-shot, and then proceeded to invest it by posting a detachment about five miles off to watch Fort Christina, and another somewhat nearer to cut off any reinforcement or relief from that quarter, and then by digging trenches and throwing up embankments, and by what, I believe, is termed in the military art gradual approaches, to get the residue of his forces near enough to the works, under entirely safe cover, to open his guns upon its log battlements. He had in the mean while repeated his demand for its surrender, and at last peremptorily, with a solemn threat of opening his guns upon it forthwith in case of refusal, when the commandant, to save any further useless waste of time, concluded to surrender, and accordingly capitulated on the very favorable terms offered, without any one being hurt, even by accident, on either side; and New Sweden was half conquered already. He next proceeded in like manner against Fort Christina, ordering his armed ship and the French privateer round into the Christina and into such a position as to rake the fort with their guns, and then spent twelve days in investing it and in erecting half a dozen different batteries on the several commanding posi-

tions surrounding it, mounting in the aggregate not less than twenty cannons, independent of the guns of his two armed ships, when, on his final and peremptory summons, it followed the example of Fort New Amstel, and surrendered with precisely the same result,—nobody hurt and no powder burnt, which fortunately, perhaps, for all concerned, happened to be a very scarce article in Fort Christina just at that time. The capitulation was also on equally liberal and favorable terms. Stuyvesant even treated Rising in particular, quite generously and handsomely, for the exchequer, both public and private, of the latter being now in quite a collapsed condition, he loaned him money enough to pay his expenses back to Sweden. The summary effect of this last surrender was to efface New Sweden forever from the map of our country. The date of it was the 25th of September, 1655. From the best information which we have on the subject, I do not think the whole population of the Swedish settlements on the Delaware, men, women, and children included, amounted to more than three hundred and seventy-five souls at that time.

One of the results of this conquest was to increase the previous indebtedness of the Dutch West India Company to the City of Amsterdam to so large an amount as to induce them, together with other considerations, to apply to the city government to accept and assume the proprietorship and dominion of all their possessions on the Delaware below the Christina in satisfaction of the debt, which was assented to, and soon after the same were duly relinquished and conveyed to the city; after which they were called the possessions of the colony of the City of Amsterdam, or the

City Colony, the company still retaining, as before, all north of the Christina, including the fort and settlement about it bearing that name. The authorities of the City of Amsterdam seem at once to have conceived the idea of building up a settlement and a port on the South River that should equal and rival New Amsterdam on the North River, and to have selected New Amstel for that purpose; and so zealously did they embark in the enterprise, and liberally and generously promote and stimulate the growth of it, that it contained more than one hundred houses, a population of five or six hundred inhabitants, and some twenty to thirty farms around it, by the year 1659; and it was probably this unexampled growth and prosperity of New Amstel that first attracted the special attention of Lord Baltimore and his official representatives in the Province of Maryland, so soon after their domestic commotions and conflicts had been sufficiently composed and settled in the centre of the province, to admit of their turning their attention to his interests in any other direction, and which, as we have before seen, was not until the year 1658. New Amstel had now become the seat of government of all the possessions belonging to the City of Amsterdam, or the City Colony, and had a director-general and council residing in it, who had jurisdiction over all of its possessions, the former being appointed by the authorities of the city; and, furthermore, it was not until the year 1659 that it first became known to any settler within our limits that Lord Baltimore had any claim or pretension whatever to any territory on the Delaware. That information was first communicated by a member of the provincial council residing on the Eastern Shore,

to the director-general of the City Colony at New Amstel, by a messenger sent by the latter to him with a letter addressed to the governor of the province, and a request that he would forward it to the governor, and which contained a respectful application for the surrender of five or six soldiers who had recently deserted from the fort at New Amstel and fled into the province, and which he politely received and promised to forward as requested; but he, at the same time, took occasion to instruct the messenger to inform the gentleman who had sent him, that he then had in his possession a commission from Lord Baltimore to go to New Amstel and demand the possession of it in his name as rightfully belonging to him, because he believed that it was within the limits of his Province of Maryland, but that his lordship had since arrived in the province, and had ordered that all the lands between the degrees of his grant should be surveyed, and as soon as ascertained, that they should be reduced to his authority and jurisdiction without fail and without relinquishing any part of them. The communication was verbal merely, but it was duly delivered by the messenger on his return to the director-general, and as soon as it became known, which was instantly, of course, the universal surprise and astonishment which it at once produced was simply stunning on all New Amstel; and from the account we have of the sudden panic into which they were thrown by it, some of the weak-kneed inhabitants of the place would, if they could, have instantly fled from it in the opposite direction, so completely were they appalled and paralyzed by it. This occurred in the month of June, 1659.

In the month of August of the same year, at a meeting of the governor and provincial council held for the purpose of taking into consideration his lordship's instructions and commands to send to the Dutch, in Delaware Bay (I quote from the minutes of the council) seated within his lordship's province, to command them to be gone, "it is ordered that Colonel Nathaniel Utie do make his repair to the pretended governor of a people seated in Delaware Bay within his Lordship's province, and that he do give them to understand that they are seated within his Lordship's province without notice given to his Lordship's lieutenant here, and require them to depart the province." This was followed in a distinct paragraph by an additional instruction of a private nature, and which was evidently intended for the eye of the commissioner only, but which the gallant Colonel, the Harry Hotspur of his lordship's cavaliers and provincial council, either forgot, or did not deem it necessary, to detach from his commission and the preceding instructions embodied in it, when he came to lay his credentials before the pretended governor and council of New Amstel, assembled in due form and in grave and solemn state to receive him as the accredited envoy, not of his Majesty, the King of Great Britain, but of a grand dignitary second only to him, I have no doubt, in his estimation, his noble lordship of the Province of Maryland. It was literally as follows: That in case he finds an opportunity, he insinuate into the people there seated, that in case they make their application to his lordship's governor here, they shall find good conditions according to the conditions of plantation granted to all comers into

this province, which shall be made good to them, and that they shall have protection in their lives, liberty, and estates which they shall bring with them. And which clearly indicates that they were not so anxious for them to be gone, after all. But if they expected this delicate and sinister part of the embassy to be accomplished by gentle hints, or diplomatic address, finesse, or insinuation merely, they were very much mistaken in their man when they appointed such a person as the straightforward, plain-speaking, gallant Colonel Utie to execute it. A communication, however, of a more polite and courteous tenor had been about the same time addressed in terms to the commander of the people on Delaware Bay in reply to the letter I have before mentioned from the director-general at New Amstel, to the following effect:

SIR,—I received a letter from you addressed to me as Lord Baltimore's Governor and Lieutenant of the Province of Maryland, wherein you suppose yourself to be the governor of a people seated in a part of Delaware Bay, which I am very well informed lieth to the southward of the degree of forty, and can therefore by no means own or acknowledge any for governor there but myself, who am by his Lordship appointed lieutenant of the whole province lying between these degrees, 38 and 40, but do by these presents require and command you to presently depart north of his Lordship's province, or otherwise desire you to hold me excused if I use my utmost endeavor to reduce that part of his Lordship's province unto its due obedience under him.

Three days after the session of the council and his appointment, Colonel Utie, with two other delegates and a servant, mounted on horses, made their imposing entrance into New Amstel, but, as if to assure the inhabitants at first sight of the friendly purpose of his mission and his desire to propitiate their good will by a graceful tender of the olive branch or calumet of peace, concord, and amity, he brought with him in custody, not the five or six soldiers who had deserted from the fort, but three or four unfortunate debtors to the City Colony, who had absconded from New Amstel into the province to escape imprisonment for the crime of getting in debt without the ability to get out of it, and duly surrendered them to the proper authorities. In return for this civility and chivalric act of colonial comity, he demanded an audience of the director-general and council at the earliest practicable moment, for his business was urgent and would not admit of delay, which was promptly granted; and on the introduction of the business of his mission, he opened the proceeding by laying his commission and instructions in full before them, which relieved their apprehensions very considerably, particularly the private portion of them; but in the course of the discussion, which was conducted in very good temper on their part, he soon lapsed into a vehement and violent harangue, in which he added a good deal to the imperative force and emphasis of his public instructions, and concluded in effect by demanding an immediate compliance with them, and with a threat of instant war as the only alternative left them. They replied that it would be necessary for them to consult Governor Stuyvesant before answering his demand, and that it would require several

weeks for that purpose, whereupon their meeting was adjourned for three weeks; and yet the colonel, notwithstanding his haste for an answer and to return to the province as speedily as possible on his arrival, remained a minister resident for the whole of that time in New Amstel, and did faithful service in the mean while among its landholders by insinuating in a very free and open manner how much better it would be for all of them to repudiate the claim of the Dutch and accept Lord Baltimore's conditions; and there were not a few fence-men in the place and vicinity who were half inclined to agree with him on that question, and were always willing to hear him discourse, either in public or private, on that interesting subject. This gave much uneasiness as well as offence to the constituted authorities of the town, but no one was so much outraged by it as Stuyvesant was when he learned it, for he did not hesitate to denounce him as a spy, and to threaten to have him arrested as such and sent a prisoner to Holland. The name of Fort Christina and the settlement around it had prior to his time been changed to Altona, and meeting with the director-general of that post and settlement on the streets of New Amstel during the time I have just spoken of, the colonel notified him that Lord Baltimore claimed Altona also as within his province, and told him that he must consider what he had said to him there as sufficient notice of that fact. On the day appointed, however, the director-general and council, with the consent of Stuyvesant, again met the colonel, when they respectfully informed him that they rejected the claim and refused to accede to the demands of Lord Baltimore, and then delivered to him

a formal protest against his claims and pretensions on behalf of the New Netherlands.

Steps were immediately taken in the next place to prepare to defend their possessions on the Delaware against the demands and menaces made in the name of his lordship, and pursuant to instructions given by the City of Amsterdam, all of the country lying west of their previous purchase, from Cape Henlopen to the mouth of the river, was bought of the Indians, and a new fort was erected and garrisoned at the Hoorn Kill. A considerable body of troops were also ordered from New Amsterdam, and stationed at New Amstel. But whilst these preparations were in progress, Stuyvesant concluded to despatch an embassy to his excellency his lordship's governor of the Province of Maryland, with full powers to demand instant and ample reparation for the audacious and insolent manner in which his demand for the surrender of their possessions had been made on behalf of Lord Baltimore, and for the great loss and injury which had been entailed on the prosperity of New Amstel by the consternation which it had produced there, and for the sinister and insidious efforts which had been made there to frighten and seduce the inhabitants from their fidelity to their true and lawful government, and also to compose, compromise, and settle all matters in dispute and controversy on such terms as should be mutually acceptable to the parties interested; and which constituted in fact the main if not the only object of the mission. The commission consisted of two very intelligent and respectable gentlemen of New Amsterdam, Mr. Augustus Herman, a native of Bohemia, and the original proprietor of the

manor of that name, containing eighteen thousand acres originally, and lying partly within the limits of this State and partly within those of Maryland, and Mr. Resolved Waldron, who, after reaching New Amstel, proceeded on their journey with Indian guides and a small escort of soldiers, threading their way for the most part through primeval forests, arrayed in all the rich autumnal tints of the month of October, until they reached a small affluent of the Chesapeake, and thence by canoe navigation past the residence of the redoubtable Colonel Utie, on an island at the mouth of the Sassafras River, of whom they had heard such terrible things at New Amstel that they did not deem it prudent to wait on him, for fear of his arresting their farther progress to Kent Island, where after several days of land and water travel, they procured a fine sail-boat, and proceeded on their voyage down the Chesapeake. They were received very courteously, and had several protracted and interesting interviews and official sessions with Governor Fendall, Secretary Calvert, and the provincial council, during which the conflicting claims of the Dutch and of Lord Baltimore to the territory in dispute were ably canvassed and discussed by their respective representatives; and among other matters urged by the Dutch commissioners against the pretension of his lordship, the misrepresentation contained in the petition on which his grant had been made, and the fact that the Dutch had planted colonies and settlements within its limits, and had sealed their title to the territory with their blood—alluding to the massacre of their colony on the Hoorn Kill—prior to the date of it, were distinctly presented and pressed during the discussions.

But the most remarkable thing perhaps developed in the course of them was the final proposition submitted by the Dutch commissioners. Finding there was no other prospect of accommodating their differences, they at length proposed to divide the peninsula by a conventional line running north and south through the middle of it, even designating on the map prominent points in the location of it, and so near to where our present coterminous boundary is established, as to leave no doubt that that early proposition in 1659 became the original of the idea and conception of the conventional division afterwards propounded to the succeeding Lord Baltimore by William Penn. This proposition was rejected, however, and the deliberations closed, and their mission terminated without any practical results. No further negotiations were instituted between them on the subject, nor were any further demands made by either upon the other afterwards; before the close of the year, however, the governor of the province ordered a survey to be made of lands within six or eight miles of New Amstel, and allotted and granted them to inhabitants of the province; but none of them ever attempted to take possession of them, and the effort would have been wholly abortive if they had, because the Dutch were on the alert for it, and had instructions from Stuyvesant to repel it by force of arms, if necessary, as an unlawful invasion of their possessions.

In the following year Lord Baltimore made his next effort to acquire by purchase the lands claimed by him through his agent in the City of Amsterdam, and by a direct application to the Dutch West India Company to surrender to

him the settlements of Altona and New Amstel and their respective neighborhoods, upon condition of his reimbursing the company all expenses incurred on account of them, which offer the company not only peremptorily refused, but took occasion in their reply to his communication, which asserted his claim to them under his patent and as within the degrees of his grant, to affirm their right and title to them by possession under the grant of the States-General for many years without claim or molestation from him or any other person, and to admonish him that they were resolved to retain and defend them to the utmost extremity, in case he persisted in his pretension and should resort to forcible means to obtain possession of them. They also soon afterwards appealed to the States-General to represent through their minister at London to the ministry of England the situation of their affairs with Lord Baltimore in relation to the matter, and to request that the British sovereign would require his lordship to desist from any encroachment upon them until a boundary could be established between his Province of Maryland and their possessions on the South River, and which was in due time attended to by the States-General as requested; and that it was also duly brought to the attention of the British sovereign is, I think, to be reasonably inferred from the fact that at a session of the governor and council of the province held eight months afterwards, in May, 1661, they adopted a resolution to the following effect: that inasmuch as it was doubtful whether the settlement of New Amstel was below the fortieth degree of north latitude, and the Dutch West India Company was determined to maintain their possessions on the Delaware

by force, and there was no hope of any aid from the other English colonies in the attempt, no further efforts should be made to reduce them to obedience to the authority and jurisdiction of the province, until the will of his lordship should be known in regard to the matter; and that some effort should be made in the mean while to ascertain whether it was within the boundaries of his grant.

As to the events which occurred between the date last mentioned and the month of August, 1662, which we have on the authority of some of the historians of our sister State, such as the advance of an organized military force under the banners of Lord Baltimore against the fort and settlement at the Hoorn Kill during that time, the evacuation of the fort and the retirement of the Dutch settlers from the place, and the occupation of it by Maryland settlers, and the collections of duties there by his authority, I can only say that while I think it very questionable, or their statements much exaggerated, it is quite certain that if the Dutch settlers ever retired from it, or the fort was ever evacuated, they must have returned very soon afterwards, and that if the Maryland settlers ever possessed themselves of it, they must have abandoned it quite as speedily, as the well-authenticated historical events which followed soon after will conclusively show. By them all this is recorded as having occurred in the year 1661; and yet this date brings us down to an era of good feeling pre-eminently characterized by friendly and harmonious relations between the Dutch and English settlers on the opposite sides of the peninsula, and also between Lord Baltimore himself and the principal officers in all the Dutch settlements; for in August, 1662,

his lordship with a numerous suite made a friendly visit to the director-general of the City Colony at New Amstel, and was very cordially received and entertained by him, and two days afterwards extended his visit to the director-general at Altona, where he was received and entertained in the same friendly manner, and where there was an invitation from Governor Stuyvesant awaiting his arrival, to extend his visit as far as New Amsterdam, with a tender of a proper escort from Altona, but which his engagements compelled him with regret to defer to another and more convenient opportunity. I shall have occasion hereafter to mention another important fact which would seem to be equally incompatible with the statements which I have referred to, or with the presumption even, that any such hostilities had occurred between them in 1661, or that his lordship was in possession of the fort and settlement at the Hoorn Kill in that year, or any year afterwards.

On the 12th day of March, 1664 (O. S.), letters patent were issued by Charles the Second of England to his brother, James, Duke of York and Albany, his heirs and assigns, for all the mainland beginning and extending from the River St. Croix, now the northern boundary of the United States, where they adjoin the British province of New Brunswick, to the east side of Delaware Bay; and among the rights, powers, and privileges conferred upon him by it were those of royal governor of it, subject to the sovereignty of the king over it. Prior to that date it having been the purpose of Charles the Second for a long time to terminate the disputes and contentions between the Dutch and English settlers in America by estab-

lishing in the only practical method left to him, the long-asserted claim of the Crown of England to all the territory then in possession of the Dutch in this country, he despatched in the latter part of the month of May following a fleet, consisting of two frigates, a sloop-of-war, and a transport with three hundred troops, under the command of Colonel Richard Nichols, with whom were associated as royal commissioners Sir Robert Carr, George Cartwright, and Samuel Maverick, Esquires, with powers and instructions to visit the English colonies on the coast, and hear complaints and settle the peace and security of the same, and that their first duty would be the reduction of the Dutch in or near Long Island, or anywhere within the English dominions, to entire obedience to the sovereignty of the British Crown, to remedy the many grievances which the neighboring British colonists had for many years suffered at their hands. In the mean time, before the expedition had reached its destination, on the 25th day of June, 1664, the Duke of York sold and conveyed to Lord Berkeley and Sir George Carteret that portion of the lands granted to him lying between the Hudson River and the Delaware Bay, and now constituting the State of New Jersey; and which was then named New Jersey in compliment to Sir George Carteret, who had been governor of the island of Jersey, and had firmly held it for Charles the First during the rebellion and his war and conflict with the Parliamentary forces, and whose devotion to his cause was in part the consideration for the sale to them.

It is not necessary to trace in detail the progress and movements of the English fleet and expedition in the work

assigned them. It is sufficient to state that by the 9th of September following the fleet had appeared before New Amsterdam, the capital and principal settlement of the New Netherlands, and Governor Stuyvesant had submitted to the demands of Colonel Nichols without forcible resistance or firing a gun, and had surrendered to the English all of the Dutch possessions over which he had authority and command at that time, and England was now in full possession and control of them. A short time prior to this event, however, the residue of all the Dutch and formerly Swedish settlements on the western side of the Delaware, above the Christina, including Altona, had also been sold and conveyed by the Dutch West India Company to the City of Amsterdam, and had been incorporated in the City Colony, and was now solely subject to its government and authority. That fact had been made known to Colonel Nichols and the commissioners, either before or upon the surrender of Stuyvesant, and as their instructions were to reduce all the Dutch possessions on our coast to obedience, their next duty was to proceed in like manner against their settlements on our river. They had left England with ample instructions for every contingency that might arise, and for this occasion most especially. Accordingly, Sir Robert Carr was directed by Colonel Nichols and the other commissioners to proceed with one of the frigates, the sloop-of-war, and transport of the fleet, and the troops not required to hold the fort and community at New Amsterdam in proper subjection, against the fort and the town of New Amstel, on the Delaware, as then the principal settlement upon it; and for that purpose a commission was duly issued

to him by them with written instructions, among which was the following, and which was evidently dictated at the War Office in London, by the command of the king, before the departure of the expedition from England: "If Sir Robert finds he cannot reduce the place by force, nor upon the conditions before mentioned, he may add such as he may deem necessary; but if both fail, he is, by a messenger to the Governor of Maryland, to ask aid, and from all other English who live near the Dutch plantations. He is to declare to Lord Baltimore's son and all the English concerned in Maryland, that this great expense to His Majesty in ships and soldiers has been incurred solely for the purpose of reducing foreigners in these parts to His Majesty's obedience; but that being reduced at His Majesty's expense, he is commanded to hold possession for His Majesty's own behoof and right, and that he is willing to unite with the Governor of Maryland in His Majesty's interest on all occasions; and if my Lord Baltimore doth pretend right thereto by his patent (which is a doubtful case), you are to say that you only keep possession till His Majesty is informed and otherwise satisfied."

Fortunately, Sir Robert had no occasion to call on the Governor of Maryland for any assistance on his arrival before New Amstel. But suppose it had been otherwise, with such a wet blanket as that instruction and admonition to his lordship contained thrown on the shoulders of every cavalier and soldier of Maryland called on to aid in such an exigency and such a struggle, with how much ardor or spirit would they have engaged in it? Under the instructions referred to, Sir Robert Carr sailed with his fleet

and troops for the Delaware, and, after a tedious voyage in ascending the river, passed the fort at New Amstel without being fired upon, and anchored above it. He then made a formal demand in the name of his Majesty the King of England for the surrender of the fort, the town, and all the possessions of the City Colony on the bay and river. After one day of parley and delay, the authorities and citizens of the town were generally disposed to submit and to surrender the place without further hesitation, but a minority of them, at the head of whom firmly stood the director-general of the colony, D'Hinoyossa, were strenuously opposed to it, and would come to no terms, and as Sir Robert was in hopes that they also would at length see the necessity and propriety of it, the effort to procure it without firing either upon the fort or the town was protracted for three days, when the town authorities and citizens determined to capitulate and surrender it without the consent and against the will of the director-general, on which he retired with his officers into the fort, resolved to hold it, at least, to the last extremity. The next morning the frigate and sloop-of-war were ordered to drop down below the fort, but within musket-range of it, and each to discharge two broadsides into it, and the troops were also landed for the purpose of storming it as soon as those discharges were made. The plan of attack was promptly executed by both the ships and the soldiers, and in a moment the fort was theirs, with a loss to the Dutch of four killed and ten wounded out of a garrison of between thirty and forty men. It was an act of consummate courage and heroic resolution on the part of the director-general to withstand such an attack, but it was

at the same time but little better than an act of madness, for the fort was utterly untenable, and could afford no security or protection against such a combined assault both by land and water. The terms of capitulation, though liberal to all the inhabitants submitting to them, constituted a total surrender of the Dutch possessions on the Delaware to the sovereignty of the British Crown. Officers and troops were immediately despatched to the Hoorn Kill to enforce the surrender and take possession of the fort and settlement there; and there were strong complaints on the part of the inhabitants both there and at New Amstel of the bad treatment and spoliations of private property to which they were subjected by the British troops after the surrender. The name of New Amsterdam was now changed to New York, and of New Amstel to New Castle, by the English conquerors; the former of which contained at that time a population of about fifteen hundred, while all the settlements within the limits of our State did not probably comprise a population of more than two thousand. The failure of the two preceding races to make any greater progress in the settlement and population of this fine and favored region in America during the time they had been in the possession of it, is only the more remarkable when we reflect that each embarked in the grand enterprise with great spirit and ardor at an unusually brilliant and auspicious epoch in the history of both countries apparently for such an undertaking, and when the star of empire shone in the ascendent with the brightest effulgence over each of them, whilst the sky of Sweden was yet radiant with the lustre of the achievements and conquests of Gustavus Adolphus in

Russia, Prussia, and on the shores of the Baltic, and that of the Netherlands was still in a blaze with the glory of the still grander achievement of their entire independence of the Crown of Spain, and the magnificent conquests of their meteor flag both in Oriental and in Western seas; and yet, strange to say, not even the faintest and feeblest reflection of that splendor and glory on either hand ever reached to their dominions on the shores of the Hudson or the Delaware. Full fifty years had now elapsed since the Dutch had commenced the plantation of their possessions in this country, and yet in one hundred years after that time Delaware alone must have contained a civilized population of nearly fifty thousand, and the four States of New York, New Jersey, Pennsylvania, and Delaware a similar population of nearly one million; and now, after the lapse of a little more than two hundred years from that date, the population of the same cannot be far short of ten millions. It is therefore manifest that the English conquest was no calamity, but a great blessing in the first instance to the region conquered, and afterwards to our whole country. For it was the fortune of these four States to bear the brunt of the American Revolution, as the regions of the Hudson and the Delaware became the theatre of its greatest and grandest conflicts, and here, in turn, our national independence was afterwards substantially conquered; and from that time they both became illustrious in the history of the country, and the Delaware particularly memorable as the historic river of the Revolution.

In the following year war was formally proclaimed by England against the Netherlands, and continued until 1668,

without any change in the relations which the province of the Duke of York now sustained to England, and into which our territory, with the sanction of his Majesty Charles the Second, had been duly incorporated immediately after its conquest, by his royal highness the duke under his letters patent, which did not include it, and by which he thus constituted his whole territory one province and one provincial government under them, making New York the central seat of it, and the official residence of his lieutenant-governor for the time being. But war again occurred between the two countries in 1672, during which the Netherlands temporarily recovered the possession of the whole region, ours as well as the residue of it, and re-established their government over it; on the conclusion of it, however, in 1674, by the terms of the treaty it was restored to England, and which had the effect at last to confirm the title of that country to it by the peaceful and solemn compact of the two countries; and inasmuch as the intervening recapture of it *flagrante bello* was supposed to have had the effect in law to abrogate and annul the estate and powers granted and delegated immediately from the king to the Duke of York in the province, it was deemed advisable to revive and confirm the grant by a renewal of the letters patent after the close of the war and the ratification of the treaty of peace restoring it to the Crown of Great Britain, and which was accordingly done on the 29th day of June, 1674.

On the 14th day of June, 1680, William Penn presented to his Majesty Charles the Second, with whom he was personally well acquainted, as he was also with his brother,

the Duke of York, a petition to grant to him in lieu of a claim on the British government, which he had inherited from his father (late an admiral in the British navy), for money advanced and services rendered, to the amount of sixteen thousand pounds, a tract of country in America, lying north of Maryland, bounded on the east by the Delaware River, on the west limited as Maryland, and to extend northward as far as plantable. There then existed in the privy council of the king a body of councillors of the Crown well known to the laws and constitution of the realm, a duly constituted committee, named in polite and strictly technical terms The Lords of the Committee of His Majesty's most honorable Privy Council for the Affairs of Trade and Plantation, of which Lord Chief Justice North of the Court of King's Bench was *ex officio* a member, among many other eminent noblemen and gentlemen. This committee had, among other powers conferred upon it, special cognizance of disputes in relation to plantations and colonial and provincial boundaries arising in the distant colonial possessions of the Crown, and beyond the jurisdiction of the courts of law of the kingdom, notwithstanding they might involve questions of right and title to extensive possessions in such distant colonies; and whenever a question arose between two provinces of America, or elsewhere in their remote possessions, concerning the extent of their charters, mutual limits, or matters of that kind, the jurisdiction of the committee was original. It had, however, no power to enter judgment or decree as a court of law or equity, or to enforce its decision against either party, for its province simply was to investigate such cases and to advise

the king of their conclusions in regard to them. To that committee, by the direction of the king, Mr. Penn's petition was promptly referred. I am here happy to have the opportunity to acknowledge the obligation we owe to the distinguished commissioners appointed a few sessions since on behalf of this State to consider, in conjunction with a like body of commissioners appointed on behalf of the State of New Jersey, what was then known as the fishery question between the two States, and to report to the Legislature thereon, for the thorough and patient research and investigation made by them in the matter, and which brought to our knowledge, for the first time in the history of the questions we now have under consideration, the full and interesting details of the proceedings before that distinguished committee of the privy council on the petition so referred to it. I shall repeat the substance of them only.

On the 14th of June, 1680, the Committee in session in the council chamber, the petition of William Penn was read, praying in consideration of debts due to him, or his father, from the Crown, to grant him letters patent for a tract of land in America, north of Maryland, bounded on the east by the Delaware River, on the west limited as Maryland, and northward to extend as far as plantable: whereupon Mr. Penn was called in, and having been asked what extent he would be contented with northerly, declared he would be satisfied with three degrees to the northward, and was willing, in lieu of such a grant, to remit his debt due to him from His Majesty, or some part of it, and to stay for the remainder until His Majesty should be in a better condition to satisfy it. And after consideration of the whole

matter it was ordered that copies of his petition be sent to Sir John Werden on behalf of His Royal Highness (the counsel and representative of the Duke of York), and to the agents of Lord Baltimore, to the end that they might report to the Committee how far the pretensions of Mr. Penn might consist with the boundaries of Maryland, or the Duke's property of New York, and his possessions in those parts. Whitehall, June 25, 1680. Committee again in session. The petition of Mr. Penn was again read concerning a tract of land to be granted to him in America, together with a letter from Sir John Werden, and another from Lord Baltimore's agents touching the same. And Mr. Penn having been afterwards called in, was told that it appearing by Sir John Werden's letter that part of the territory desired by him was already possessed by the Duke of York, he should apply himself to His Royal Highness for adjusting their respective pretensions; and Mr. Penn being also acquainted with the matter of the letter from Lord Baltimore's agents, he does agree that Susquehanna Fort shall be the bounds of Lord Baltimore's province; and as to the furnishing of arms and ammunition to the Indians, Mr. Penn declares himself ready to submit to any restraint their Lordships shall propose. Whitehall, Nov. 4, 1680. Committee again in session. The petition of Mr. Penn was read, desiring that a day might be appointed for preparing a grant unto him of proprietary in a tract of land in America upon Delaware River: and their Lordships appoint this business for Thursday next. Whitehall, Thursday, Nov. 11, 1680. Committee again in session. Mr. Attorney-General presents the Committee with his

observations on the draft of Mr. Penn's patent. Whitehall, Dec. 16, 1680. Committee again in session. Mr. Penn is called in concerning the patent desired by him, and upon reading the letters from Sir John Werden touching the boundaries wherein His Royal Highness may be concerned, their Lordships think it best for the settlement thereof that Sir John Werden be desired to attend on Saturday next in the afternoon, at which time the agent of Lord Baltimore is likewise ordered to give his attendance as to what concerns his Lordship's property of Maryland. Whitehall, Saturday, Jan. 15, 1681. Committee again in session. The boundaries of Mr. Penn's patent, settled by Lord Chief Justice North with the alterations of Sir John Werden, were read and approved, and their Lordships appoint Wednesday next, at nine in the morning, to review the whole patent. Whitehall, Saturday, Jan. 22, 1681. Committee again in session. Upon reading the draft of a patent for Mr. Penn concerning his absolute proprietary of a tract of land in America, northerly of Maryland, the Lords of the Committee desire my Lord Chief Justice North to take said patent into his consideration, and to provide by fit clauses therein that all acts of sovereignty as to peace and war be reserved to the King; and that all acts of Parliament concerning trade and navigation and His Majesty's customs be duly observed; and in general that the patent be so drawn that it may consist with the King's interest and service, and give sufficient encouragement to planters to settle under it. A paper being also read, wherein my Lord Bishop of London desires that Mr. Penn be obliged by his patent to admit

a chaplain of his Lordship's appointment, upon the request of any number of planters; the same is also referred to my Lord Chief Justice North. Whitehall, Thursday, Feb. 24, 1681. Committee again in session. A draft of a patent for Mr. Penn is read, and there being a blank left for the name of the tract or province, their Lordships agree to leave the nomination of it to the King.

The communications by letter which in the mean while ensued between the committee through its secretary, William Blaythwaite, Esq., and the representative of the Duke of York, and the agents of Lord Baltimore, in relation to the matter, will furnish further information on the subject which the journal of its sessions merely, of course, could not supply, and will clearly explain and show how and why the northern boundary of our State is in the form of an arc of a circle, and which was originally fixed, pending these proceedings, by agreement between the Duke of York and William Penn, as the southern limit of his Province of Pennsylvania, where it was to abut upon the northern boundary of what his royal highness then called his Delaware, or New Castle colony. The first is a letter in reply to his service of a copy of the petition of Mr. Penn, pursuant to the order of the committee at its first session, from Sir John Werden on behalf of the Duke of York.

St. James, June 23, 1680.

For William Blaythwaite, Esq., *Secretary to the Right Honorable the Lords Commissioners for Trade and Plantations at Whitehall.*

Sir,—I had answered your letter of the 14th sooner, but

my going to Windsor just when I received it hindered me then, and also made me think it proper to acquaint the Duke with the contents of it first. What I have now to say is, that by all which I can observe of the boundaries mentioned in Mr. Penn's petition, they agree well enough with that colony or plantation which hath been hitherto (ever since the conquest of New York by Colonel Nichols) held as an appendix and part of the government of New York by name of Delaware Colony, or more particularly New Castle Colony, that being the name of a principal place in it; the whole being promiscuously planted by Swedes, Finlanders, Dutch and English, all which hath been actually under the government of His Royal Highness' Lieutenant at New York hitherto; but what are its proper boundaries (those of Latitude and Longitude being so very little known, or so ill observed, as experience tells us, in all the West Indies) I am not able to say; if this be what Mr. Penn would have, I presume the Right Honorable the Lords of the Committee for Trade and Plantations will not encourage his pretensions to it by reason of what is mentioned, which plainly show the Duke's right preferable to all others (under his majesty's good liking), though it should not prove to be strictly within the Duke's Patent; but if it be any other parcel of land unimproved in those parts, which is without all other patents, and not interfering with the possessions of His majesty's subjects already settled there, I humbly submit to their Lordships how far they may think convenient (under fitting restrictions and qualifications to tie up the government of such new colonies as near as may be to the laws of England) to recommend the

petitioner's request to His majesty: thus I think I have, as far as I am able at present, fully answered your letter upon this subject; so I remain,

Sir, your most affectionate Friend and Servant,

Jo. Werden.

On the same day he received from the agents of Lord Baltimore the following reply:

Sir,—In answer to yours in reference to Mr. Penn's petition, some things are thought proper to be offered in respect to the particular concern of my Lord Baltimore, and something in reference to the public on his Lordship's behalf. It is desired that if the grant pass unto Mr. Penn of the lands petitioned for in America, that it may be expressed to be land that shall lie north of Susquehanna Fort, also north of all lands in a direct line between the said fort and Delaware river; and also north of all lands upon a direct line westward from the said fort; for that fort is the boundary of Maryland northward. It is further desired that there may be contained general words of restriction as to any interest granted to Lord Baltimore, and saving to him all rights granted; it is also prayed that my Lord may have a sight of the grant before it pass. On the public account it is offered that some due caution be provided that no arms, powder, shot, or ammunition be sold by any that shall settle in this new plantation to the Indians or natives; for hereby a common mischief may happen unto all his Majesty's neighboring plantations.

This, with our thanks on my Lord Baltimore's behalf for your care of him, is all at present from,

Sir, your humble servants,

BARNABY DUNCH,
RICHARD BURK.

On the 16th day of October, 1680, a second letter was received from Sir John Werden on behalf of the Duke of York, as follows:

SIR,—You heretofore wrote to me touching Mr. William Penn's petition then before the Right Honorable the Lords Commissioners for Trade and Foreign Plantations; to which I answered you as at that time I was obliged to; since then Mr. Penn hath represented to the Duke his case and circumstances, in relation to the reason he hath to expect favor from his Majesty touching that request of his, to be such as that his Royal Highness commands me to let you know, in order to your informing their Lordships of it, that he is very willing that Mr. Penn's request may meet with success; that is, that he may have a grant of the tract of land which lies on the north of New Castle Colony, part of Delaware, and on the west side of Delaware River, beginning about the latitude of 40 degrees, and extending northwards and westwards as far as his Majesty pleaseth, under such regulations as their Lordships shall think fit.

Sir, your very humble servant,

JO. WERDEN.

In the mean while a draft of the proposed grant had been

prepared by Mr. Penn, and by the order of the committee had been submitted to the attorney-general, that if upon consideration of the powers therein proposed he should have any objection to it, he might report the same to them. And in obedience to their order their secretary had on the 18th day of November, 1680, addressed a letter to Sir John Werden, apprising him also of that fact, and that they had been informed that a copy of the draft had been laid in his hands, and that if he had nothing more to offer to them on the subject, they proposed to take their final resolution in relation to the patent at their next meeting, and stating the time of it; to which he replied on the 20th of that month as follows:

SIR,—At two of the clock of this day I met with your letter to me of the 18th instant, and a copy in it (which I here return to you) of some part of Mr. Penn's patent for land in America. I am to first premise to you that in cases of this nature it were most proper to have the advice of council learned in the laws for settling the boundaries of any new patent which may be liable to encroach on those of another's possession; but in regard I remember well the Duke's directions expressed in a former letter by me to you by his Royal Highness' order, dated the 16th of October, 1680, I shall frankly tell you my thoughts thereupon, viz.: That I believe the description by longitude (especially) and of latitude are very uncertain, and so also is it under what meridian the head of Delaware river lies, which I do believe hath never yet been observed by any careful artist. But it being the Duke's intention that Mr. Penn's grant be bounded

on the east side by the Delaware river, and that his south limits be twenty or thirty miles beyond New Castle (which colony of New Castle is northwards and distinct from Maryland, that being under the jurisdiction of Lord Baltimore), which extent northwards of New Castle colony, we guess, may reach as far as the beginning of the fortieth degree of latitude; therefore, if Mr. Penn's patent be so worded as to leave New Castle twenty or thirty miles beyond, free, and to be bounded on the east by Delaware river, I think this is all that needs as to the Duke, who will not concern himself how far north or west Mr. Penn's patent takes him.

I am, Sir, your most affectionate Friend and Servant,

JO. WERDEN.

Three days afterwards, that is to say, on the 23d of November, 1680, he wrote again to Secretary Blaythwaite, as follows:

SIR,—Mr. Penn having often fallen into discourse with me of his concerns in America since I wrote to you on Saturday, I have told him the substance of what I wrote, and he seems to fear that if his south limits be rightly set at twenty or thirty miles north from New Castle Town, he shall have so little of the river left as very much to prevent the hopes he hath of improving the rest within his patent; but, on the other side, he is willing that twelve English miles north of New Castle be his boundary, and believes the distance will fall under the beginning of the fortieth degree of latitude; I have already signified to you all I know of the Duke's mind herein, which is in general to

keep some convenient distance from New Castle northwards for a boundary to that colony. But I confess I do not understand why it is precisely necessary to insist on just such a number of miles, more or less, in a country of which we know so little, and when all the benefits are intended to this patentee which others enjoy: so as I submit this point to their Lordships' consideration, and do not think it material to add more at present, from

Your very affectionate Friend and Servant,

Jo. Werden.

The agents of Lord Baltimore, as well as Sir John Werden on behalf of the Duke of York, were again duly notified to appear before the committee, on the 18th of December, 1680, to present their objections to the draft of Mr. Penn's patent, if any they had, and were desired not to fail in their attendance, as their lordships were determined to proceed at that time to a resolution in the matter. But neither of them then appeared, or made further answer.

Assuming, on the basis of this last letter, that the Duke of York had at length assented to the fixation of the southern line of Mr. Penn's patent for his Province of Pennsylvania at the distance of twelve English miles north from the town of Newcastle, the Lords of the Committee for the Affairs of Trade and Plantations requested Lord Chief Justice North to draw the description of the boundaries to be inserted in it, and which he did in the following terms:

"As the same is bounded on the east by Delaware River from the twelve miles distance northward of New Castle

Town, beginning of the fortieth degree of northern latitude unto the three and fortieth degree of northern latitude, if the said river doth extend so far northward; but if the said river shall not extend so far northward, then by the said river so far as it doth extend; and from the head of the said river the eastern bounds are to be determined by a meridian line to be drawn from the head of the said river unto the said three and fortieth degree; the said lands to extend westward five degrees in longitude, to be computed from the said eastern bounds; and the said lands are bounded on the north by the beginning of the three and fortieth degree of northern latitude, and on a circle drawn at twelve miles distance from New Castle northward and westward, unto the south by the beginning of the fortieth degree of northern latitude; another by a straight line westward to the limit of longitude above mentioned, excepting all lands within twelve miles of the town of New Castle that shall happen to lie within the said bounds, now in the possession of His Royal Highness, or his tenants or assigns."

Their final report to the king in the matter was as follows:

MAY IT PLEASE YOUR MAJESTY:

In obedience to your Majesty's order, signified to us by the Earl of Sunderland on the 1st of June last, we had prepared the draft of a charter constituting William Penn, Esq., absolute proprietary of a tract of land in America therein mentioned, which we humbly present to your Majesty for your royal approbation, leaving also the naming of the

said province to your Majesty, which is most humbly submitted.

In response to their inquiry of the attorney-general, they received the following communication from the first law officer of the Crown during their consideration of the matter:

MAY IT PLEASE YOUR LORDSHIPS:

I have considered the petition of Mr. William Penn, praying his majesty to grant unto him a tract of land in America, lying north of Maryland, bounded on the east by Delaware bay, to the westward by the Indian countries as Maryland, and do not find that such boundaries do intrench upon the Lord Baltimore's province of Maryland, which is bounded southward by a part of Virginia, eastward by the main ocean and Delaware river, and northward by that part of Delaware river that lieth in the fortieth degree of latitude, and so by a direct line westward through the continent. And the patent granted to His Royal Highness, of New York being bounded westward by the east side of Delaware bay, is sufficiently distinguished from the grant desired by Mr. Penn, which is bounded eastwardly by Delaware bay or river; so that the tract of land desired by Mr. Penn seems to be undisposed of by his majesty, except the imaginary lines of New England patents, which are bounded westwardly by the main ocean, should give them a recall, though impracticable to all those vast territories. But I am further to offer unto your Lordships, that there are several Dutch and Swedish plantations, which

have been under the English government, that lie scattered on the westward of Delaware River, and some of them perhaps within the bounds of Mr. Penn's petition, and have for a long time, either acknowledged the protection of His Royal Highness, who took them from the Dutch upon the conquest of New York, or of Lord Baltimore, near whose borders they are settled; and how far Mr. Penn's grant may, in this consideration, concern his neighbors, is most humbly submitted to your Lordships.

It is to be observed, and it is for that purpose I have referred to them, that pending this important and protracted proceeding and investigation, Lord Baltimore presented before the committee of the privy council conducting it with the utmost deliberation and impartiality, no claim or pretension whatever to any of the settlements on the western side of the Delaware Bay and River, although every one then existing lay below the parallel of the fortieth degree of north latitude, and the only way in which their attention is directly called to that matter is to be found in the rather gratuitous allusion and suggestion of the attorney-general contained in the last lines of his communication to them; but even that recognizes the right and title of the Duke of York to them, as formerly Dutch and Swedish plantations or settlements held by the right of conquest, and his peaceable possession of them for several years prior to the application of Mr. Penn for his grant. But though not needed for such a purpose, because it is manifest from the moment the petition of Mr. Penn was read to them, they were well aware that Lord Baltimore's interests might be affected by it, and that

he might have grounds for objecting to it, it had the effect to bring this particular matter to their immediate and direct attention, and the care with which they proceeded to adjust the southern boundary of the province in reference to these settlements to the satisfaction of the Duke of York, indicated not only a clear and deliberate recognition of his right and title to them and to his Delaware or New Castle colony, but quite as clear and deliberate a repudiation and condemnation of Lord Baltimore's claim and pretension to them, on their part, under the circumstances. And such having been their final conclusion and decision in the case, it only became the stronger and more conclusive against the claim of Lord Baltimore when it was approved and confirmed by the king himself by the grant of the province to Mr. Penn. And well might it have been inferred from the course pursued by him during that inquiry, that his lordship had at last come to the conclusion to renounce tacitly, at least, all further claim to them. But scarcely had his royal highness parted with his title to them, thus recognized and sanctioned by such high authority, and soon afterwards further confirmed to him by a formal grant and letters patent, than his pretension was revived by his lordship and his heir and successor, not to be definitively settled until nearly seventy years afterwards, and then only by a solemn decree in the High Court of Chancery in England against the validity of it.

The grant and letters patent from his Majesty Charles the Second to his brother, and heir presumptive to his throne, the Duke of York, to which I have just alluded, were made and delivered in due form in about two years

after the termination of the proceedings before the Lords of the Committee for the Affairs of Trade and Plantations, on the 22d day of March, 1683, and were for "all that the Town of New Castle, otherwise called Delaware, and the Fort therein or thereunto belonging, situate, lying and being between Maryland and New Jersey in America; and all that tract of land lying within the compass or circle of twelve miles about the said town, situate, lying and being upon the River Delaware, and all the Islands in the said River of Delaware, and the said river and soil thereof, lying north of the southermost part of the said circle of twelve miles about the said town; and all that tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle, otherwise called Delaware, and extending south to Cape Lopen; together with all the lands, islands, soils, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings, fowlings, and all other royalties, privileges, profits, commodities, and hereditaments to the said town, fort, tracts of lands, islands, and premises, or to any or either of them belonging or appertaining, with their and every of their appurtenances, situate, lying, and being in America, and all our estate, right, title and interest, benefit, advantage, claim, and demand whatsoever, of, in, or to the said town, fort, lands, or premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly and other rents, revenues, and profits of the premises, and of every part and parcel thereof; To have and to hold the said town of New Castle, otherwise called Delaware, and Fort, and

all and singular the said lands and premises, with their and every of their appurtenances hereby given and granted, or herein before mentioned to be given or granted, unto our said dearest Brother, James, Duke of York, his heirs and assigns forever." A nominal rent of four beaver-skins per annum, when demanded, being reserved therein to his Majesty, his heirs and successors. It also granted to him, his heirs and assigns, the general powers of internal government over it, and of making laws and enforcing the same within its limits.

Prior to the date of it, however, the Duke of York had made and delivered to William Penn, on the 21st day of August, 1680, an indenture of lease for the term of ten thousand years for the town of New Castle, and the lands and the river about the same within the twelve miles circle surrounding it, and had afterwards, on the 24th day of August, 1682, sold and conveyed by his deed of feoffment all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying, and being upon the river Delaware in America; and all islands in the said river Delaware, and the said river and soil thereof, lying north of the southermost part of the said circle of twelve miles about the said town, and all the estate, right, title, and interest of his royal highness therein and thereto belonging; and also, on the same day, another deed of feoffment to him for all the land lying below the said circle on the river and bay, and extending from it to Cape Henlopen; and under both of which deeds of feoffment in fee to Mr. Penn livery of seisin was duly and formally made, and he

was thereupon put in full and complete possession of all the lands and all the river and soil thereof, and all the premises so sold and conveyed. A moiety of all the rents and profits thereof being reserved to the duke.

I should here say that the name of Pennsylvania bestowed on his province was not only suggested, but was insisted upon by the king, in an interview with Mr. Penn on the subject, in honor of his father, Admiral Penn, his own preference being that of New Wales,—Wales being the land of his nativity, and bearing some resemblance, as he thought, to his new province. And every Pennsylvanian, I think, ought to be satisfied that in that matter the king evinced better taste than Mr. Penn.

His arrival on the Delaware after the date of his deeds of feoffment was at New Castle, on the 27th day of October, 1682, where he was received by the inhabitants with a cordial welcome; and within three weeks afterwards he had writs issued for an election of representatives to a general assembly to be held at Chester, to which he had in the mean while changed its former name of Upland. We even then had three organized counties, named respectively New Castle, Jones, and New Dale, while Pennsylvania, by the operation of the twelve miles circle, had but one and no more, and the germ of that she had obtained from the liberality and generosity of the Duke of York, and from our own incipient little State. Pursuant to the call and writs issued elections were held, and the General Assembly, composed of members from the Province of Pennsylvania and the three lower counties (or "territories of the province," as they were soon after designated in contra-distinc-

tion to the province proper), convened at Chester on the fourth day of December following, and on the petition from the inhabitants of these counties asking for an act of union by the governor, and for their incorporation with the province in order to obtain the enjoyment of all the rights and privileges of it, such an act was passed at its first session, which was only for a few days. By the terms of it they were annexed to the Province of Pennsylvania as of the proper territory thereof; and it further provided that the people therein should be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania then enjoyed, or should thereafter enjoy. So that our little State first began its history by a close and cherished union with the great State of New York, and after that by another spontaneously sought with the great State of Pennsylvania; and being devoted to union of that kind from the start, it was quite natural that it should have stepped as promptly and spontaneously into the great union of the States as soon as the constitution of it was formed and presented for adoption. She has always been devoted to such union, and never tried secession but once, and then she made a complete and grand success of it, as we can all proudly and gratefully attest to this day.

Early in the ensuing month of January, 1683, the General Assembly again met, this time in Philadelphia, the Provincial Council having also assembled there a few days before. There were then six counties organized and represented in both bodies, three in the province and the same number in the territories, and to show the liberality and enlarged views of William Penn on the subject of legislative representation,

I will here simply state that by his original charter of government conferred upon the inhabitants of his province, and the act of settlement passed at the preceding session, each of these counties was represented by nine delegates in the General Assembly, and by three members in the Provincial Council, elected by what were then denominated the freemen of the county; but with the sanction of the governor and at the request of the Assembly, the former number was reduced to six for each county at that session.

Before I proceed any further, I should here remark that Cecilius, Lord Baltimore, died and was succeeded by his son and heir-at-law, Charles, Lord Baltimore, in 1676.

Meanwhile, between the sessions of the General Assembly before mentioned, Governor Penn, who had previously despatched a messenger to Lord Baltimore to arrange a meeting between them in relation to the boundaries of their provinces, joined him at West River on the 19th of December, 1683, where he found his lordship attended by a numerous suite, and who by his attention and civilities and the state with which he was surrounded, probably sought as much to impress the plain and simple proprietary of the adjoining province with his exalted character and power, as to flatter and please him with these demonstrations of respect for the like office and position which he held and enjoyed on the other side of the unsettled and disputed boundary which divided them. In their conference the next day Mr. Penn presented to him a letter from King Charles the Second, to the effect that Lord Baltimore had but two degrees according to his patent, and that, beginning at Watkin's Point, he should admeasure the degrees at sixty

miles to the degree, that being well and universally understood to be the extent of a degree of terrestrial latitude at that point when his letters patent were issued. To which he replied that the king was greatly mistaken, and that he would not abandon his patent to follow the king's letter, nor could a letter void his patent; and by that he would stand; and which was about the substance of all he had to say on the subject to the end of the conference. To which Mr. Penn rejoined that he thought the mistake was on his part, for though his patent began at Watkin's Point and went to the fortieth degree, yet that was assumed to be under the thirty-eighth degree, and if he had to start below that degree, then Virginia would be wronged. At this point of the colloquy, the uncle and chancellor of his lordship, who was present during the conference, remarked that his father's grant was not by degrees, as at first contemplated by him when he applied for it, for he had more of Virginia given him, but being planted, and the grant intending only land not planted, or possessed by any other than savage nations, he left it out so that it might not forfeit the rest. Upon which it instantly occurred to the mind of Mr. Penn that by that answer he could pretend nothing to Delaware which had been discovered, bought, and planted by the Dutch before that time, and so it could not have been intended to be included in it; but I must here observe that that was true only as to the purchase from Cape Henlopen to the mouth of the river and the settlement of De Vries's colony on the Hoorn Kill, so far as our side of the bay and river was concerned. And Mr. Penn also considered that even if his lordship's patent had in good faith and

according to the intention of it included any part of Delaware Bay and River, his lordship had forfeited his right to it by the long interval of time which had elapsed without any possession of it on his part, or reducing it to the sovereignty of England under which he claimed it, until the king at last had to do that, and therefore it was his to do as he pleased with it. Finding, however, that his lordship's mind was fixed on that point, he next proposed to him that though it was two degrees and a half from Watkin's Point to the fortieth degree of north latitude, at sixty miles to the degree, instead of seventy, yet if he would consent that the measurement should be computed at sixty miles to the degree, he would agree to commence at the fortieth degree, fall where it might. But his lordship dissented, and the conference was concluded without any compromise or adjustment of the matter.

In the month of May following he received a formal message from Lord Baltimore to meet him at the head of Chesapeake Bay, but his engagements preventing it, he met him a few days later ten miles west of New Castle, and thence invited and accompanied him to that place, where he entertained him as handsomely as the facilities of the town would afford; and finding that he was desirous of speaking privately with him only, he proposed that whatever communications were to pass between them should be in writing in the presence of their respective councils at their several lodgings, the better to avoid misapprehension or failure of memory in the progress of their negotiations on the subject. But his lordship deferred it, and excused himself on the plea that he was not well and would return to Maryland

as soon as he could, and reserve any further consideration of it for another season. Penn had learned, however, prior to that time, that he had issued a proclamation inviting settlers, under his authority and promise of protection as the proprietary of the Province of Maryland, into our counties at lower prices for land than he was offering them, and that the proclamation was attracting some attention in those counties. The next communication which he received from his lordship was a formal demand, by a special agent duly authorized to present it, of all the country south of the fortieth degree of north latitude, both in the Province of Pennsylvania and the three lower counties annexed to it, and the same being promptly refused, a party from Maryland, under the command of Colonel George Talbot, in the spring of 1684, made forcible entry on several plantations in the territory, and who even proceeded so far in this hostile invasion as to seize a piece of ground five miles west of New Castle, belonging to a gentleman by the name of Ogle, who had come over with Sir Robert Carr, and had participated in the capture of Fort Cassimer and the English conquest of the three lower counties, and erected a log fort upon it, raised a breastwork and built a palisade about it, and placed a force of armed men in it, and which he held for some time against the formal demands of the civil authorities at New Castle, in the name and under the commission of Lord Baltimore. In the mean while, the governor and council at Philadelphia instituted legal measures to reinstate the parties dispossessed, and to have the invaders prosecuted according to law, and a full account of which was forthwith addressed by letter from Governor Penn to

His Royal Highness, the Duke of York. His lordship must have felt himself by this time impelled by a stringent necessity to fortify his claim and title by some show of actual possession, or he would hardly have ventured at that late day, and after all that had happened, on such a rash and desperate expedient. But not long after this event Lord Baltimore returned to England, and Governor Penn, apprehending his purpose, and aware that the controversy concerning their boundaries would shortly be brought again before the Lords of the Committee for Trade and Plantations, soon followed him. In four months after his arrival in England Charles the Second died, and his brother James, Duke of York, peaceably succeeded him under the title of King James the Second of England, and after the delay which followed this event and two hearings before the Lords of the Committee, at which Lord Baltimore and Governor Penn were both present in person, and after full argument of the question before them, on the 13th day of November, 1685, they directed the following order of council to be entered: That the said lands intended to be granted by the Lord Baltimore's patent were only such lands as were cultivated or inhabited by savages, and that the part then in dispute was inhabited and planted by Christians at and before the date of the Lord Baltimore's patent, as it had been ever since that time, and continued as a distinct colony from that of Maryland, and so they were of opinion that for avoiding further difference, the tract of land lying between the River and Bay of Delaware and the Eastern Sea on the one side, and Chesapeake Bay on the other, be divided into two equal parts by a line from the latitude of

Cape Henlopen to the fortieth degree of north latitude (the south boundary of Pennsylvania by charter), and that the eastern half thereof be adjudged to His Majesty (viz., King James, who, when Duke of York, granted to Mr. William Penn), and the other half remain to the Lord Baltimore, as comprised in his charter. And this was not only afterwards recommended, but it was ordered by the king to be done in 1709.

I have now traced with too much prolixity, I am aware, the facts of the case and the history of this question from the first European or Christian settlement in this State down to the year 1685, but I do not propose to pursue it in detail any further, although sixty-five lingering years still remain, through which it slumbered for the most part in a state of comparative silence and suspension before we reach the ultimate conclusion and settlement of it. There is, however, one important and independent event in the history of our State which I will here notice before I proceed any further with the narrative of the question. The proprietary and governor, William Penn, had been long absent from the province and unavoidably detained in England by the state of his affairs and a succession of misfortunes and calamities there, from most of which the purity of his life and character should have been alone sufficient to have exempted him, and owing to that circumstance probably, as much as any other, jealousy and dissension had sprung up between the province and the territories, in the legislative as well as in other branches of the provincial government, in which the counties of the two portions of the whole territory being equal in number, and also in representation, there was, of

course, from the beginning a very delicate and sensitive equipoise of power between them in that branch of it. And besides, from the very start the province had not only been increasing in population and wealth more rapidly than the three lower counties, but more so than any other English colony or province in America. And yet, strange to say, notwithstanding this fact, the first manifestation of invidious feeling, or spirit of sectional jealousy exhibited by the one towards the other in the General Assembly, was on the part of the province towards the territories. Governor Penn had sadly disappointed the hopes and expectations of New Castle, and of many in the three lower counties also, when he passed by such a magnificent site as that of New Castle, and went so far above it, into the woods and among the Indians, to found a great city and a great capital for his fine province; but for that very reason, in part at least, he had conceived from the first a kinder regard for the place, and a stronger desire to promote its welfare and prosperity as far as it was in his power.

Actuated by this, as well as by other considerations, he had occasionally called and convened the General Assembly at New Castle before his departure for England, and having returned after an absence of nearly fifteen years, during which period much dissatisfaction with certain proceedings of the council of the government having arisen in the three lower counties, in December, 1699, he issued his next call for the General Assembly to meet in New Castle in the fall of 1700, with a view, it is said, to conciliate and reconcile this dissatisfaction. It was not his custom to address them by written messages, but when they assembled he went be-

fore them in person, and generally in a brief speech recommended such measures as he deemed advisable, and the one he made at the commencement of the session I am now speaking of is comprised in seven printed lines. It recommended an amendment of the frame of government, a revision and completion of the body of laws, and particularly for the settling of property, a supply for the support of government, and closed with these words, "I recommend to you amity and concord among yourselves." The members were all very happy to meet him, and the session was harmonious, and closed apparently to the satisfaction of all its members, both from the province and from the territories. There was among other statutes a general revenue act passed at that session, applicable alike to the province and the territories.

The next session I shall refer to was called by him to meet in Philadelphia on the 15th day of September, 1701. In the mean while there had been another general election of its members, with an increase in their number from the province, and which, of course, for the first time transferred the preponderance of power in the body to that section. But to the surprise of members from the three lower counties, not long after it had assembled an act was introduced by two members of the council elected from the province to confirm the revenue act before mentioned and all the acts passed at the preceding session of the Assembly held at New Castle in 1700, on the ground that such a confirmation at a session held in the province was necessary to give them any force or effect in the province, or in other words, that it was not competent for the body when sitting in the territories,

though composed of all its members, and so sitting under the call of the proprietary and governor, to pass any law to bind the province or the inhabitants of it. Such an arrogant assumption and pretension, and such a foregone conclusion to subordinate and degrade the territories to a condition so inferior to that of the province, and so manifestly contrary to the basis of equality on which the union of the two sections had been formed in that respect, suggested as it was for the first time immediately on the province attaining a majority in the body, met of course with all the indignant and vehement resistance from the representatives of the territories which it so well deserved. It was, however, insisted on and sustained by the unanimous voice of the members from the province, and when on the 10th of October it was put upon its first vote, the entire delegations present from New Castle and Kent counties, numbering nine members, arose from their seats and retired from the chamber. The vote was then immediately taken on the bill, and it was passed by the remaining members, consisting of twelve from the province and two from Sussex, no others from that county attending at the session. But wherefore the two who remained did not retire also history saith not. The retiring members however reappeared in their seats five days afterwards, and on being interrogated, answered that they were willing to join with the other members, provided they might have liberty to enter their dissent to the bill for the confirmation of the laws, "and nothing might be carried over their heads by over-voting them;" and declared that they were willing to do anything for the good and tranquillity of the government, and then

withdrew. They were afterwards recalled into the House again, and were told they should have liberty to enter their dissent to the bill referred to, but for the House to promise not to over-vote them, it was a thing so unheard of, and such an infringement of the rules and privileges of assemblies, the House could not yield to that demand. The reading of the bill three times over was then proposed, when the dissenting members departed from the House again. By conference on the part of the House and the mediation of the governor with the absenting members, an accommodation was afterwards effected, and they returned to their seats in the House a few days before the close of the session and declared their dissent to the bill which had been finally passed in their absence, and continued to perform their functions and duties as members for the remainder of it. But all foreseeing that this was not the end of the disruption threatened, amendments were incorporated in the charter of privileges originally granted by the proprietary and governor to the inhabitants of the province and territories on their union as one under his government, providing for and sanctioning in advance on his part their legislative separation and the establishment of a distinct legislative assembly, both in the province and in the territories, and which was afterwards completely accomplished by each of them within the time and in the mode provided for. And after the close of the session of 1701, the members of the Assembly for the province, and the members of the Assembly for the territories, or the three lower counties on Delaware, as they were now generally called, never met again in joint session, or as one body; and for all the purposes and powers of govern-

ment, legislative, judicial, and ministerial, they became entirely separate, distinct, and independent of each other, the only remaining governmental link or ligament connecting them together being one and the same proprietary and governor over both of them from that time until the declaration of American independence.

I now descend through the silence of the intervening period before alluded to in reference to the particular matter under consideration, to the year 1732. Both William Penn and Cecilius, Lord Baltimore, had been gathered to their fathers years before this time, leaving this unsettled question as an unfortunate legacy and yoke of discord to vex and perplex their descendants and heirs-at-law, when a change at length seemed, for a time at least, to come over the spirit of the succeeding Lord Baltimore, the third from Cecilius, and articles of agreement under seal executed in England on the 10th day of May, in that year, were entered into between the heirs of Governor Penn and his lordship, to settle this dispute on the basis recommended by the Lords of the Committee for Trade and Plantations and commanded by the king, which I have already read to you. The articles of agreement were accompanied with a map or plan of the territory to be divided under them, and which related solely to our peninsula, as high up as the northern and circular boundary of our State, which Lord Baltimore's agents, by his directions, had prepared for the purpose before the agreement was entered into, and which was annexed and specially referred to in the agreement for places and points mentioned in it; and upon that plan Fenwick's Island was named and designated as Cape Henlopen, and

from that island as the place of beginning, by the terms of the agreement, a line was to be run due west to the Chesapeake Bay, and from the middle of that line a direct line was to be run in a northerly direction until it struck as a tangent a circle of twelve miles, to be drawn about the town of New Castle, and from the point of contact of that tangent and circle a line was to be run in a due north direction to the point where it would be intersected by a line to be run in a due west direction from a point fifteen miles south of Philadelphia, with the qualification or proviso that if the said line to be run in a due north direction should cut off any part of the said circle, such part of the circle should constitute the boundary of division. And the boundaries were to be marked by stone pillars to be set up on it. By the terms of the agreement, also, commissioners were to be appointed by the parties to do this on or before the 25th day of December, 1733, and for want of a quorum of commissioners to meet at any time for that purpose, the party, by default of whose commissioners the articles could not be carried into execution, should forfeit to the other the penalty of five thousand pounds; and when done the parties were to make conveyance to each other for their several and respective portions of the territory to be divided by it between them.

But for eighteen years more the question still remained unsettled, when at last a bill was filed in the High Court of Chancery in England by the heirs of William Penn against Lord Baltimore, for the specific performance and execution of the articles of agreement, all the parties then being in that country, which was resisted by his lordship, and after

it had been duly prepared for trial, and all the evidence had been taken on both sides, was finally heard and decided by Lord Chancellor Hardwick in 1750. It was very thoroughly and elaborately argued by able counsel on both sides, and as the counsel for the defence endeavored to avoid the obligation of the agreement, they entered into the consideration and discussion of the whole question, from its earliest origin, and as it stood before the agreement had been entered into, and in which they were followed by the counsel on the other side. The jurisdiction of his honor, as the Lord High Chancellor of England, to try such a case of disputed claim to real estate and a princely province in the remote regions of America, was of course questioned and denied, and was among the first grounds of defence earnestly urged by the counsel for his lordship, in reply to which, in announcing his final opinion after the closing of the case, he took occasion to pay our three lower counties the following flattering compliment in a classical allusion, which for dignity and elegance was never surpassed, I am sure, by anything that ever fell from a Lord Chancellor in England. It is in the opening paragraph of his opinion, and as it strikes the key-note of the whole of it in the very first line, I will repeat it: "I directed this case to stand over for judgment, not so much from any doubt of what was the justice of the case, as by reason of the nature of it, its great consequence and importance, and the great labor and ability of the argument on both sides; it being for the determination of the right and boundaries of two great provincial governments and three counties; of a nature worthy of the judicature of a Roman Senate rather

than a single judge, and my consolation is, that if I should err in my judgment, there is a judicature equal in dignity to a Roman Senate that will correct it." And that judicature to which he referred, of course, was the House of Lords in England. But when we reflect that that decision, which practically settled this question forever, and saved our territory from the persistent and pertinacious effort of Lord Baltimore and his ancestors to absorb it in his Province of Maryland, had the direct effect, in the due course of the historical and political events which soon followed it, to make those three counties, in sixteen years from that time, a sovereign and independent State in the first confederation of the United States of America, the justice as well as the dignity of it becomes still more appropriate and striking.

The obligation of the agreement had been denied in the answer and in the argument on the ground of mistake and surprise on the part of Lord Baltimore, who did not know, as it was contended, at the time of entering into it, the superiority of his own claim over that of the complainants to the three lower counties; and as to the alleged misrepresentation in the petition of the first Lord Baltimore for the grant of the province, they further contended that there had been no such Dutch or Christian settlement proved to have been established at the Hoorn Kill or elsewhere within their limits prior to and at the time of the issuing of his letters patent as could invalidate his grant on that ground; and even spoke of De Vries's colony as consisting of mere stragglers there, without the knowledge, recognition, or sanction of the king. But, on the evidence in the case, the Lord Chancellor overruled both objec-

tions, and on the latter remarked that if they had been but stragglers settled there, yet if they had set up marks of possession on the soil, though not expressly recognized by the Crown as a settlement, it would have been sufficient to constitute the misrepresentation a deceit on the Crown. And although he sustained the agreement and decided the case upon it, still, as the bill and answer and the argument of counsel had placed the history of the whole case before him from its inception, he took occasion to review and consider it in the opinion delivered by him, in which he held that the relief prayed for in the bill was the ordinary equity dispensed in that court, the specific performance of an agreement for the settling and fixing of boundaries in peace, to prevent disorder and mischief, which in remote countries distant from the seat of government were most likely to happen and prove most mischievous. That his court had no original jurisdiction on the direct question of the original right of the boundaries, but the bill did not stand in need of that, because it was founded on articles of agreement executed in England under seal for mutual considerations, which gave jurisdiction to the King's courts, both of law and equity, whatever might be the subject-matter. The conscience of the party was bound by the agreement, and being within the jurisdiction of that court, which acted *in personam*, the court might properly decree it as an agreement if there was a foundation for it.

But the settling of the limits was not a dismembering of a province, and if a license from the Crown were necessary in law or policy to do that, it sufficiently appeared by orders in council made in 1685 and 1709, that the Crown had not

only recommended, but ordered this division to be made, so far as respects the three lower counties, as to which there was no dismembering, for the dividing line was there exactly the same; indeed, the circle was not within those orders. But as to that no difficulty could arise. The articles were not like a submission to arbitration. In those cases generally the time is conditional, so as determination be made by a certain day; but here the line and circle are agreed on by distinct, independent covenants, and that they shall form the boundaries of these tracts of land. That therefore, was a particular, certain specific contract of parties that those should be the boundaries. There was nothing left to the judgment of the commissioners, who were merely ministerial agents to run the lines according to the agreement, and set the mark. Therefore it was not like an award, but an agreement which this court would see pursued.

As to any imposition or surprise, the evidence was clearly contrary thereto. It would be unnecessary to enter into the particulars of that evidence; but it appeared that the agreement was originally proposed by the defendant himself; he himself produced the plan afterwards annexed to the articles; he himself reduced the heads of it to writing, and was very well assisted in making it; and further, that there was a great length of time taken for consideration and reducing it to form. Then was he to presume that he was imposed on in a plan, too, sent to him by his own agents; as to the plan itself, it was in his own power. A plain mistake, without imposition or fraud, would be a ground for not decreeing a specific performance. But the evidence shows that the defendant and his ancestors were conversant with

this dispute about fifty years before the agreement was entered into; therefore no ignorance, want of information, or mistakes were to be presumed. And in cases of that kind after an agreement, and plain mistake contrary to the intent of parties not shown, it was not necessary for the court to resort to the original right of the parties; it was sufficient if it were doubtful merely.

To consider the points in dispute, and first upon the defendant's charter, on which it was insisted that the whole of the fortieth degree of north latitude was included, and if so, it was not to be limited by any recital in the preamble. There was great ground for saying that the computation of latitude at the time of the grant varied much from what they were then, and that they were at that time set much lower than at present. But whatever that was, did it take the whole of it in by description? It came to the question whether the *usque ad* was inclusive or exclusive; therefore, however described, the same question remained.

But there was another argument advanced by the plaintiffs to restrain the defendant's charter from taking in the whole fortieth degree, viz., the recital of it, because they say the information given to the Crown by Lord Baltimore was that this part was land uncultivated and possessed by barbarians; whereas it was not so, but was possessed by Dutch and Swedes, and therefore the king was deceived in his grant. There was considerable evidence that Dutch and Swedes were settled on the east part of that country. But that was said to be no deceit on the Crown; for, though some stragglers were settled there, yet if not recognized by the Crown, that was not a settlement. He was of a different opinion.

For in those countries it had been always taken that the European country which has first set up marks has gained the right, though not formed into a regular colony. And that was very reasonable on the argument on which they proceeded. Then would not that affect the grant? If the fact were so, that would be as great a deceit on the Crown in notion of law as any other matter arising from the information of the party; because such grants tend to involve this Crown in wars and disputes with other nations; nor could there be a greater deceit than a misrepresentation tending to such a consequence, which would be a ground to repeal the letters patent by *scire facias.*

Next consider the dispute on Penn's charter, which grants to him all that tract of land in America from twelve miles distance from New Castle to the forty-third degree of north latitude, under which the plaintiffs do not pretend a title to the three lower counties, which relates to the two feoffments in 1682. Upon that title it is clear by the proof that the true situation of Cape Henlopen is as it is marked in the plan annexed to the articles of agreement, and not where Cape Cornelius is, as the defendant insists, which would leave out a great part of what was intended to be included in the grant; and there was strong evidence of seizin and possession by Penn of that spot of Cape Henlopen, and of all acts of ownership in regard to it. But the result of the evidence, taking it in the most favorable light for the defendant, amounts to making the boundaries and rights of these parties doubtful, and being so, it was the most proper case for an agreement, which being entered into, the parties could not resort back to the original rights between them,

for, if so, no agreement could stand; whereas an agreement entered into without surprise ought to be encouraged by a court of justice.

In relation to the coterminous boundary of this State and New Jersey, I would remark that, inasmuch as the original grant from the king to the Duke of York was of all the territory from the river St. Croix to the east side of the Delaware Bay, and his later grant to him subsequent to the Delaware conquest, of the town of New Castle, and all the lands embraced within the compass or circle of twelve miles surrounding it, together with all the islands in the river Delaware and the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town, it has always been considered and held in this State that, when we come to inquire for and ascertain the boundary between the two grants where they abut on each other, they must, of course, be read and construed together with strict reference to the manifest import of the terms employed in each to designate their respective limits, and the extent of territory, land, and soil intended to be granted and conveyed in each of them respectively; and as the former is to extend to the east side of the Delaware Bay, which was then and has ever since been understood to include the Delaware River also (otherwise the grant would not have extended to the river, but to the bay only), and the latter conveys not only the town of New Castle and all that tract of land lying within the compass or circle of twelve miles about the said town, situate, lying, and being upon the river Delaware, but also all the islands in the said river Delaware, and the said river and soil thereof

lying north of the southernmost part of the said circle of twelve miles about the said town, it extends to the east side of the river likewise within the circumference of the said circle; for it was as clearly the intention of the king to convey to the duke in the second grant, with the town of New Castle and the lands about it as limited and described, that part of the river itself, and the soil thereof, or the bed thereof, to the east side of it lying within the circle, as it was his intention to convey to him in the first grant all the land on the other side of it to the east side of the Delaware Bay. And such is the construction we have always given to the two grants, and the courts of our State have from the earliest period claimed and exercised jurisdiction over that part of the river to low-water mark on the east side of it, as a rightful portion of the domain of our State, and as much so as any other part of it claimed under that or any other grant. And the construction which we have thus given to it is in accordance with the construction which has been uniformly given to similar grants in analogous cases in the highest courts of the United States. But without that express grant of the river itself, and the subaqueous soil, or bottom of it within the compass or circle designated, the second grant would have been controlled by the general principle of legal construction applicable in such cases, and would have extended *ad filum aquæ*, or to the channel, or the middle of the river only.

But we derived our title to it immediately, not from the second grant of which I have been speaking, but from the deed of feoffment in the same terms from the Duke of York to William Penn for the same possessions, the essential

portion of which I have before read to you, and which I then stated to you was executed and delivered to him before the grant for the same had been made to the duke by the king, although he had been placed in full possession and command of them as absolute owner, proprietary, and royal governor of them by the king eight years prior to the sale and conveyance of them by him to William Penn, and had so been in the possession of them for eight years when he made that sale and conveyance to Penn. And as this was, among others, made a matter of particular objection before Lord Chancellor Hardwick in the case before mentioned, and from which I have already read so largely, by the counsel for Lord Baltimore to the ability of the heirs of William Penn to make a good and sufficient legal title to him for an portion of the territories in dispute between them, in case his lordship should decree a specific execution of the article of agreement, you will excuse me for now reading what the Lord Chancellor said in regard to that matter.

"As to the plaintiff's estate and possession, this must concern only the three lower counties which plainly passed by the feoffment. I will lay aside the question of estoppel, which is a nice consideration, for the Duke of York being then in the nature of a common person, was in a condition to be estopped by a proper instrument. In 1683 the Duke of York takes a new grant from the Crown, and having granted before, was bound to make further assurance; for the improvements made by Penn were a foundation to support a bill in equity for further assurance. The Duke of York, therefore, while a subject, was to be considered as a trustee. Why not afterwards as a royal trustee? I will not

decree that in this court, nor is it necessary; but it is a notion established in courts of revenue by modern decisions that the king may be a royal trustee; and if the person from whom the king takes by descent was a trustee, there may be grounds in equity to support that; and if King James the Second, after coming to the crown, was a royal trustee, his successors take the legal estate under the same equity; and it is sufficient for the plaintiffs if they have an equitable estate. Then consider this in point of possession of the Penns, the proof of which is very clear. They have been permitted to appoint governors of these lower counties, which have been approved by the Crown, according to the statute of King William. Indeed, all the acts of possession are with a *salvo jure* to the Crown. But the evidence for the defendants amounts to this. Not a real possession or enjoyment, but of attempts to take possession, sometimes by force, sometimes by inciting people to come there; otherwise why should Lord Baltimore grant here for half what he granted in other places? Which shows plainly that it was an invitation to get settlers there under their title. But what ends this point of want of title to convey is, that no part of the lower counties is left to be conveyed by the plaintiffs to the defendant; so that nothing being to pass by plaintiffs, it is not material whether they have title to convey or not. But now, in cases of this kind, of two great territories held of the Crown, I will say, once for all, that long possession and enjoyment, peopling and cultivating countries, is one of the best evidences of title to lands or districts of land in America that can be; and so have I thought in all cases since I have served the Crown;

for the great beneficial advantages arising to the Crown from settling such regions is that the navigation and commerce of the country is thereby improved. Those persons, therefore, who make these settlements ought to be protected in the possession as far as law and equity can; and both these proprietors appear to have great merit with regard to the Crown and the public, for these two provinces have been improved in private families to a great degree, to the advantage of their mother-country; this regards the three lower counties, the strength of which is vastly on the side of the plaintiffs."

Another very kind and complimentary allusion to the worth of our infant little State, of which we may well feel proud, for it certainly ought to be eminently gratifying to us, even at this day, to know that so good and great a man, and such a profound and able jurist and statesman as Lord Chancellor Hardwick entertained such a kind and favorable opinion of us at that early period. I apprehend, however, that his distinguished lordship could have had but little, if any, presentiment in his noble mind that the same radiant little gem which he was just then contemplating with such a high and favorable estimate of its value was so soon to be wrenched by an unlineal hand, with all its other and still more resplendent American jewels, from that same magnificent crown which he was then serving with so much ability, admiration, and devotion in that exalted station.

But to return from this digression, I will simply add on the point from which I was diverted, that all the equities involved in the question presented are clearly in our favor; and perhaps, before an equity tribunal, among them there is none more deserving of attention than that alluded to

by his lordship in analogy to a plea of estoppel in law. Both States, New Jersey and Delaware, derive their legal title from the same noble grantor, he derived his to both estates immediately from the Crown, to which he himself succeeded so soon after selling to Penn, and after obtaining his legal title for the same from the Crown, and the death of Charles the Second occurring so soon and suddenly and unexpectedly after that, there was scarcely a reasonable time left under all the circumstances for obtaining a conveyance of further assurance from the Duke of York before he became king; and after that there was no method of compelling it, if he either neglected or declined to make it. But since that decision it has been ruled and established under the sanction of such names as Lord Mansfield's and Lord Kenyon's, that even in the courts of law of that kingdom such a trust would be presumed to have been surrendered by the holder of the legal title for the security of the equitable owner of the estate after such a long possession of it by him.

The decree in the case of Penn *vs.* Lord Baltimore was for a specific performance and execution of the articles of agreement, which finally settled (practically, however, only, it seems) the long vexed and perplexing question in relation especially to what now constitute the coterminous boundaries of this State and the State of Maryland, and under it the same were run, marked with stone pillars one mile apart, and established in conformity with the terms of the agreement.

But to complete the present narrative of the subject, I think it but just and proper out of the respect which I

entertain for that State, and the favorable opinion and regard which its citizens have always cherished for the character and memory of their provincial proprietaries, and in extenuation of what would seem to have been the perverse and obstinate spirit so long maintained and manifested on the part of the chief of them against any amicable settlement of the controversy, to quote again from the opinion of Lord Chancellor Hardwick, what he finally said in the conclusion of it in relation to the last of them, and as a matter throwing some further light on this interesting portion of its history. It was more particularly with reference to his refusal to execute the articles of agreement and resisting the suit that he remarked, when considering the question of costs in the case,—

"But in America the defendant's commissioners behaved with great chicane in the points they insisted on (when they had met for the purpose of performing the duties devolved upon them by the articles prior to the institution of the suit), as the want of a centre for the circle about New Castle, and the extent of that circle, viz., whether a diameter of two or of twelve miles, the endeavoring to take advantage of one of the plaintiffs' commissioners coming too late to make the plaintiffs incur the penalty. The defendant has been misled by his commissioners and agents in America to make their objections his defence, which brings it nearer to himself; and although he would not at all have thought of it as from himself (so that I impute nothing in the least dishonorable to him), yet I must take it as his own act; and then should not do complete justice if I did not give plaintiffs the costs of this suit to this time, to be taxed, reserving subsequent costs."

The execution of the decree by the commissioners and the surveyors, Messrs. Mason and Dixon, in running, marking, and establishing the boundary, was not completed until the year 1768, nor was it confirmed by the king and by orders in council until the month of January in the following year, and it was not until the 8th day of April, 1775, that the Governor and Commander-in-Chief of the Three Lower Counties and Province of Pennsylvania published his proclamation requiring all officers and other persons residing on our side of it, as thus established and confirmed, to yield obedience to the laws of the said counties and govern themselves according thereto, and which was followed by the act of the Legislature reciting the foregoing proceedings, and extending the divisional lines of the counties through the newly-acquired strip of territory from their former western termini to the boundary so established, and to all persons inhabiting it as the lately disputed lands of this government all the immunities, rights, liberties, and privileges which they could or might be entitled to as if they had always been acknowledged actually to have resided within the same, and which was not passed until the 2d day of September, 1775, and which was the last statute but two enacted under the proprietary government by the Honorable John Penn, Esq., with his Majesty's royal approbation Governor and Commander-in-Chief of the Counties of New Castle, Kent, and Sussex upon Delaware, and Province of Pennsylvania, by and with the advice and consent of the representatives of the freemen of the said counties in General Assembly met, and by authority of the same.

And now these massive stones and monumental marks just

planted upon the boundary and duly confirmed and ratified with all the forms and ceremonies of the law, are already beginning to shake and tremble with the earthquake throes of a great upheaval, for we are now on the very verge of the American Revolution. On the 4th of July following the Declaration of Independence was adopted in the Congress of the United States, and in glad response to it and under the majesty of its sanction, by the 20th of September following the freemen of the three lower counties upon Delaware had, by their delegates duly chosen and in convention assembled, framed and adopted a constitution of government as a free, independent, and sovereign state of the world, under the name and style of The Delaware State. But for that we were indebted in a peculiar manner and degree to that Congress of the United States and to the Declaration of Independence, and as no other of the thirteen States that came out of it was; for we entered it as the territories or three lower counties of the Province of Pennsylvania upon Delaware, by virtue of the executive and proprietary ligament which then connected us to it; but that was severed by the word of the Declaration, on the faith of the sword that was instantly drawn to complete and consummate it, because all the powers of government which William Penn or his heirs or lieutenants had ever possessed, either in the province or its territories, were conferred by and held at the will and pleasure of the King of Great Britain, our king as well as his king up to that moment, and when his Majesty ceased to be our sovereign, he and his heirs and his deputies ceased, of course, to be our governors. Their subordinate powers, of course, perished with

the sovereignty on which they solely depended. And the last link which bound us to the Province of Pennsylvania, was at the same time dissolved with it. But suppose there had been no legislative secession and separation from the province prior to that, we should have still remained the three lower counties of the State, instead of the Province of Pennsylvania upon Delaware; or, on the other hand, suppose Lord Chancellor Hardwick had ruled and decided in the case referred to, in favor of, instead of against, the claim and pretension of Lord Baltimore, we should have gone into that Congress and come out of it, and been to this day nothing but three more counties added to the Eastern Shore of the State of Maryland.

And now after this presentation of the history of the subject, have I erred in the conclusions to which it has conducted me, or over-estimated the significance and importance of the three great events which I have regarded as the most fortunate and momentous in their consequences and results that have ever occurred in our history up to the date of the Declaration of Independence: the settlement at the Hoorn Kill prior to the date of Lord Baltimore's patent, the legislative separation from the Province of Pennsylvania, and the decree of the High Court of Chancery in England in the celebrated case to which I have referred so much at large? They made us a constituent and co-ordinate member of the great republic of the United States of America, and certainly constitute the three golden links both in our colonial history and in our colonial destiny.

PAPERS OF THE HISTORICAL SOCIETY OF DELAWARE.

III.

SOME ACCOUNT

OF

WILLIAM USSELINX

AND

PETER MINUIT,

TWO INDIVIDUALS WHO WERE INSTRUMENTAL IN ESTABLISHING THE FIRST PERMANENT COLONY IN DELAWARE.

BY

JOSEPH J. MICKLEY.

THE HISTORICAL SOCIETY OF DELAWARE.

WILMINGTON:

1881.

The following paper was read before the Historical Society of Delaware at its annual meeting, December 10, 1874. Various circumstances have delayed its publication until the present time, but without at all impairing its value as a historical contribution.

An obituary notice of the author, extracted from a Philadelphia newspaper, will be found interesting.

JOSEPH J. MICKLEY.*

. . . Mr. Mickley was born in Lehigh County, of "Pennsylvania Dutch" stock, on March 24, 1799. Sixty years ago he came to this city and learned piano-making. Later he engaged in this business on his own account, and was so employed until 1869. Many years since he began collecting curious coins of all nations, and in time had the most valuable collection in the United States. In 1867 he was robbed of sixteen thousand dollars' worth of coins, and a short time afterwards he sold the rest of his collection for a like sum.

Two years later he went to Europe, whither his fame as an antiquarian had preceded him, and was warmly received there. He remained abroad three years, travelling through all parts of England and the Continent. While in Europe he perfected himself in the Swedish language, and became deeply interested in books and manuscripts bearing upon the early Swedish settlements in America. In addition to his collection of coins, Mr. Mickley possessed a large library of rare and curious books in many languages. He had a number of very old directories of Philadelphia and other

* Died February 15, 1878.

cities, containing the names and residences of Washington, Jefferson, and other distinguished Revolutionary patriots. He had also many volumes relating to the history of Pennsylvania, and at the time of his death was translating a Swedish manuscript upon the same subject, in anticipation of publishing a work upon the early annals of the State. He was an acknowledged musical critic, and was said to be the best mender of musical instruments in the United States.

Ole Bull was his intimate friend, and his house was for many years the resort of antiquarians, musicians, and historians from all parts of the world. It was he who discovered that the violin which Ole Bull had bought for a Gaspar Desala was a counterfeit. Among his musical treasures was an autograph composition of Beethoven. Besides being extensively acquainted with European history and literature, Mr. Mickley could speak fluently French, German, and Swedish. He was very simple in his ways, and, while firm in his convictions and keen in his judgment of men, he was singularly gentle and lovable. Mr. Mickley was the first president of the Numismatic Society, and a well-known member of both the Franklin Institute and the Pennsylvania Historical Society.

SOME ACCOUNT

OF

WILLIAM USSELINX AND PETER MINUIT.

Gentlemen of the Historical Society:

William Usselinx, a native of Antwerp, in Brabant, presented the first idea of establishing a trading company to this country and of planting a colony in it. He had travelled several years in Spain, Portugal, and the Azores Islands, where he became acquainted with the profitable commerce carried on between those countries and America, or, as it was then called, West India. After his return to Holland, in the year 1591, he proposed to different persons, principally merchants, a plan to establish a general trading company, to trade to America, from which a great benefit could be derived by the nation, as well as by individuals.

In the year 1600 he presented his plan, in writing, to the States-General of Holland, many cities, and private persons,

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Note.—Most of the materials used in this paper were taken from original unpublished documents preserved in the libraries of Sweden, where I procured copies of them during my sojourn in that country.—J. J. M.

which was approved of. He labored diligently in forming a company. Prince Maurice, who had seen and heard Usselinx on the subject, became interested in it, and by his advice Usselinx travelled through Holland to make his scheme known, but it seems he could not rouse the slow inhabitants, for he said, "The people could not be awakened from their sleep." After staying one year in Amsterdam, he presented a petition urging the consideration of his plan, but without a favorable result.

In the year 1616 he sent a petition to the States-General of Holland and West Friesland, in which he offered to prove the following five points:

1. That through such a West India Company the United Netherlands could be strengthened and be better secured against the King of Spain than through all their revenues.

2. That the country could expect more treasures and a more extensive trade from India than Spain, in case we continue in peace with the King of Spain.

3. That in case we should become involved in war with the King of Spain, we could, through the means which we might acquire, not only retain but take places now in his possession, or render them altogether fruitless to him.

4. That money could be collected to carry on this work properly without weakening or reducing the regular trade in the least, even if the sum should amount to ten millions.

5. That this work should not only prove a benefit to merchants, mechanics, and seafaring people, but that each and every inhabitant should derive an advantage from it.

After many pressing solicitations this petition was finally permitted to be read in April, 1617, about one year after it

had been presented. By having devoted most of his time to this his favorite scheme, and meeting only with disappointments, Usselinx had become very much embarrassed in his private affairs, for in the year 1618 *sureté du corps* was granted to him, so that he was allowed to travel through Holland without being arrested by his creditors. Notwithstanding all these disappointments and the astonishing tardiness of the Hollanders, the indefatigable Usselinx was not yet discouraged, but labored assiduously, so that, after much perseverance and anxiety, he finally succeeded in forming the so much desired "Holland West India Trading Company." A charter was granted to this company on the 3d of June, 1621; and through the means of this company a permanent settlement was founded at New Amsterdam, on the Island of Manhattan, now New York.

The troubles of poor Usselinx had not yet ended, his patience was still further put to the test, for, after frequent urgings to be remunerated for his services, he had the mortification that not only no attention was paid to his demands, but that even his acts were unfavorably criticised. At this he lost his patience and made use of the following language:

"Crackbrained and overwise pretenders, who think that which they cannot comprehend in their crazy heads is not to be found in nature, even if they don't know what has passed in this affair and what my intentions may have been, are yet so impertinent not only to slander the good work and my propositions, but even dare to accuse persons of high rank and intelligence of inconsiderateness and imprudence, because they give me a hearing and approve of my propositions."

Inasmuch as Usselinx had spent many years of his time in forming this company, to the injury of his private affairs, and learning that he was not rewarded for his services, the far-seeing Prince Maurice most earnestly urged a settlement of his claim. In a letter to the States-General of the United Netherlands, dated August the 30th, 1622, he says,—

"Usselinx has during a number of years employed much of his time in laboring faithfully to promote and establish the West India Company, in which he has rendered great and useful services, and still continues in it with the same zeal, for which he justly deserves to be properly rewarded. Therefore it is our desire that your High Mightinesses consider well his former and future services, and satisfy his just claim. Do not lose sight of him, do not let him go from here, for that may prove dangerous."

This judicious advice was also disregarded, for, after frequent solicitations, the States-General positively refused to settle his claim on the 4th of July, 1623, and referred him to the managers of the West India Company, with a letter dated Hague, August 25, 1623, in which they say,—

"With this we send you a summary relation from Usselinx to our deputies, and those of the cities of Holland and Zealand, in regard to the West India Company, which has several times been well considered by us. Inasmuch as we find in it his zeal and affection for the continuance of the said company, and as he is still inclined to remain, willing to give and explain the knowledge he has acquired by long experience, therefore we have found it proper, for the sake of the public good, to recommend the said Usselinx most cordially, and beg you, in the most friendly and earnest

manner, that you will examine and consider everything favorably, and according as you find him worthy of his services make a suitable disposition."

Usselinx did not deliver this letter, nor his summary relation, for certain reasons. He says, "Because the managers had not yet met, and it did not suit me to wait any longer, and because the managers or company did not owe me, but their High Mightinesses the Lords States-General themselves owed me for my services. Besides, I noticed much jealousy in some of the members, so that I could not expect as much good from them as I had imagined, particularly as I now perceived how much my good advice and warnings were opposed, and that the evil, pernicious, and fruitless practice would be continued. I had, therefore, little hope that the good and useful which I had intended to present would be agreeable or be received by them.

"For these reasons I finally resolved not to trouble myself any more about the company, and, after giving due notice, left them and the country to try my luck elsewhere out of the country."

Disappointed, poor, and vexed at the ingratitude of the Hollanders, Usselinx left Holland, either towards the close of the year 1623 or early in 1624, and went to Sweden, and there he made a proposition, through the celebrated Chancellor Axel Oxenstierna, to the great King Gustavus Adolphus to establish a "Swedish Trading Company." That great and good monarch received Usselinx in the kindest manner,—with open arms, as it were. His proposition was immediately taken into consideration, and acted upon in a manifest, or letters patent, consisting of twelve

articles, dated Gottenburg, November 10, 1624, to establish a general trading company to Africa, Asia, America, and Magellanicum.

Usselinx pointed out the advantages to be derived from this enterprise to the nation and individuals, and stated that there were thousands of miles of land in America where no Spaniard had ever been, with a fertile soil, healthy atmosphere, and a good climate, where their superfluous goods could be sent, and in return goods be received from there, thereby establishing a trade beneficial to both countries. "But, above all, it must be truly said that the most important object at which all pious Christians should aim, is that a knowledge of and friendship with so many different nations must serve most powerfully to the honor of God, which is effected partly by preaching the beatifying word of our Lord Jesus Christ to those nations who have hitherto lived in blindness, idolatry, and wickedness, so that they will be brought to the light of truth and eternal salvation. In those countries where trade had hitherto been carried on, the natives, for want of a mild government, had been in a great part extirpated, and those that remained so much oppressed that life had become a burden to them."

Therefore, if a friendly course is pursued towards the people, which "shall and must be," then in course of time it would tend to civilization and polity, and finally bring them to the Christian religion, which would undoubtedly become a great advantage to both parties.

Slaves were not to be introduced, because they cost much, work reluctantly, require nothing from mechanics, as they go almost without clothes, and through ill treat-

ment soon die; whereas the people from different parts of Europe, being free, intelligent, and industrious, have wives and children, require all kinds of merchandise and mechanics, which would increase commerce; consequently much more would be gained by employing free people, for from slaves there would be no gain, except their labor.

After the publication of the manifest, Gustavus Adolphus gave Usselinx power and permission, in a letter dated Stockholm, December 21, 1624, to travel through the kingdom to collect subscribers to establish a "General Trading Company." In this letter the king says, "The honest and prudent William Usselinx has humbly represented and demonstrated to us by what means a 'General Trading Company' could be established here in our kingdom. We have taken his proposition into consideration, and find it is founded and based on such good reason that we cannot disapprove of it, but see, if God gives luck, that it certainly will tend to the honor of his holy name, to our and our States' prosperity, and to our subjects' improvement and benefit."

It was also ordered that all governors of provinces, civil and military officers, and ministers of the gospel should assist Usselinx all in their power to procure subscribers among the people, high and low; all and every one who had a desire to participate in this company should voluntarily contribute, according to his means, be the amount large or small. The company was to go into operation on the 1st of May, 1625, and continue to 1637,—twelve years.

To this manifest Usselinx gives a lengthy explanation in his "Utförlig Förklaring" (detailed explanation), dated

Stockholm, October 17, 1625. After refuting the slanders and falsehoods which had been circulated against his scheme, to the prejudice and damage of Sweden and the good work, he answers every objection raised against it minutely and ably, and points out the great advantage to be gained by such a company, giving as an example the immense result gained by the Spaniards, whose fleet had brought from West India into Spain, in the year 1620, the enormous amount of fourteen millions one hundred and thirty-two thousand dollars in gold, silver, and merchandise, and in the same year the trade from Brazil amounted to nineteen millions two hundred and twenty-two thousand four hundred and thirty dollars. But he did not wish to be understood that Sweden could realize in a few years that which required one hundred and thirty years for Spain to accomplish. Before the Hollanders had any intercourse with East and West India, Africa, Turkey, and Italy, they were so poor that they had scarcely enough means and power to keep their dams in order, but through trade with these different countries they had become populous, rich and powerful. To make friends of the inhabitants of the countries where trade was to be carried on was considered of the greatest importance.

"As it is proved by their history that the Spaniards have in a tyrannical manner put to death millions of innocent people in West India, and laid waste kingdoms and provinces without any benefit to them, so, if, instead of following such a cruel course, a humane policy is pursued in the intercourse with the natives,—by setting a good example, treat them kindly, and be honest in trading with them,—

then there is no doubt a great advantage, greater than the Spaniards ever had, can be obtained. In some parts the Indians are industrious, have a great desire for clothes and other necessaries from Europe, which may create a large trade.

"Tobacco is only a filthiness which gives no other use than that it disturbs the brain and increases drunkenness, yet more money is spent for it than for all the spices brought from the East Indies. But at all times there is nothing to be regarded more honest and praiseworthy among all nations than to plant colonies and bring unoccupied land to usefulness."

Another charter was granted by Gustavus Adolphus, dated Stockholm, June 14, 1626, to establish the lately begun "General Trading Company." It consists of thirty-seven articles, and is principally based on that of November 10, 1624, but differs in the time for the beginning to go into operation, which is changed from 1625 to 1627, and to continue twelve consecutive years. In the thirty-third article is the following favorable account of Usselinx: "Whereas William Usselinx, born in Antwerp, Brabant, has spent the most of his time in investigating the condition of the above-named countries, and, according to the testimony of the States-General of the United Provinces, the late Prince Maurice of Orange, and several historians, that he is the first projector and beginner of the established West India Company in Holland, and has given the Lords States-General good instructions, so he has also given us, by his good advice and information, great satisfaction,—he has obligated himself to remain in our service and com-

municate faithfully and candidly everything that came to his knowledge on the subject through long experience and industry,—therefore have we, for his past and future promised services, trouble, labor, and expenses, allowed him to receive from the company one out of every thousand of all the goods and merchandise which shall be bought, traded, or sold, as long as trade continues to the countries mentioned in this charter. Thus the said company shall be obliged to pay one out of a thousand to Usselinx, his attorney or his heirs." This scheme was favorably received, the royal family subscribed to it, and the people of every rank followed eagerly.

On the 11th of January, 1628, the king issued a mandate or order that the subscribers should pay their dues on or before the 1st of May following. He said, "We have favored the South Trading Company with excellent and agreeable privileges, for the good of our kingdom and fatherland, as well as that of our loyal subjects, in which they, as well as ourselves, have subscribed a considerable capital. In order that the work which is now begun can be continued, the money is to be paid in certain instalments, according to the requirement of the charter; therefore we ourselves will graciously cause our dues to be paid in the treasury of the company. Herewith we command all those, of whatever rank or condition, who have subscribed, either for large or small sums, that they shall pay their dues without any further delay from this date to the 1st of May next."

After Usselinx had been several years in the service of Sweden, the king sent him with a letter of recommendation

to the States-General, to congratulate them on the great victory by the West India Company, and the capture of the rich Spanish fleet, several weeks before, under Admiral Peter Heintz. The letter is dated Stockholm, January 27, 1629:

"High and mighty, particular good friends and allies, the splendid victory with which God our Lord has blessed you and the American or West India Navigation Company, several weeks ago in India, under Admiral Peter Heintz, induces us to congratulate you herewith most heartily, and at the same time we gladly see with particular affection your lucky and good progress prosper. We would also highly recommend the bearer of this letter, the honest and much experienced, our dear, faithful William Usselinx. Inasmuch as we have no doubt that his particular experience of the affairs and countries of West India, his acknowledged ability and industry, can be very serviceable to you in further undertaking and executing something in said places, it is therefore our friendly request that you will receive the above-named Usselinx in a friendly manner, in case that if he proposes and hands you anything in such matters, if on well-grounded reason, not only willingly hear him, but advance and execute it as much as is in your power, not doubting at all that whatever he proposes or intends will be received by you, and that all such will not only tend to *your* benefit and welfare, but to all oppressed Christendom."*

Usselinx had a similar letter, differing only in name and title, to Prince Henry Frederick of Orange.

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* The original of this letter is in the Latin language.

Although this letter was written ostensibly to congratulate the States-General and Prince Henry Frederick, yet it appears that the principal object was to induce the Hollanders to remunerate Usselinx for his services. This is corroborated by the following extract from the minutes of the resolution of the States-General of the United Netherlands on the conference of William Usselinx with their deputies, Messrs. Eck, Schaffer, and others, dated April 17, 1629, to wit:

"Whereas Messrs. Eck and other deputies have had, agreeable to the resolution of the 9th inst., a conference with William Usselinx, who arrived here from Sweden, they have again reported that the said Usselinx represents himself as the founder and promoter of the West India Company, and demands compensation and satisfaction for his good services rendered, and, on condition that after the claim has been properly settled, he offers to give further advice and explanation of such affairs of West India as he may have had an opportunity to obtain a knowledge of,

"Therefore, at a consultation on it, it was

"Resolved, That the above-named Usselinx shall go to the meeting of the Nineteen of the said West India Company, where his claim, as well as his further offer, may be duly considered.

"Signed, CORNELIUS MÜSCH."

The above resolution was not presented to the meeting of the Nineteen at that time, because Usselinx, being then in the service of the King of Sweden, was obliged to depart

suddenly and travel to Prussia to meet the king on very important business, when, after several months' absence, he returned to Holland, where he had another conference with the deputies of the States-General in November, 1629, whereupon the following letter was written to the managers of the company by the States-General, dated November 17, 1629, viz.:

"Mr. Usselinx has reported to us and demanded that we should compensate him for his good services rendered in promoting your dear company. As we are sure you know best how to judge of it, not doubting his good will and affection for the prosperity of the said company. In this we are strengthened by his offer, namely, that he is ready to do further services; for which reason we cannot omit to recommend the said Usselinx to you, with the request that you will reasonably and carefully consider his services rendered. Let him enjoy the fruit of his labor, listen to his proposals, and employ him in the service of the company in some situation. Upon this we depend."

It is not to be understood that Usselinx asked for a situation,—for he was then, and had been several years, in the employment of the King of Sweden and well satisfied with his situation,—he merely meant that he would give them further advice and information, on condition that they should pay him for his former services.

To the above letter the managers of the company sent the following reply to the States-General, dated Amsterdam, December 3, 1629:

"Mr. Usselinx has brought before us and desired that we would compensate him for his good services which, it is

pretended, he has rendered us to the promotion of our company. He has delivered your High Mightinesses' letter of November 17th, relating to the same; he has also verbally given us to understand that the most of his trouble and labor in forming our company he had intended to be more in the service of your High Mightinesses, or commonwealth, than in that of our company. (It has really turned out so.) In consideration that the same request had before this been refused in our meeting of the Nineteen, which will be recollected by the deputies of your High Mightinesses who were present at that meeting; and as the office of the management of our company is not here, but in Zealand, so nothing can be done by us out of it; therefore we most humbly beg your High Mightinesses will deign to excuse us, in that we cannot have anything to do with Usselinx, nor with his offer, or anything relating to the service of the company, because he does not consider it advisable to make any disclosures but in the presence of your High Mightinesses' commissioners, who might consider and judge upon it as found according to their good understanding."

Usselinx then gave in to the States-General what he calls "his very last paper," after which he took his final leave from the Netherlands. This paper is dated Hague, August 15, 1630. It is very lengthy; in it he explains very minutely everything in relation to the "Holland West India Company," which he finds necessary, because it was near forty years since he had commenced laboring towards forming and promoting the said company, and as there were many new members in the government, who might

not be sufficiently acquainted with the affairs, and would have to be informed in the matter. During thirty-two years —from 1591 to 1623—he devoted so much of his time to the company, and incurred such heavy expenses, that he was obliged to sell five hundred morgen* of land at a sacrifice, by which he lost three hundred thousand florins, equal to one hundred and twenty thousand dollars. From 1614 to 1623 he devoted nearly the whole of his time to the company, which he finally saw in a very prosperous condition.

He proves clearly that he was the projector and founder of the company. He also states in the same paper that there were even a number of people who considered the company an injury to the commonwealth, and that he, Usselinx, deserved punishment for establishing it.

After this "last paper" or communication was received by the States-General, they ordered in writing,—

"That this writing or communication shall be delivered to Mr. Rantweix, who shall examine and report upon it.

"Signed, CORNELIUS MÜSCH.

"August 31, 1630."

After the report was presented, the following extraordinary resolution was given to Usselinx, also in writing, word for word:

"On hearing the report of Mr. Rantweix, it has been, after due deliberation, found, unanimously, that in case the petitioner thinks he deserves compensation for his

* Equal to one thousand acres.

former pretended services, rendered in promoting the privilege of the West India Company, that he has to resort and apply to the managers of the said company. The High Mightinesses declare herewith that they can well allow that the petitioner may go where he thinks he can improve his condition.

"Signed, CORNELIUS MÜSCH.

"September 6, 1630."

To this Usselinx made the following remarks:

"In case the reader has taken pains to read my writing of August 15th understandingly, and then consider this last decree, he will easily perceive that such a decree in reply to my writing sounds somewhat impertinent, in that my many and important services in promoting their company, which are world-wide known and have never been questioned by them, should thus be set aside unnoticed.

"Moreover, to be exiled and told to look for employment elsewhere when I never in the least had asked for any, either in writing or in any other manner, as I had then been for a number of years in an honorable situation in the service of the King of Sweden, and on this occasion the king's agent in the Netherlands."

At the suggestion of Usselinx, Gustavus Adolphus gave an extension to the charter of 1626 of fourteen articles, which included Germany in the privileges of the company. This was dated at Nuremberg, October 16, 1632; signed and sealed by Axel Oxenstierna, who said, "That the King was so much engaged at that time in the war, and that he, as the authorized ambassador in Germany, had full power to act."

Gustavus Adolphus gave this his last authority to Usselinx to travel through Germany, to visit high and low, and to appoint assistants to collect subscribers. In this document the King styles him "Our now authorized Over-Director of the New South Company, our dear and faithful William Usselinx."

This document was also signed and sealed by Axel Oxenstierna, at Heilbronn, May 1, 1633, after the death of the lamented King Gustavus Adolphus, who was killed in the battle of Lutzen, November 6, 1632. A short time before the death of the king, Usselinx issued his "Mercurius Germaniæ" (particular directions for Germany). It is a very copious document; in it he points out the benefit Germany would derive from participating in this South Company, and refers to the Holland Company and Prince Maurice as a proof of its usefulness. He answers all the objections which have been made against the scheme very clearly and elaborately.

To the objection that he was too old, he replied, "I am now sixty-six years old, and as hale and strong as I was forty years ago, when I first took the Holland Company in hand in the Netherlands."

Axel Oxenstierna, in his public letter to the Germans, dated Frankfort-on-the-Main, June 26, 1633, in confirming the appointment of Usselinx as agent for Germany, calls him "the first projector of the South Company, now appointed Over-Director, the honorable our particularly beloved William Usselinx."

In the beginning the affairs of the South Company appeared to be very promising, at least as regards the means

to put it in operation, for in the year 1632 they had sixteen vessels, well fitted out, which they began to send out on expeditions; but unfortunately during those troublesome times of the Thirty Years' War navigation was very insecure, consequently the Spaniards seized and confiscated four of the company's vessels in 1632, and in 1634 the Hollanders captured five, which they, however, soon released. Upon this followed the disastrous defeat of the Swedish army in the battle of Nördlingen, August 27 of the same year, which entirely broke off the engagement with Germany in regard to the company. Usselinx then went to France to induce that government to engage in the Swedish South Company. In 1639 he attempted to form an alliance between Sweden, France, and England, as a security against Spain, and in 1640 he endeavored to interest the Hanse Towns in the same affair, but he was unsuccessful in all these schemes. In 1643 he was finally appointed Swedish agent in Holland. This is the last account I have been able to find in any document of the indefatigable and persevering William Usselinx.

While Usselinx gave the first idea to the Swedish king to establish a colony on this continent, another equally interesting man made himself known on the subject, who not only had the same idea, but really put it in practice. That man was Peter Minuit, of Wesel. He came to Holland from Wesel, where he had been a deacon in the Protestant Church.

Towards the end of the year 1624 he was appointed Director of the Council, or President of the Board, of the Holland West India Company, to reside at New Amster-

dam, on the island of Manhattan, where he arrived on the 4th of May, 1626. He remained in office until 1632, when a dispute arose between the West India Company and the patroons, in which Minuit was suspected of being in favor of the latter, in consequence of which he either resigned or was dismissed. This is not quite clear. Minuit left New Amsterdam in the ship "Eendracht" (Concord) in the same year, 1632, with a cargo of five thousand beaver-skins. After his arrival at Portsmouth he was detained, with the ship and cargo, by command of the English government, under pretence that the country where he traded to belonged to England. He was, however, soon after released, and finally arrived safe in Amsterdam, with his valuable cargo, in May, 1632. No public records have as yet been found, either in New York or Holland, relating to that period of time in which Minuit was director at New Amsterdam, excepting a deed or warrant for land to Godin & Blomaert, which land is situated on the east side of the Delaware (now Cape May). This is dated Manhattan, July 13, 1630; signed by P. Minuit and others.

Minuit's attention was after this directed to Sweden.

At the time of the death of Gustavus Adolphus, in 1632, the heir to the throne of Sweden was his daughter Christina, a little girl not quite six years of age. A guardian government was then organized, which was composed of Axel Oxenstierna and four other members. To this government Minuit offered his services to establish commerce and plant a colony in West India, or America. In a letter dated Amsterdam, June 15, 1636, he says, "As West India has been gradually occupied by the English, French, and Neth-

erlanders, so it appears to me that the Swedish government should not remain inactive. Thus, in order to spread its name in foreign countries, have I, the undersigned, been desirous to offer my services to the Swedish government,—to begin on a small scale, which, through the blessing of God, may in a short time result in something great. In the first place, I have proposed to Peter Spiring to make a voyage to Virginia's New Netherlands and other parts adjoining,—safe places, well known to me, with a very good climate,—which should be named *Nova Swediæ*."

Minuit's calculated outfit amounted to twenty-seven thousand four hundred florins, equal to about eleven thousand dollars, of which he offered to furnish one-half, and Spiring, either on his own account or on that of the government, should supply the other half. A ship of from one hundred and fifty to two hundred and twenty-five tons, mounted with twelve guns and the necessary ammunition, with twenty to twenty-five men, would be required, and the government might add twelve soldiers to it to garrison the places.

"To try to get there, the sooner the better, and procure friendly terms with the wild inhabitants, so as to induce them to collect beaver-skins during the winter; trade with them for four to five thousand skins. Thus, with a small beginning, increase the capital, so as to take more in hand afterwards."

He thought the Swedish government might grant a charter to secure the trade within the limits of Terra Nova (Newfoundland) and Florida, and also grant power to capture Spanish and Portuguese vessels. During ten years the goods of the company should be free from duty both ways, in and out.

The country being fit to raise tobacco and different kinds of grain, suitable persons should be taken along to cultivate them, raise vegetables, etc. They could also be employed as garrison. Finally, he says, "In case I were called to Sweden, everything could be better explained."

Minuit's proposition was immediately taken in hand by Axel Oxenstierna, Peter Spiring, and Claes Fleming. The Hollander, Samuel Blomaert, took it also into consideration, though a member of the Holland West India Company.

When Peter Spiring went to Holland, in the summer of 1636, with a commission from the chancellor, he agreed with Blomaert to appoint Peter Minuit to conduct the expedition. This was approved of by the government, during Spiring's visit to Sweden, in the same year (1636). On his return to Holland, in the capacity of resident Swedish minister, Spiring closed the business, in writing, with Minuit, Blomaert, and other Hollanders; they answered for one-half of the calculated expenses of twenty-four thousand riksdaler,—equal to twenty-six thousand six hundred and forty dollars,—for the expedition, while Spiring, the three Oxenstiernas, for the government, and Claes Fleming furnished the other half. In February, 1637, Minuit went to Sweden to take charge of the expedition, which was fixed upon for West India; it was to be kept a profound secret, on account of the Holland West India Company.

The outfit for this expedition consisted of two ships from the South Company, the "Calmer Nyckel" and "Fogel Grip" (Key of Calmar and Bird Griffin). It left Stockholm for Gottenburg in August, 1637, proceeded towards the end of the year, by way of Holland and the south passage, to

Jamestown, in Virginia, which it reached in the latter part of March, 1638, and in the middle of April of the same year arrived on the Poutaxat, or Delaware River, which was named Nya Swerige's Elf (New Sweden's River). The place where the people first landed was called by them Paradis Udden (Paradise Point). The voyage from Stockholm to this place was accomplished in eight months. Then they sailed up the river Delaware to the Minqua, which they called Christina Elf (now Christiana Creek), where Minuit bought a tract of land of the Indian chief Metatsiment, and built a fort on a place called by the Indians Hopokahacking. This fort was named, in honor of the queen, "Christina Skants" (Fort Christina), situated close to your flourishing city of Wilmington. Adjacent to this fort the industrious Swedes commenced clearing and cultivating the land, while Minuit by his prudent acts soon procured the friendship of the Indians, by which means he was enabled to carry on a successful trade with them for peltry.

At the end of July of the same year (1638) Minuit departed from New Sweden with the ships well laden, one with tobacco and the other with peltry, leaving twenty-four men behind as garrison, besides the cultivators of the soil. In the beginning of the year 1639 the ships had reached Holland, and only in June of the same year arrived safely in Gottenburg, having made the voyage from here to that place in about eleven months.

It appears Minuit either died during his return to Europe or left the Swedish service, as no further reliable account of him has as yet been discovered.

And now, in conclusion, ladies and gentlemen, allow me to say that it is a great satisfaction to me to have met you here on the very ground which was bought of the Indian chief Metatsiment, and on which the first colony of civilized people was permanently established on the banks of the Delaware, two hundred and thirty-six years ago, by Peter Minuit.

PAPERS OF THE HISTORICAL SOCIETY OF DELAWARE.

IV.

MEMOIR

—OF—

JOHN M. CLAYTON.

—BY—

JOSEPH P. COMEGYS.

THE HISTORICAL SOCIETY OF DELAWARE,

WILMINGTON:

1882.

PRESS OF FERRIS BROS.,
WILMINGTON, DEL.

MEMOIR

OF

JOHN M. CLAYTON.

Mr. President and Gentlemen of the Historical Society of Delaware:

I should state, before I commence my reading of this memoir, that I have exhibited the subject of it in a most favorable light. A memoir should do nothing less; especially when prepared, as this has been, at the instance of a Society concerned in presenting the distinguished men of the State, and the features of her history, in the best view for public admiration. With this in my mind, and yet not forgetting the duty I owed to truth, I have delineated the character and achievements of John M. Clayton as they appeared to me, his cotemporary and admirer; though not insensible, however, to knowledge of infirmities of nature common to most of us. I have presented him as he should be shown to the people of Delaware, in his public aspect, as tradition, personal knowledge, and

the records of our country, exhibit him; feeling it to be the duty I was under to the Society, to its interests and purposes, and to candor, to look at and portray him just as I have done. Like other men, he had weaknesses; but no man can point to any act, or expression, of his private life, even, that shows the slightest stain upon his character. Though a member of no church or religious congregation, he yet was an unquestioning believer in every article and creed of the Christian religion; and had no respect for, or patience with, the sentiments of its opponents. He cherished, especially, the moral virtues of honesty, fidelity to friendship, gratitude; and never forgot the services, how slight soever, that any rendered him, nor failed to grieve for those who forgot the favors he had done them. There were, of course, in his life, some of the latter, as there are in that of other men, but his charitable spirit made him willing to refer their defection to some *temptation of the devil* which they were too weak to resist. But he never trusted them again; his knowledge of human nature would not allow that. Nor did he permit them, by any act of his, to suppose that he could. Still he could not descend to vindictiveness. Such was the absolute sway, almost, that John M. Clayton held in Delaware, politically, from 1828 till the close of General Taylor's administration, a period of more than thirty years, that he never once failed to lead his political friends in the course he preferred—which shows not only the superiority of his judgment with respect to the affairs of his

party, but that there was no fault in him as a leader that could form a nucleus for opposition. He *reigned supreme;* as a party leader should, who possesses in the eminent degree he did, sagacity, oratorical power, unselfishness. Men there were of his own party who envied his power and hoped to destroy it; but whenever they essayed a movement for that purpose, it was always defeated. His party in Delaware knew that *he* was their champion, and not the small men who assailed him; and they clung to him with all the fidelity which loyalty to their own party advantage required of them. And such fidelity, they well knew, could not be yielded to a worthier person. Nor less had he the respect of his opponents. They made war upon him, of course, and upon the political theories he supported; but, at the same time he did nothing, public or private, that abated their admiration of him in the least. Oh for the return of the days when men could pardon the difference of opinion of their political adversaries, and respect the honorable methods they took for enforcing it!

MEMOIR.

I beg you believe, that, when the time came for performance of the task I assumed, in accepting the invitation of the Society to read, before its members, a memoir of the late John M. Clayton, I regretted your selection, because I felt that, in every step of my progress in the work of preparation, I should feel, and painfully too, that other hands than mine ought to have been employed for a service, all the more difficult, because the subject of it was of such importance, in his day and generation, that only the most comprehensive observer and delineator of men's character, could do full justice to his merits. Although John M. Clayton, if he had been as wise as Solomon, could not have attained the renown which, in this country, only crowns the career of great political, national leaders — because he was a citizen of the smallest State in the Union — yet, he had a fame as a statesman, jurist, and man of splendid forensic abilities, which, in his day, was very wide and solid, and was promised in his young life by the intellectual gifts he then showed that he pos-

sessed. All his friends and acquaintances felt, ere he stepped upon the stage of real, active, public life, at the bar, even, that he would soon attain an eminence, among men, of the highest grade. Were such anticipations realized? That is for you to say, when I have recounted the events of his life, his career, private and public, so far as the limits of this paper will allow me to do it. And, first, let me give you some knowledge of the birth and parentage of our subject.

In England, in tracing family descent, it is considered a matter of the first importance to be able to say, of the subject of a memoir, that his ancestors came over with the Conqueror; as if it should afford those calling themselves Anglo-Saxon Englishmen any satisfaction to be able to carry back their lineage to the conquerors of Harold. With us in America, it is quite the fashion to be able to say, that such an one's ancestors came to these shores in the Mayflower; as if there were any merit in such parentage beyond that which can be claimed at any time, by those descended from any other immigrants seeking to establish, in a new home, modes of Christian worship more in accordance with their notions of fitness than the prevailing ones whence they came; — or that they came here in the train of Lord Baltimore, a nobleman of courtly lineage and fame, and of great renown also as that Catholic ruler who allowed, at that day, in his most enlightened liberality, perfect liberty of conscience to the settlers upon a domain as fair as that within the boundaries given to

him and his descendants, by his royal sovereign;—or that they represent the posterity of the stout Dutch burghers who laid the foundations of New York, and settled the fine territory of the New Netherlands, from the ocean, along the magnificent river of Hudson, to many miles beyond the mouth of its tributary, the Mohawk. While these different stocks were being planted, in the course of the diffusion of European population over America, another set of emigrants came to her shores—a body of men and women whose high moral worth, and peaceable spirit, won for them, at once, from the savage possessors of the country, where they disembarked, their confidence and affection. These people brought neither arms in their hands, nor the passion to use them if they had been there, disdaining, as they did, all success that could only be secured by the use of weapons of war, and preferring to rely rather upon the mild influences of that religion which proclaimed peace and good will to all men, barbarians as well as civilized. While their courage was not that displayed by the warrior, or the man of strife, they had yet, in an eminent degree, that rarer quality of bravery which is shown by doing right according to God's law, in the face of all men. These were the Quakers, the cotemporaries of William Penn, and his companions, rather than followers, in his journey towards the sunset to take possession of the domains granted to him by his sovereign, Charles II., and the Duke of York, Charles's brother, by their respective charters of alienation.

Among those who shared the voyage of Penn and concluded to cast his fortunes in the new commonwealth ceded to his friend, was Joshua Clayton, who at his death left sons, John and Joshua. John also left two sons to survive him, James and John. James's posterity was five sons, the eldest of whom was Dr. Joshua Clayton, President of the State of Delaware, at the close of her first period of sovereignty under the constitution of August, 1776, and her first Governor under that of 1789; he was the father of Thomas Clayton, who represented this State with great credit, at different periods, in both Houses of Congress, and shone with exceeding lustre as an able and upright Chief Justice of the Court of Common Pleas from 1828, when he took his seat there, until January, 1837, when he resigned his office, under the new Constitution, as Chief Justice of the State, to accept a Senatorship in the Congress of the United States. The youngest of these five children of James Clayton was originally named George, but his brother James dying shortly after his father, and when George was a mere infant, the name thus lost was restored by being conferred upon George, who became James. This James was the father of the subject of this memoir. His mother was Sarah Middleton, of Virginia ancestry, whose maiden name was bestowed upon this her son, and he was christened John Middleton Clayton. John Clayton, a brother of Joshua, the father of Thomas, and James the father of John M., was a distinguished character, having been an active political personage in the colonial and later times;

Judge in Admiralty under the Constitution of 1776; Sheriff of Kent at the period of change to the new form, and Associate Judge of the Court of Common Pleas until his death.

James Clayton (formerly George), was born on the 24th day of March, 1761, married to Miss Middleton on the 18th of August, 1791, and died on the 24th day of November, 1820, leaving his wife (who died on the 23d of June, 1829, at the age of fifty-five years, three months, and fifteen days), and six children, to survive him; Lydia, who married John Kellum, of Accomac county, Virginia; John M.; Harriet, who became the wife of Walter Douglass, who died in 1824, and afterwards of Henry W. Peterson, since deceased; Elizabeth, who died unmarried; Mary Anne, who was the wife of George T. Fisher, who survived her and died in 1831; and James H. M. Clayton, who died unmarried in 1837. These sisters and this brother of John M. Clayton all died in his lifetime, only one of them, Harriet, having left any issue now alive, and but one other of them, Mary Anne, ever having had any issue.

John M. Clayton was born at Dagsborough, in the county of Sussex, in a house standing, until within a few years, upon an ample lot of ground lately owned by Mr. John Hazzard, who was the proprietor of a hotel, which he kept himself, at the south end of it. The parents of young Clayton must have been uncommon persons. They were both well-formed, and the husband large like the rest of the old Clayton

stock. I have seen them in my childhood — his mother very often; his father a few times. He was truly a stalwart man, with an imposing appearance, and she of the full feminine size, and with features of striking and distinguished fashion. Added to all the essential qualities for a wife and mother of a very talented family, she possessed great refinement of manner in society, and also a rare fluency of speech, which she transmitted to all her children — there not having been one of them who was not remarkable for fine powers of conversation. James Clayton shone in society for his breadth of information and depth and strength of mind, and also for those qualities of the heart that endear men to each other — generosity, benevolence, sympathy constantly expressed. And then he was so manly, so above any of the petty feelings or purposes that mar the characters of men. This is the testimony of his acquaintances, as I have heard it from the mouths of some of them. He was a great reader, as his son has told me — his favorite authors being the English classics, so called to distinguish them from their less successful and accomplished rivals in the literary field; and he has frequently spoken to me about his father's passionate fondness for Shakespeare's plays, and of his remarkable memory of their text. In fact, he has said to me more than once, that his father was the best Shakespearian he had ever known. He was very fond, was this excellent man, of the society of his cherished friends; and upon occasions

of their re-union, such as village life affords, would give himself much effort to make all happy around him.

As soon as young John was qualified by age to leave home for school, he was sent to Berlin, in Worcester county, Maryland, to attend upon an academy there; but the quarters where he was put to board proving not suited to his liking on account of a deficiency in the quantity of food given the boarders, he and another boy, James Davis (a son of Isaac Davis, afterwards Judge Davis of the old Supreme Court), ran away, and walked all the way to Milford, where their respective parents then resided — James Clayton having removed to Kent whilst his son was at Berlin. He was next sent to Lewes, where he remained for some time, boarding with a kind, motherly, old lady, who treated him like a son. From thence he was brought to Milford for instruction — the schools there having greatly improved, and here he remained until the 24th of July, 1811, when at the time precisely of his arrival of the age of fifteen years, he entered Yale College, and thence graduated on the 12th day of September, 1815; with the highest honors of his class. I have heard him often speak of his college days whilst I studied in his office; and he enjoyed, with a zest impossible to describe, the reminiscences his conversations with me evoked. He was full of fun of all the kinds enjoyed by college boys; and being, at a very early age, a good performer on the violin, was sought after by the students, and was

friends with all of them whose society he desired to cultivate. But of all his companions none stood so high in his affections as a little fellow, a year behind him in age and studentship, George McClellan of Philadelphia, afterwards the famous surgeon, and the father of the present Governor of New Jersey. I have seen the two together whilst Clayton lived at New Castle; and it was entertaining, to a degree I cannot give you any adequate idea of, to be present when these two brilliant men, greatly distinguished in their respective careers, forgot all their rank and consequence in what a great poet calls a *revivescence* of their college life — those school days which Thackeray, speaking from his affectionate and tender heart, calls "the happy, the bright, the unforgotten." If you could have heard them without seeing them, or knowing who they were, you would have thought two schoolfellows had met a year after their graduation at college And yet they were both men of matured years and honors, upon whom the public had given judgment as men of the highest abilities in their several walks in life.

Upon his graduation young Clayton returned home for relaxation, having been hard at work in college for four years, and never having given himself enough vacation to return to his family. Coming back to Delaware at the close of 1815, and intending, as his father did, that he should be a lawyer, he was, some time not long afterwards, entered in the office of his cousin Thomas Clayton, and studied under him until

March, 1817, when he returned to New England to attend the then famous law school at Litchfield, Connecticut, where he remained for a year and eight months, studying, as I have heard him say, sixteen hours a day. Upon leaving there he finished his course in Kent, and was admitted to the bar at Georgetown, in Sussex, at the October term, 1819, of the Court of Common Pleas, when he was but a little over twenty-two years of age. He selected Kent as the county in which he should begin his professional life, and took an office near the court-house, in Dover, in the eastern end of what is now the dwelling of the Hon. John A. Nicholson.

Now commenced a career at the bar which up to that time had never been paralleled in this State, nor has it been equaled since. Clayton at once rose to a very high rank as a lawyer. Nor is this wonderful when you consider the qualities for success the young man had. Treating as one of them personal appearance, it must be admitted that here nature had given him all that could be desired — a tall, commanding, thoroughly well-developed figure, six feet one and a half inches high, with a handsome countenance moulded in the style befitting great characters, and with an air of dignity, softened by that indefinable expression of the human face that shows a gentle heart in the breast. The proportions of his figure were correct also. This fine stalwart frame was surmounted by a head of ample size, measuring just twenty-four inches in circumference. Other portions were in like accord

with symmetry. And then, without the least trace of foppishness, or particularity about dress, he yet never appeared in any company, at any time, arrayed otherwise than as became gentlemen of his day, when such as he were careful to dress themselves as comported with their rank and station in life. Such was the figure of this young aspirant for professional success, when he appeared at the bar of Kent. His other qualifications were, a fine collegiate education at a famous seat of learning; an unusual preparation, by study and training, for the bar; extensive historical and literary information; remarkable powers of analysis and of illustration; quickness of perception, amounting almost to intuition; ardor and industry in the pursuit of his client's business; a grace, and at the same time force and power, of manner; and ease and fluency of utterance. All these combined gave him, in the very outset, advantages which he speedily and thoroughly turned to the best account for himself. Superadded to the whole was an unaffected and winning cordiality of recognition and intercourse which completely captivated all who came within the circle of his acquaintance. Thus equipped by nature, and by a thorough knowledge of the principles of his great profession, and endowed also with a memory which never forget anything worth remembering, his attractions as a lawyer were very great; and it is not to be wondered at that he entered, almost as soon as he had the right to open his mouth in court, upon a business at first remunerative, but which before long attained the fullest

measure of abundance and profit at that day. In addition to his fine legal knowledge, he early developed extraordinary power as an advocate. Upon him fell (what I may call) the most desperate cases at the civil and criminal bars; and it is safe to say, that when it was possible for any lawyer to *win a case*, as the slang of that time was, or *to succeed*, as the phrase now is, he was always the *victor in the contest*. It seemed only necessary for success that he should be employed — his power over juries being so irresistible. I do not, in any sense, mean to say that he controlled juries (the judgment of twelve honest, intelligent men is not to be controlled in this State, at least, by any man, how great soever his influence), but I do mean to say that he had a way of presenting to the jury the facts of his own side and also of the other (for if these had not been laid before the jury in their full strength, he supplemented the deficiency by his candor), that drew them *in spite of their teeth* (I feel that I may say), or of their tenacity of opinion, to adopt the argument his fertile mind presented them with, and also the conclusion such argument required. This was entirely natural. Here was a man of extraordinary powers in all respects — not the least of which, by any means, was that of looking into the very thoughts and purposes of men. It was just such a lawyer, possessed of such uncommon powers, that every plaintiff and defendant wanted. Every plaintiff, or defendant, in a lawsuit, wants a lawyer on his side, who combines two qualities — one that of being well

versed in the law, and the other that of being a good advocate of the interest of his client. I have in my mind, now, some desperate cases of crime, where, before the trial, conviction was considered only to await the end of it, and yet the felon escaped, or with a verdict greatly modified from the demand of the prosecution; and this, although the court sometimes seemed to feel itself compelled, by way of resistance to what appeared to it to be too great an influence with the panel, to stigmatize the offence in very strong terms. Nor was he, by any means, less fortunate in the trial of civil cases. He had the *prestige* of success, although his competitors at the Kent bar were, at that time, no less celebrated men than Henry M. Ridgely, Thomas Clayton, and Willard Hall. With such antagonists he contended; and, for a young man, but lately entered upon a stage, where they maintained the highest standing, it can with truth be said that he achieved a success, as their competitor, which he could not have done, had he not possessed abilities of the very first order. This career increased in brilliancy until he attained a fame, throughout the State, which, long before he entered upon another and no less distinguished course in life, called for his services in the other counties in nearly all the most important cases that arose therein — though the practice of going the circuit had been, well nigh, abandoned by the leading lawyers, when he came to the bar.

The death of his father in 1820, though a very trying event in the life of his son, for he had the greatest

respect and affection for him, was probably an important element in his rise to distinction. He was not naturally industrious, in the common sense of the term, but was rather inclined to ease — though his college and law student life would seem to show the contrary — and required an incentive to work. Such incentive death gave him (his father's fortunes having been overwhelmed by the great disasters that befel the country about 1820) in the necessity of providing for the support of a mother, two sisters, and a brother, with the latter to educate. This was just the stimulus such an one required; and it was this apparent calamity that proved, there can be no doubt, of the greatest benefit to him. Here was a young man, of splendid abilities, natural and acquired, with habits of study that made it easy enough to work, but still who was not required to make any great effort for success. The necessity, however, of providing for his mother and her orphan children inspired him; and day and night, continually, he wrought for them, until he was secure from all risk of being embarrassed any longer. He toiled at his profession, in every branch of it, legal and equitable, civil and criminal, enjoying nothing else but the society of his friends and the weekly visits he paid the loved ones at Milford, whither he went every Saturday afternoon, walking (when the weather would permit) sixteen miles of the distance to the home of his brother-in law and friend Walter Douglass, who would forward him to Milford, where he would cheer the hearts of all by his pres-

ence, affectionate manners, and bestowal of the surplus earnings of the week, large or small. I have often heard him speak of those days, and relate the infinite delight it gave his heart to convey so much pleasure by these visits.

When young Clayton had been but three years at the bar, but after he had acquired enough by the law not only to enable him to take care of those left to him, but of a wife as well, and not until he could offer himself to her with entire pecuniary independence also, he proposed for the hand of a lady and heiress, Miss Sally Ann Fisher, daughter of Dr. James Fisher, who was a physician of distinction and general intelligence, at Camden, in Kent, and whose first wife, the mother of Mrs. Clayton, was a McClymont, of a large Presbyterian family, seated near Dover. On the 12th of September, 1822, the young couple were married at Middletown, in New Castle county, by the Reverend (afterwards Dr.) Samuel Brincklé, now deceased, who was chosen for the ceremony because he was the brother of Joshua G. Brincklé, a fellow-practitioner with young Clayton, and whom he fondly loved. The newly made husband and wife, a few months after their marriage, took the dwelling and office of Henry M. Ridgely, upon the green in Dover (he having retired temporarily to the country); but in the interval, between the marriage and the occupancy of the Ridgely property, they resided in her own house in Camden, to and from which place he walked every day, giving himself six miles exercise, to refresh him after the

labors of one day, and recruit him for those of another. In this Dover residence were born unto them two sons; and there occurred that fatal calamity, the shadow of which never passed from his life, nor was its presence ever entirely unfelt. His love for his wife was the greatest passion that ever influenced him. While to others she was a lovely woman, of most affectionate heart, and with just enough of the Quaker, in the blood she had inherited from her father, to give to all her actions, expressions, and emotions, that delicate softness, so near akin to shyness, which characterizes the daughters of the Society of Friends, she yet possessed for him something more than all this; something that made him, by no means given to emotions, worship her almost as an idol. On the 18th day of February, 1825, she died in his arms, leaving him with two boys, the youngest but a few days old. Life, from thenceforth, seemed to have, for him, no attractions; but for the necessity of taking care of those who had been committed to him before, and the children his wife had given him, he would have sunk, utterly, under the load of his affliction. The duties of life, however, pressed upon the heart of the brave man, and exacted from him that he should not give himself up to grief absolutely, but should devote himself, as he best could, to the service of those dependent upon him. With this spur he started again in the race and work of life; and it was a frequent expression with him, in recurring to that sorrowful time, that nothing but work in his profession saved

him. And work he did, like a hero. It was his only salvation. There was nothing for him but the abstraction of thought from grief, that work — hard, engrossing, honorable labor — can give. But, to that love for his young wife, he remained perfectly, absolutely true, throughout the whole of his subsequent life; and never, under any circumstances, allowed himself to think of himself otherwise than as her lover. There came a time, whilst he was still young, when he no longer had any of the family of his father about him — one of the orphan sisters having married, another died, and then his mother, and finally his brother — and he had every inducement, which ripe manhood and the importunity of friends could offer him, to take a wife; but he repelled, sometimes sternly, and always firmly, all advice to marry again. He would not think of it, though almost absolutely alone, having none about him but his two small children, and one young girl, his niece, and her brother, younger than herself, the children of Walter Douglass. He did the best he could with and for them; he was to them father, mother, and everything else that was loving. Such was the situation of Mr. Clayton (except that his mother outlived that event a few months), when he was elected to the Senate of the United States. Before entering upon a consideration of his career as a public man, or politician and statesman, I will say more of his professional life.

There cannot be any question that John M. Clayton was a lawyer of the very first grade in every branch

of learning, whether legal or equitable, civil or criminal. He came to the bar prepared by a course of unremitting study of all the old authors, and the modern text writers down to his time. In the days of his pupilage for his profession, the requirements for admission to the bar were not only a full course of reading, including always Coke upon Littleton, Plowden, Wood's Institutes, Doctor and Student, and other recondite works relating to matters of civil concern, but also Hale and Hawkins in the criminal list of authors, and such works upon equity as had then been written. Besides, as the custom of creating entails, and strict settlements, was still very much in vogue in Delaware, and had been from her settlement by the English under Penn, it was then essentially requisite that a lawyer should be a master of all the learning of such, and of that large class of interests which then, more than now, arose out of the provisions of the many wills written in conformity with the practice at home which the settlers imported here. Some of this latter was what is called *black letter;* it was all abstruse, and not to be acquired fully but by one endowed by nature with a strong mind, improved by ample learning, classical and otherwise. I feel that I hazard nothing in saying that Mr Clayton had mastered all this learning; that he was familiar with what is called *nisi prius* law also; that he had a special aptitude for professional practice; and if there can be a union in any one man of all that is necessary to make a great lawyer, it existed in him. In addition

to all this, he was a conscientious lawyer in every sense. He was faithful to the court, whom he enlightened by his learning, and true to his client. All his addresses to the court were conceived in a spirit of respect and confidence; he approached them as those set over him, strong as he was — regarding them as the personal representatives of the whole people, or State, in the sovereign duty and prerogative of administering justice. All his engagements for his clients were faithfully and willingly performed; and how successfully, the records of the courts show. Their cause at once became his cause; whatever effort he could make for the most influential of his clients, or for those to whom he was bound by the strong ties of friendship, was put forth for the humblest also who sought his services. If those who applied to him had any case, he quickly saw it, and as ardently espoused it. And what the measure of that ardor was, those can testify who remember him in court, and some who served under him as students. Having been in his office a year beyond the usual term, from my nonage, I know a good deal of what I am speaking; for although his public, political engagements as a Senator then absorbed most of his time, yet there was some of it given to the law. I have said, before, that he was not, naturally, an industrious man, as that term is understood; but he was a man of tremendous working power, and when required by the necessity of the service he had undertaken, or that of sustaining his reputation or fame, he was the most resolute and inex-

haustible laborer I ever saw. In fact, every faculty of his nature seemed to be absorbed in the one purpose of ending with success what he undertook. At such times he had no more idea, apparently, of the likelihood that his assistant might suffer from fatigue, than if he had known him as a mere machine. I shall never forget the labor, as an amanuensis, he required me to perform at the time he was pleading to issue the great Randel case, reported in the first volume of Harrington. Most of the pleadings in that case were dictated by him, without any book before him, as he walked the floor of his private office; and many of them were read, and reviewed, and altered, again and again, before they finally passed from his critical examination. Those pleadings speak for themselves; and they were inspected, passed upon, and assailed, in one form or another, by as able men in the law as could be found at our bar, or outside of it, to perform that work, and finally settled by a bench than which no State had then a superior. Those pleadings stand as an imperishable monument of the industry and science of Clayton — for no other man had anything to do with their preparation. This case is remarkable for another thing — that up to the time when the verdict was given for his client, no finding of such magnitude, for merely unliquidated damages, had ever been rendered in the United States. As in the Randel case, so in other cases. His whole soul was, as it were, given up to them, where there was to be contest. He would think, or talk, of nothing else; you must listen

to him about his case, or question, or leave him. It made no difference who approached him, unless their own business required to be attended to in some way, he would talk of the matter then in hand. Whether this was a natural relief for an "o'erfraught" mind, or that he sought to extract opinions from others to fortify or modify his own, I know not; but his cases engrossed him to the displacement of all other subjects, and discourse about them was as necessary, apparently, to him, as the nourishment of food. And yet this was not true at all times, for when his mental travail over a case had ended by his thoughts being properly matured about it, he gave no more attention to it out of the court-house; and hence, he sometimes appeared to be careless or indifferent, when the contrary was to be expected. He had, however, worked the matter out in his thoughts, and there was nothing more to do before the trial.

The influence of Mr. Clayton with juries, to which I have referred, was very extraordinary. Certainly no man this State has ever produced was his equal with a jury, common or special; and the first living man among us,* although his fine intellect is now clouded by age, said to me, years ago, when contemplating his character as a public man and jurist, that he did not believe a jury lawyer superior to Clayton had ever lived in this country. His powers were, certainly, extraordinary, and consisted as well in the examination of witnesses as in the discussion of the facts proved.

*James A. Bayard, since deceased.

Whatever a witness knew on his client's side, he was sure to bring out, and with the best effect, framing his questions so as to refresh his memory where it was weak, as also to furnish him, when needed, with language that would best convey his thoughts. His witnesses were never afraid of him, as some men's are, his manner being so reassuring; and he never failed to extract from them, sooner or later, in his examination, all they knew. When he had done with them, the cross-examination that followed rarely produced any contradiction, or discrepant statement — so well had he, by his consummate art of preparing the witness for it, shielded him from assaults by the opposite counsel. A bad examination in chief lays a witness sadly open to the assaults and artifices of the adverse counsel; but he never made one: when he handed his witness over to his adversary, that witness not only had his story perfectly in memory, so that no *tripping* was possible; but he had kept him, if a timid man, so long engaged, as to give him an assurance that enabled him to resist all attempts afterwards to confuse him. Such a lawyer is of great service to inexperienced witnesses — who, often, make a bad figure, from being in the hands, at first, of counsel not having the address and art necessary for their due preparation to meet what sometimes degenerates into brow-beating upon the cross-examination. When, however, the duty of taking in hand an opposite witness, and sifting his testimony in chief, came to him, it was a treat to see him perform his work; and woe be unto that witness

if he had told a falsehood, misstated a fact, or if he sought to conceal one important to be brought out. There was no escaping his efforts to get at the true facts. A witness might be ever so smart, and subtle, or cunning with his answers, sly in his suggestions, or bold in his assertions; sooner or later he was compelled to disclose what he knew, and qualify what he he had said that was calculated, if unexplained, to mislead the minds of the jury. This was accomplished, partly by his general manner, partly by the communication in which he put himself with the witness, by his special effort for the occasion, and greatly to the discovery a witness soon made, that there was no use in trying to escape him. The ordinary arts of confusing, by rapid and irrelevant questions, were no part of his enginery: his was a treatment better calculated to answer his purpose, and not excite the sympathies of the jury for the victim's distress. When an unfair witness left the stand, he knew that he had been drained thoroughly of the real truth, but felt no resentment against him who had found out everything. There were, however, times when a falsifier, or prevaricator, had to be dealt with; and then he subjected such an one to a terrible ordeal. It was then a case which required something more than gentle treatment; it demanded an earnest, vigorous, unyielding contest for the victory, and such was made. There was no use in fighting him with boldness, or endeavoring to elude him by ingenious artifice of answer: the truth had to be spoken, or the witness passed from the battle with

his statements so battered by the blows the cross-examination had inflicted upon them, that they had no weight with the jury. I have been witness, as perhaps some present have also, to many of those encounters between this lawyer and hostile witnesses, and they always resulted in his triumph.

When these cases before juries came to be presented by counsel in their addresses, the court-room was sure to be filled, for everybody knew there would be a great treat for them in listening to the trial. The greater the case, and the more prominent his opponents were, the greater the interest; for then his superior powers would be evoked. When he was in active practice, but towards the close of it, there were other strong men at the bar than those of whom I have spoken. They were his juniors, professionally (and most of them otherwise), but still he could by no means *walk over the course* in his practice. It was against these men that he was called upon to do battle for his clients. He had no weak adversaries, I assure you. They were of the best to be found anywhere, and in the highest rank among us. When such were his antagonists, then the interest was overpowering. The engagement was a real one — not at long range, as senatorial conflicts have become, since the fashion arose of reading orations addressed virtually to an audience outside the chamber, with only the words *Mr. President* now and then uttered to remind you that a debate, nominally, is in progress; but a hand-to-hand contest, in which every intellectual and

popular quality was brought to bear upon the twelve men in the box. How many of us have enjoyed such scenes — if we *could* not divest ourselves, wholly, of the partisanship our admiration, respectively, for the several individual actors excited! But while these foemen of his were fine speakers, ready with their resources, which were copious, and able and earnest, and insinuating too, in their appeals to the jury, he, it must be confessed, outshone them all. His grand appearance, in all his full stature and expression of face, his perfect knowledge of every fact having the least relevancy to the case on trial, his excellent temper, ingenious appropriation of every unwitting expression of his opponent to the interest of his client's side, thus producing sometimes, and pardonably, that irritation of the opposing counsel so advantageous sometimes to his adversary, his masterly array, or marshalling, of the facts on his own side, and placing them in juxtaposition with those of the other side, subject to all the disparaging comments upon their weakness, or want of congruity, his candor would allow him to make, and his splendid voice, matchless copiousness, elegance and force of language, and perfect powers of illustration, were something that all men remember who witnessed or heard them, and which as yet, in Delaware, have never been equaled. He had hardly been at the bar a year before his fame as a lawyer and advocate became well known. I remember to have heard him say that at a very early period in his professional life he was employed by the Abolition Society of Pennsylvania to assist the

then Attorney-General, James Rogers, himself of great distinction at the bar, in the prosecution, in the county of Sussex, of a notorious and desperate kidnapper, Joe Johnson. Others have told me how greatly he distinguished himself on that occasion; in fact the case is mentioned frequently for one particular feature of the trial — the fainting upon the stand of a false witness to prove an *alibi*, under the cross-examination the young lawyer gave him. Afterwards he occasionally went out out of the State to engage in cases — two, notably, of indictments in Maryland for murder. From my observation of him, and of others, I feel I can say, unqualifiedly, that he was more familiar with the rules of evidence than any one I have ever known.

In January, 1837, Mr. Clayton retired from the bar, and accepted the office of Chief Justice of the State, tendered to him by his friend, Charles Polk, Governor at that time by virtue of being Speaker of the Senate, upon the death of Governor Bennett. As a judge, he could not have had a superior, in any respect — when all necessary to make such is considered. I have spoken of his legal learning. He had that in full measure. It is the chief qualification. Besides this, he had the quickness and acuteness of perception of which I have spoken. He had also great patience to hear, an assuring manner to the diffident, entire freedom from prejudice or passion, and an impartiality remarkable in one so fresh from bitter political contests. In fact, as a judge, there could be found no fault in him. All approached the trial of their cases with a certainty

that nothing but justice would be dealt out by the court where he presided; and the young practitioner was soon assured that there were no favors to be awarded to any that were not common to all. It was only where he thought that counsel were arguing beside their case, that he ever interrupted them — having no necessity to make a display of learning, which weak men feel sometimes in the course of trials. He resigned that place after having held it for a little more than three years, and no writ of error was ever taken from any of the court's decisions in his time. During this career a celebrated indictment was tried — for blasphemy — in which, with great labor and research, he brought forward all the law upon that subject. How well he sustained his reputation, any competent critic can discover, by reading that case at the end of the second volume of Harrington's Reports.

Upon the retirement of Mr. Clayton from the bench his professional life virtually ended, although he, occasionally, took part in important cases. He was sought after in almost every one of note; but only engaged in those where personal friends were interested, or some other strong motive impelled him. Such a motive influenced him to accept employment by the Government in its controversy with the State of New Jersey, over the title to the Pea Patch Island — in which service he had, as an associate, the very distinguished lawyer to whom I had reference before — the Hon. James A. Bayard — for whose talents Mr. Clayton felt the highest admiration, and towards whom, personally, he ever

entertained the warmest feelings of friendship. They were strong friends — with a love for their State, a pride in all that concerned her, and a belief in the justice of the title she had ceded to the United States, that knew no faltering. These two men took up the case of the Government founded upon Delaware's title, examined into every phase and detail of it, both of law and of fact, searched every book or parchment that industry, or money, could open to them, and made up and presented an argument, partly out of the mouth of one and partly out of the mouth of the other, which, for thoroughness, ability, and skill of arrangement and detail, has never been surpassed in this country. It is all reported by the late Reporter of the Supreme Court of the United States — John William Wallace — and can be found among the documents of Congress.

This case is, I believe, the last in which Mr. Clayton appeared as a lawyer; and he was put upon his mettle in the preparation and discussion of it, one of his competitors being George M. Bibb, of Kentucky, who had filled the office of Chancellor in that State, that of one of her Senators in Congress, and was reputed one of the ablest jurists in the country. This famous case was tried in Independence Hall, in the city of Philadelphia, in the Select Council chamber, before the Hon. John Sergeant, a distinguished gentleman of Pennsylvania, selected as an arbitrator by both the contestants, and known everywhere for his great legal learning and ability, and was attended by

an appreciative audience. The discussion of the great questions involved, was pronounced by the eminent referee to have been the ablest to which he had ever listened. When it closed, and the counsel to support this State's title left the chamber, there passed from before that referee two men who, for power and sagacity of intellect, and learning in their profession, had no superiors in America. I am aware this may seem extravagant praise; but it is not. I am only speaking of them as you, who are capable of judging, will sanction.

Here I might close my history of the career of the subject of this memoir as a lawyer — omitting all reference to many cases in the courts illustrative of some of the traits he possessed, and to many anecdotes, of interest only to professional men. But I do not think I should omit to say something that will be, perhaps, new to them, about his mode of studying cases. Most lawyers, when a question with which they are not perfectly familiar is presented, resort at once to their books, relying upon text writers to furnish them, directly or indirectly, with all they need, to answer it. His course was the opposite. He studied the subject first, in his mind; and when he had come to a conclusion upon the question of it, he resorted to books of authority to support his reasoning. If they did not do it, he modified his own views by the authorities. He rarely, however, found them to be at variance with his own previous judgment; this was owing to his ample early training, of which I have spoken. When

the variance was irreconcilable, his loyalty to the law not only demanded of him that he should bow to the majesty of its authority, but that he should be sure he was required to do so at the time; and this made necessary an examination of the cases, a task that evoked all his untiring powers of mind and body. I know, full well, what they were.

Such, as I have briefly, and all too feebly, presented it, is the history of John M. Clayton in his legal life. I now pass to the consideration of his public, or non-professional life.

His Political Life.

At the time when John M. Clayton was admitted to the bar (October, 1819), there can hardly be said to have been any parties in the United States. The second election of Mr. Monroe was about taking place, and that without any opposition over the country. There had been a very strong sentiment of hostility between the Federal and Democratic parties, that had kept alive all the fierce passions that political warfare excites; but the triumph of the national arms made those who favored the war with Great Britain so strong before the people, that the Federals were fain to give up their opposition to the majority, with the best grace they could. Accordingly they made no organized opposition as a national party to the first election of

Monroe, and at the second, that of 1820, there was nowhere, but in one State, any opposing ticket. The successful close of the war of 1812, and the approval by President Madison of the re-charter of the Bank of the United States, had deprived the promoters of political differences of all ability any longer to foment party dissensions and keep alive the spirit that sustains them. When Clayton came to be in a situation, therefore, to take part in political strife (if he had a taste for it), there was no ground for difference of opinion, nor any hope, if there were, of success in taking a stand upon it. Accordingly, he did not attach himself to the Federal party, to which the Claytons adhered from habit, nor did he concern himself about the small matter of the success of particular men at elections. I have every reason to believe that he was wholly indifferent to the result of the elections, whatever it might be. He had something more to do than give his mind and thoughts to the contests of men for places. There being no principle at stake, he had no work to perform in the political field. Still, he voted, and at the election of 1820, stood with those who were striving to promote what they conceived to be essential reforms in the affairs of the Federal party. It was at this election that he cast his first ballot. But he had, nevertheless, before this time, in fact before he came of age, attracted the attention of leading men of the then dominant party (the Federal) in the State, and was elected Clerk of the House of Representatives at the sessions of 1816,

1817, and 1819, and of the Senate in 1820, the year of the success of the reform, or independent ticket — which he had voted. He was continued in the latter office for the following years of 1821 and 1822. There was a Federal party still in the ascendant in Delaware at this time, but it existed merely by force of habit — men being the issue, and not principles. At the session of 1821 he was appointed Auditor of Accounts by the Legislature, — an office of great responsibility, though not always filled with the most competent men, — and held that place for two years, when he resigned it. All this time he was working hard at his profession. When he resigned the auditorship he ceased to have any official place, and so continued for six years. However, in 1824, at the close of the second term of Mr. Monroe as President, the people were required to decide who should succeed him. A variety of names was presented for their selection. General Jackson, the hero of New Orleans, John Quincy Adams, Henry Clay, William H. Crawford, and other distinguished men were named — all Democrats: no man offering the name of a Federalist, for such had no strength anywhere outside of New England, which, at that time, was not so important a section as, now-a-days, we are required to believe that it is. In Delaware some espoused the cause of one of these worthies, and some of another, and there was a strange commingling of antecedent discordant elements. Clayton's family and many old friends voted for Adams, as did a large number of the old Democrats; but he him-

self took no part in politics — not even voting that year or the next. The result, as all know, was that there was no election by the Electoral College; and the House of Representatives, acting under the Constitution in such a contingency, chose Adams. This result was treated by all Adams' opponents as the fruit of a *bargain* between him and Clay (or rather the friends of each), for their mutual profit. It had color, from the fact that Clay was made Secretary of State; but we now know that there was no bargain, or understanding whatever, upon the subject of Clay's promotion. This, however, was not so understood at the time, and the friends of General Jackson made good use of the charge in the memorable campaign of 1828 — when there was a political conflict indeed; and adversary met adversary, armed with all the weapons of party warfare, and fired by all the spirit such strife creates.

In the interval between the Presidential election of 1824 and that of 1828, Clayton filled the office of Secretary of State, first under Samuel Paynter, who was Governor in 1824, and afterwards under Charles Polk, elected in 1827 — his selection by the former, being in lieu of Henry M. Ridgely, who had resigned to take a seat in the Senate of the United States (made vacant by the death of Nicholas Van Dyke, and partially filled by the gubernatorial appointment of Daniel Rodney), showing that he had not, to that time, evinced any disposition to become a party leader — else so strong a friend of General Jackson, as was Governor Paynter, would would not have taken him

as his counsellor. At the same time that Samuel Paynter was Governor, Mr. Clayton was elected a member of the House of Representatives of this State, and served with distinction in the office of a legislator — considered in those days one of such importance that the best ability in the State, legal and otherwise, was sought for, in making out the tickets. By this time, all traces of difference of principle between the old parties, Federal and Democratic, having entirely faded, the names themselves alone remained, and men yet clung to them from old association, and for want of some general cause of difference in sentiment to abolish them. They were furnished with this in the contest of 1828, which was waged solely between the friends of General Jackson, who took his name and became Jackson men (or Jacksonites, as their opponents preferred to call them), and those of the incumbent, John Quincy Adams, who called themselves Administration men, and were called by their adversaries Adams men. In this memorable struggle there was a bitterness of feeling, a fell spirit of hostility, that had never before been experienced, nor has ever been felt since, except perhaps during the war with the South. But for one material fact, it would be impossible to account for all the rancor the campaign of 1828 exhibited; for there was no question of foreign or domestic policy upon which men need divide, nor had any great constitutional question arisen to challenge the attention of the people, such as the alien and sedition laws, in the lifetime of the incumbent's father; or the re-charter of

the United States Bank, which had been settled by the Supreme Court, and sanctioned by a Democratic President. And the "times," to use the familiar language of the past as well as the present, were not so *hard* as to demand that the cause of it should be laid on any body. The tariff of that year had only begun to work. The country was doing well; business was reviving and prospering under a return to specie payments, and the prospective operation, as its friends claimed, of the new customs law. What, then, was the cause of the phenomenal acrimony which distinguished that campaign? It is to be found, and found alone in the fact that men discovered that they had new adversaries to fight, and they of their own household. A struggle for power, and the offices that, not long after, were claimed to be its *spoils*, was so managed by the artifices that skilful tacticians always have at command, that men were drawn into the ranks of the opposition, or of the administration; and, as all old party lines were obliterated with the cessation of the reason for them, it happened, naturally, that both the new factions (for such only they then were) were composed of the disintegrated elements of the old parties, and men in each found themselves face to face in opposition to those whom they had before called their party friends. That, of itself, would not necessarily excite rancor; but when we take into account and consider the strong personal, but, for harmony's sake, smothered, feuds that grow out of party association, where one man or one set of men must always have more power and influence than

another, or others, to the latter's discomfiture, we can understand why it was that such strong passions were exhibited in the strife for the Presidency in 1828. Superadded, was the supporting circumstance, that one side was seeking to place at the head of affairs, a candidate alleged by his opponents to have no qualification for the office, except for that one of its duties which had never been exercised elsewhere than in the Cabinet — that of commander-in-chief of the army and navy. The traditions of the country, as well as the practice of parties, all being against the promotion of military men to civil power, the administration party treated the subject in the same light as if there were a constitutional inhibition against the selection, and waged a war against General Jackson which emblazoned upon its banners coffin handbills, and the effigies of Arbuthnot and Armbrister swinging in chains in the swamps of Florida. On the other hand, the friends of Adams were constantly assailed as ungrateful to one who, by the victory of New Orleans, had saved the country from re-subjugation by the British, and as the supporters of a scheme of "bargain and sale" for the Presidency, which was then denounced with all the same epithets of fraud and corruption that we have had ringing in our ears with respect to Southern Returning Boards on the one hand, and revelations of cipher dispatches on the other. In truth there was, from this intermixture of elements in 1828, a gigantic family feud — an internecine war — all the more deadly in its malignity, because of the

opportunity it afforded for suppressed jealousies and cruel disappointments to avenge themselves justifiably. These were the feelings in Delaware, as well as elsewhere, and they found expression in that memorable campaign. I shall never forget that time, though I had not advanced far in my teens. The feeling it engendered extended into households and disturbed their harmony, and into religious societies also, so that men could hardly go through the forms of worship, side by side. Everybody in Delaware was compelled to take sides; and Mr. Clayton, feeling, as others did, that the duty of patriotism called upon him to declare for one side or the other, enrolled himself with his kinsman, Thomas Clayton, and their numerous friends, in the ranks of the administration; while their old party associates, the Ridgelys, Bayards, McLanes, and Rogerses, espoused the cause of the opposition. As the old Federal party, to which they had all belonged, was the dominant State power, of course the question, which was made by the new order of things, was, who should rule the State hereafter; which of the leaders of the old party? All these men were politicians; all were in the prime and vigor of life, and ambitious of the control, by their party, of the affairs of the State; and all were men of the first ability also. The administration party succeeded. Delaware gave her voice for Adams; and a majority of her Legislature was upon his side. This result was not attained without a severe struggle all over the State, in which Clayton took a leading part, and first displayed his surpassing powers

as a popular orator. He also, with his friends, made strong personal appeals to their old party associates to unite with them in opposition to General Jackson — many of whom, dissatisfied on account of the dissolution of their old party, and caring nothing for the questions between the new ones, only yielded to their solicitations, after finding out that others whom they disliked, politically or personally, had gone to the other side. I have heard him relate a very amusing anecdote illustrative of this strange state of things — the point of which was that one individual, notwithstanding all the arguments and appeals addressed to him, was not able, at the end of a day's mental travail, to come to any decision, until it occurred to him to inquire what side a certain person, whom he thoroughly hated, was on; and being answered that he was a Jackson man, swore that he then was an Adams man. How many men are there, now-a-days, who have any better reason to give for what is called "the faith that is in them"?

The administration men, or Adams men, being in power at the legislative session of 1829, and the time of Henry M. Ridgely having expired, John M. Clayton, at the age of thirty-three years and a few months, was elected a Senator for the term of six years, beginning with the then next ensuing fourth day of March, his competitor being Mr. Ridgely. He took his seat in the Senate on that day at a special session of that body, called, as is usual, at the beginning of a Presidential term, and witnessed the inauguration of Andrew Jackson, who had defeated President Adams

by a large majority in the Electoral College. Then may be said to have commenced his political career; for the campaign of which the ceremony of that day was the result, was the first in which he took any prominent part. He had, in truth, no inclination for such contests as those in Delaware had been in his day, up to that time — mere struggles for supremacy without any real principle at stake — though he had voted, as before said, in 1820, and at intervals afterwards. When he entered the Senate he found himself to be the youngest member of that body; and, with the exception of his colleague, he knew none of the Senators personally, and perhaps none of them had ever heard at all of him, unless in answer to inquiries always made, when a new member is to be joined to the body, to find out what standing he has in his State as a man of talents. There were then in the Senate, or entering it with him, some of the greatest men this country has ever known — men whose renown for patriotism and ability was, in their day, enough to satisfy the most craving ambition, but which since then has increased in fulness until those worthies occupy the highest niches in the temple of fame in America. Daniel Webster, Henry Clay, Thomas H. Benton, Felix Grundy, Hugh L. White, John Holmes, Asher Robbins, John C. Calhoun, Edward Livingston, and Robert Y. Hayne were there, besides others worthy to be ranked with them, in the list of strong men in intellect, and pure minds as statesmen. Some of these heroes had made a study of the service of politics (I speak of

politics in its broad sense as a philosophical system), and were skilled in all the learning of the past with respect to public government, including especially a knowledge, perfect in all respects, of the constitutional history of the United States as a Federal body, and of the several States, composing the whole, in their colonial relations to each other and to the mother country. And they had, most of them, all the benefit which can accrue from frequent discussion, where every one found his equal. Into this society entered Delaware's young Senator, modest, unused to the scene before him (for he had never even seen either House of Congress in session), but possessing within him those qualities which fitted him to take his part of the duties his high station cast upon him. And he knew that he possessed those qualities. What man of real power does not? By this time he had attained his full physical proportions. The traces of sorrow for the loss of his wife had disappeared, leaving in their place an expression of repose which, superadded to the fine intellectual lineaments of his commanding countenance, his clear complexion, and large gray eyes, attracted the attention of all who met him. It was clearly apparent that here was a remarkable man; large size, fine figure, fair complexion, handsome features, a countenance full of intelligence, a manner gracious and familiar, but dignified also,—all proclaimed him an extraordinary person before he had opened his mouth in the presence of his brother Senators. His social qualities, consisting of ease and freedom of man-

ner, exceeding powers of conversation, amiability of disposition, that consideration and respect for others which never would allow him to be guilty of the ill-bred and vulgar habit some have, of interrupting conversation in order that their own small selves may be heard; gracious recognition at all times and places of all with whom he had acquaintance — all conspired to make him not only a great favorite with his mess, but with all whom he met, or with whom he was thrown in company. It has always been the testimony of those at Washington who knew him, that he enjoyed a greater personal popularity than any other Senator: and any here present who knew him in his public day, can readily understand why he was so. Social intercourse with John M. Clayton was a great pleasure, which all could enjoy: for, surely, no man was so accessible, and none took such pains (though all unobserved by his visitor) to render their communion agreeable. While he talked himself, and was fond of doing it (for he had an overflowing mind that could not be restrained from expression), he would yet ever contrive to lead the conversation to some topic fa-familiar to his guest, or auditor, and draw him out to take his part in the discourse; and thus impress him with a most grateful thought — that he had contributed his share to an entertainment, where he only expected to be a recipient. Everybody left him fully impressed that he was not only the most agreeable great man they had ever seen, but the most interesting also — for he really knew immensely of many things,

and something of almost everything. In all my long experience of him, beginning in May, 1831, and ending only with his life, I never knew any subject of conversation started about which he did not seem to have a great deal of accurate knowledge. A great reader, with a mind that could be interested in any useful subject, and a memory which preserved most tenaciously all that mind required it should retain, it is no wonder that he had such general information. Other men, no doubt, were equally well-informed, and some perhaps better — for there are magazines of a mental kind where all knowledge is stored — but it was more than rare to find one who was so willing to hold converse with others, and possessed withal such fluency and beauty, besides simplicity and ease, of expression. No wonder, I repeat, then, that he so soon became a favorite with his brother Senators. His presence and manner were not to be resisted, and during the years that followed, when he felt it, oftentimes, to be his duty to deal in unsparing terms of denunciation with what he thought to be corruptions in the public service, or usurpation of power by the the Executive, or arrogation of authority by false interpreters of the Constitution to render nugatory valid acts of Congress by State ordinances, he yet retained the personal respect of all with whom he differed, and challenged their admiration, for his ability and oratorical eminence.

Debate on Foot's Resolution.

At the first session of Congress after Mr. Clayton's appointment to the Senate, that of December, 1830, we find him engaged in the debates upon some of the subjects of most prominent interest before the country, such as the Public Lands, the Graduation Bill, the Appropriation Bill, and (on the 4th of March, 1830) on the celebrated resolution of Foot, of Connecticut, which furnished the text for the greatest debate that ever occurred in that body.

The resolution itself was one of inquiry, simply, about the public lands; the proper disposition of them; and the policy, generally, with respect to them. But, like many other small subjects on other occasions, it gave rise to a debate which occupied many weeks, and was participated in by all the leading men of the Senate; it having drawn within its vortex almost every subject that divided parties, and elicited the best argument that could possibly be made in favor of nullification — or the annulment by a State of an act of Congress, which, in her judgment, is not authorized by the Constitution. The topic of the resolution was, of course, discussed very thoroughly, because of its general importance; but the attention of the country was specially drawn by the introduction into the debate of a question which had been raised very soon after the Government was founded — which question was, the remedy for a State, or States, in case of enact-

ments by Congress, which in their judgment were "deliberate, palpable, and dangerous exercise of other powers" not granted by the compact. The country was confronted with a question of such momentous importance; and patriots everywhere looked with the greatest concern upon the contest. The chief representative of the doctrine of nullification was Robert Y. Hayne, of South Carolina, a man of the first order of ability; and his chief opponent was Daniel Webster, who, with the possible exception of Alexander Hamilton, was the greatest of our long list of distinguished public men. Of commanding presence, gigantic mind replete with knowledge of all that the debate required, and an action and utterance in entire harmony with his majesty of intellect, he was the master of the Carolinian in the end — though it is not to be denied by any, that in him he met a "foeman worthy of his steel."

It is not my purpose to quote any part of the remarks of either champion in this memoir, for it would be impossible to do justice to them, by such citations. It is enough that almost every one read at the time, or has since gone over, the speeches themselves in full; and that all understand that the verdict of the nation was for the argument of the "Great Expounder," as he then came to be called. The verdict remained undisturbed practically until there was an attempt, begun in April, 1861, to reverse it by force of arms.

Into this great debate John M. Clayton entered,

as I have said, on the 4th of March, 1830, and delivered his views at great length upon three of the subjects discussed — public lands question, the Executive power of removal, and the right claimed for a State to take her case into her own hands. He had then only had three months experience of Senatorial life — the special session of March 4, 1829, having been confined to executive business, and the first regular meeting for legislation having taken place on the first Monday of December of that year — but he displayed an amount of knowledge with the first and second of these subjects, and skill in their discussion, that astonished all his friends, and attracted the attention of all men in public life. It was, at once, seen that he was destined to make a great figure in the Congress of his country; and this reconciled his political opponents in Delaware to his election — for it is a feature in the character of our people, that they have great pride in the fame of a distinguished fellow-citizen, no matter what his politics. The other subject — the constitutional one — was most ably and thoroughly handled, and the argument made against the State power was unanswerable; which appeared, among other ways, by the admirable illustration he made to show what would be the effect of establishing the doctrine asserted by the nullifiers.

The question of the power of the President to remove a public officer, not a judge, without cause, was thoroughly treated in this speech, which was conceded, on all hands, to be as strong a protest, by argument,

against it, as had ever been made; but with reference to that question, it accomplished nothing more than to put the subject, to use a frequent expression of his, "in a proper point of light." Whoever will read his argument will find it full, frank, and exhaustive. He referred to the discussion, and the result against his views, in a debate, hereafter noticed, which occurred twenty-six years afterwards, and when the country had come to regard (alas for its welfare!) the offices as "spoils" of victory, with which a successful party might enrich itself. This speech was delivered before the last and greatest speech made by Mr. Webster in the debate; and at the time of its delivery Clayton was six months less than thirty-four years old; and before that time he had been engaged in executive session in the debate on the removal subject, as appears by a speech of Mr. Barton, of Missouri, from which the injunction of secrecy was removed.

Corruptions in the Post-Office Department.

In the very first week of the next session of Congress, commencing in December, 1831, Mr. Clayton introduced his celebrated resolution to inquire into the abuses of the Post-Office Department. This inquiry imposed upon him a herculean task. It was surrounded by difficulties which seemed, at first, to be insurmountable, the more especially as the whole over-

whelming force of the Executive and his party, seconded by as strong a partisan press as ever was known in the country, was unceasingly directed to suppress the inquiry, to misrepresent and distort the facts which it elicited, and to crush those who had engaged in it. During this short session, as the investigation proceeded, the advocates of the department and of the party in power endeavored to embarrass the committee by a resolution of the Senate absolutely ordering the suppression of so much of the investigation as tended to expose the causes for which faithful public officers had been removed from office. This drew from Mr. Clayton one of his most labored efforts in the Senate of the United States, in a speech then delivered. The proscription by the Administration, in that day, astonished and shocked many of its warmest supporters, by the extent, and, as some characterized it, the ferocity, with which that system was carried out. Proscription for opinion's sake was then commenced, and has since been continued by every party that has gained possession of official patronage But removals from office were then deemed acts of private oppression, inflicted by the iron hand of power, especially when, as in some cases, attacks upon private character were made to justify the displacement of the incumbent. Against what Mr. Clayton considered this system of tyranny, he urged unceasing warfare. He and his political friends denounced what they charged was a proscriptive system generally, but especially in reference to the Department whose affairs it was their duty

to investigate. At this critical period the machinations of Mr. Van Buren had caused the first rupture between General Jackson and Mr. Calhoun; and at this period also, the opponents of the Administration first commenced that movement, which was finally successful, the object of which was to draw Mr. Calhoun and his friends in opposition to the strong will which was, relentlessly, crushing all opposed to the Executive. The following, taken from the speech of Mr. Clayton, presents us with the first instance of the attempt of the minority to call in the aid of the Southern champion, who afterwards himself became so distinguished an opponent of all the arbitrary measures of General Jackson, as they were then stigmatized:

"But it will soon be seen whether there be not *one* man in this nation able to breast its terrors (the terrors of President Jackson's Administration) whenever the President hurls its thunders. There are hawks abroad, sir. Rumor alleges that the plundering falcon has lately stooped upon a full-winged eagle that never yet flinched from a contest, and, as might be naturally expected, all await the result with intense interest. It is given out, that the intended victim of proscription now is one distinguished far above all in office for the vigor and splendor of his intellect,

——'Micat inter omnes
Velut inter ignes luna minores.'

One who has been a prominent member of the party which gave power to our modern dictator, is to feel the undying vengeance which can burst forth, after

the lapse of twelve years, for an act done or a word said in a high official station and under the solemn obligation of an oath. But if that energy and fairness which have hitherto characterized him through life, do not desert him in this hour of greatest peril, we may yet live to see *one*, who has been marked out as a victim, escape unscathed even by that power which has thus far prostrated alike the barriers of public law and the sanctity of private reputation. In the meantime let it not be forgotten that the injuries inflicted by that proscription which levels first at the office and then at character to justify the blow, is not less severely felt because the sufferer has not moved in a splendid circle. The 'beetle that we tread upon may feel a pang as great as when a giant dies;' and, looking at the case to which I have alluded, may not the hundreds who have felt the sting of unmerited reproach, fairly invite the sympathies of others who are now made the objects of an attack not less unmerited and unrelenting in its character than that which *their* humbler efforts may have been unable to resist?"

During the many incidental discussions in which Mr. Clayton was engaged during this session, Isaac Hill, of New Hampshire, volunteered a written speech, which he read at great length in his place in the Senate, in defence of the alleged abuses of the Post-Office Department, and in it made a personal attack upon the members of the committee who were engaged in the inquiry; and for this he immediately received what may even now be called a castigation as severe perhaps as any ever administered to a mere servant of power.

The investigation for this session, though half suppressed by the party vote in the Senate, terminated in a complete triumph for the committee. Enough was developed to awake the attention of the public. Thirty-six forgeries in one public document were discovered — forgeries manifestly made, too, for the purpose of transferring all the odium for the grant of some of the most indefeasible *extra allowances* to mail contractors for party purposes, from the shoulders of the Postmaster-General, who was in truth totally unconnected with these frauds. Mr. Clayton persevered in his exertions to expose the abuses of this Department during both the succeeding sessions of Congress, and never intermitted his labors, until, despite of all efforts made by opponents, the most stupendous system of fraud and peculation, and bribery and corruption, was at last exposed and laid before the nation, that, up to that time, had ever stained the career of any administration in this country. Not satisfied with this, he devoted himself to the reformation of the Department, and was the first man who ever pointed out the true remedy for these abuses. In one of his speeches in the year 1834, after inviting the attention of the Senate to the enormous amount of *secret service money* annually expended by the Postmaster-General, without control or check — after showing how, by means of this secret service money, commonly called in the reports of the day, the *incidental* expenses of the Department, immense sums could be annually lavished to subsidize the public press, and for other unworthy uses,

without the danger of detection—Mr. Clayton gave it as his opinion that the only mode of effectually arresting the evil was to bring the Department under the control of Congress, as the Constitution directed it should be. He showed that, from the very origin of the Government, this Department had been unconstitutionally administered; that its revenues were part of the treasure of the nation, and like all other public money, could not be withdrawn from the Treasury without an appropriation made by law; that it was the duty of Congress to make annual specific appropriations out of the revenues of the Post-Office, as well as the other revenues of the country, to meet all the necessary expenditures of the Government; that from the origin of the Government to that day, a period of more than forty years, Congress had been unmindful of this sacred obligation, permitting the Postmaster-General annually to disburse millions of the public money without warrant of law, and at his sole pleasure and caprice; that the secret service fund, which was originally but a few hundred dollars, had, by this abandonment of the constitutional duty of Congress, now swelled to more than one hundred thousand dollars per annum, and might with equal propriety at any time be raised to a million; and that, besides these incidental expenses, Congress was then annually called upon to appropriate out of the Treasury of the nation a sum of one hundred thousand dollars to defray, what was called, the *contingent* expenses of the Department. He proposed to reform the Department altogether, — to make it

responsible, and subject it to the scrutiny and control of Congress, without whose check the frauds he had exposed would be repeated with impunity, as often as corrupt or careless men should come to the control of this branch of the Government. This important suggestion was afterwards adopted by Congress, and the triumph of Mr. Clayton and his friends over those whose abuses he had exposed, was completed by the passage of a law providing for the thorough reorganization and reformation of the Department.

From the year 1832 to December, 1836, Mr. Clayton, although employed in professional life during the recess of Congress, was engaged to a greater or less degree in the discussion of the leading topics of public and political interest then agitating the country. The period of his Congressional career was the most stormy that had occurred in the history of the Republic. More questions of vital importance to the people were agitated between 1828 and 1837 than during any other equal number of years preceding. At the time of the passage of the Bank Bill in 1832, Mr. Clayton was one of those who most ardently and anxiously advocated the preservation of the currency, and the financial system of the country. He opposed all innovations and experiments upon them; and when President Jackson's veto message was under consideration in the Senate, he delivered a speech in opposition to the veto, which was afterwards a thousand times quoted as conclusive evidence that his political friends of that day foresaw and foretold all the distress and ruin through

which the country passed in the course of that decade. Here is a part of what he said, in discussing the veto message; and it will appear, in reading it, how statesmen of later days have, in their advocacy of a stable system of finance, profited by his thoughts and the language in which he clothed them:

"I ask, What is to be done for the country? All thinking men must now admit that, as the present bank must close its concerns in less than four years, the pecuniary distress, the commercial embarrassments, consequent upon its destruction, must exceed anything which has ever been known in our history, unless some other bank can be established to relieve us. Eight and a half millions of the bank capital, belonging to foreigners, must be withdrawn from us to Europe. Seven millions of the capital must be paid to the Government, not to be loaned again, but to remain, as the President proposes, deposited in a branch of the Treasury, to check the issues of the local banks. The immense available resources of the present institution, amounting, as appears by a report in the other House, to $62,057,483, are to be used for banking no longer; and nearly fifty millions of dollars in notes, discounted on personal and other security, must be paid to the bank. The State banks must pay over all their debts to the expiring institution, and curtail their discounts to do so; or resort, for the relief of their debtors, to the old plan of emitting more paper, to be bought up by speculators at a heavy discount. The prediction of Mr. Lowndes in 1819 must be fulfilled, 'That the destruction of the United States Bank would be followed by the establishment of paper money, he firmly

believed — he might almost say he knew.' 'It was an extremity,' he said, 'from which the House would recoil.' The farmer must again sell his grain to the country merchant for State bank paper, at a discount of from ten to twenty, or even thirty per cent., in the nearest commercial city. The merchant must receive from the farmer the same paper in exchange for all the merchandise he consumes. The merchant with his money must purchase other merchandise in the cities, and must often sell it, at an advance on that price, to the farmer, of twenty per cent., to save himself from loss.

"The depreciation of the paper thus operates as a tax on the farmer, the merchant, and all the consumers of merchandise, to its whole amount. The loss of confidence among men; the total derangement of that desirable system of exchanges which is now admitted to be better than exists in any other country on the globe; overtrading and speculating on false capital in every part of the country; that rapid fluctuation in the standard of value for money which, like the unseen pestilence, withers all the efforts of industry, while the sufferer is in utter ignorance of the cause of his destruction; bankruptcies and ruin, at the anticipation of which the heart sickens; must follow in the long train of evils which are assuredly before us. Where then — where then, I demand to know, sir, is the remedy to save us? In a Government bank — a branch of the Treasury — without stockholders or property — without the power to issue a dollar of paper, or to loan a dollar of any kind — without the ability to deal in exchanges, except so far as may be necessary for paying its officers to stand behind the counter — controlling the State bank emissions of unsound currency only by

refusing to take their notes in payment of the custom-house bonds, when the Executive may think them about to prove refractory at an election."

How exactly was all this prediction fulfilled to the very letter!

The Compromise of 1833.

During the whole of his Congressional life, Mr. Clayton was the constant advocate of the protective policy; and so deeply was he convinced of the necessity of maintaining and preserving that policy, that in the famous debate on the Compromise Act in 1833, he declared that "he would pause before he surrendered it, even to save the Union, dearly as he loved, and highly as he prized, the latter." He took a more active part in the advocacy and passage of that bill than any other man in Congress, with the single exception of Henry Clay. Indeed, Mr. Clay, in a debate in the year 1836, publicly ascribed the passage of that law to Mr. Clayton — without whose exertions, he said, it could not have been enacted.

Of the vital importance of the passage of this act, at the perilous crisis when it was discussed in Congress, we can judge only by referring back to the thrilling events which were cotemporaneous with it. South Carolina had openly, in solemn convention, passed her ordinance of nullification. Her State troops were organized, and a new military system adopted by

her, for the avowed purpose of active resistance to the tariff law of 1828. Officers of great talent, including among others that gifted gentleman and chivalrous and intrepid commander, General Hamilton, were selected by the State authorities to lead the brave but misled South Carolinians to battle in defence of the ordinance of nullification. The sympathies of all the surrounding Southern States were, every day, most ardently and eloquently invoked in favor of South Carolina; and thousands of misguided and deluded men in the Middle and in the Northern sections of the Union constantly avowed their rooted hostility to the whole protective policy, and their friendship for the South Carolinians, whom they professed to consider as their oppressed countrymen. There was scarcely a State in the Union which did not contain many votaries of the free trade doctrine, ready to aid by their personal services, or their purses, the cause of the assumed sufferers. In the midst of this (as we now know it to have been) great infatuation, the President himself, backed by all his Cabinet ministers, at the head of whom stood the Secretary of the Treasury, sought to preserve the peace of the country only by breaking down the tariff. Early in the session of 1832–3, the Secretary of the Treasury sent to the Committee of Ways and Means an Executive *projet* of a new tariff, which, with slight alterations, was adopted and reported by that committee, estimating the whole revenue necessary to be raised for support of Government at only twelve millions of dollars, and imposing duties, the average of which did

not exceed fifteen per cent. *ad valorem.* The moment this proposition, emanating from the Executive (who pending his election had professed himself in favor of a *judicious tariff*), made its appearance, the friends of home labor, as the tariff men called themselves, saw that the axe was to be laid at the root of the whole protective policy. They had witnessed, before this, with what facility the colossal power of the Executive had prostrated the Bank of the United States — whose popularity was so great at the time of the President's accession to power, that its re-charter was looked upon as unquestionable. They had seen the whole system of internal improvements crushed by the Maysville veto, and this too from one who came into power professing to be the friend of that system. They now, therefore, with good reason, viewed all these principles that upheld the domestic industry of the country, as being in the utmost peril. At the same dreadful moment, the very Union of the States was tottering to its downfall. They believed that the very first blood shed on the plains of South Carolina would be the signal for the destruction of the Republic; and they justly reasoned, that, even should the Union survive the conflict, the whole tariff policy would become odious in the eyes of the friends of civil liberty and republican government, as the existing cause of the butchery of their countrymen. In the meantime they beheld the President enraged to frenzy by the threat of resistance to his power, denouncing the South Carolinians as rebels and traitors, proclaiming their disgrace as such

to the world, and threatening vengeance against their leaders, whom he vowed he would hang, upon the commission of the first overt act of resistance to the law. At this moment Mr. Clayton avowed his firm determination to sustain the Executive in his efforts to maintain the authority of the laws; and, throwing aside, for the sake of the country, all the bonds and trammels of party, openly stood forth in vindication of the President's authority to execute the laws For this purpose he delivered a speech in the Senate in February, 1833, in support of the bill for the collection of duties on imports, in reply to Mr. Calhoun, and to Mr. Tyler, then a Senator from Virginia, afterwards acting President of the United States. In this speech he reviewed, at great length, the whole doctrine of nullification and State secession. The following passages from the speech will show the true position which he chose to occupy in reference to the Executive, at this crisis, and also elucidate his views upon various subjects and theories introduced into the debate. In the second paragraph he says:

"If a doubt had ever existed in my mind as to the course which it is my duty to pursue in regard to this measure, that doubt would have been removed by the just influence of the sentiments of those who, as the immediate representatives of the people of that State which has commissioned me to act as Senator on this floor, have fully expressed themselves in certain resolutions, a copy of which is now before me. These resolutions, in substance, declare, that the Constitution

is not a treaty or a mere compact between sovereign States, but a form of government emanating from and established by the people of the United States; that this Government, although one of limited powers, is supreme within its sphere of action, and that the people owe to it an allegiance which cannot, consistently with the Constitution, be withdrawn by State nullification or State secession; that the Supreme Court of the United States is the only and proper tribunal for the settlement, in the the last resort, of controversies arising under that Constitution and the laws of Congress; that in cases of gross and intolerable oppression, for which the ordinary remedies to be found in the elective franchise and the responsibility of public officers are inadequate, the remedy is extra-constitutional — resistance and revolution. The language of our people, as expressed by their representatives, touching the fatal de lusion pervading the ordinance and legislation of South Carolina, is that while they entertain the kindest feelings towards the people of that State, 'with whom they stood, side by side, in the war of the Revolution, and in whose defence their blood was freely spilt,' they will not falter in their allegiance, but will be found, now as then, true to their country and its Government; and they pledge themselves to support that Government in the exercise of all its constitutional rights, and in the discharge of all its constitutional duties. These resolutions, proclaiming as they do the sentiments of gentlemen of all political parties, do not instruct me to adopt them as my political text-book, but leave me, untrammeled by any mandate, to follow the course which my own judgment may dictate in relation to the whole subject.

"But, sir, my sentiments were no secret to the

people who spoke thus by their constitutional organ, the legislative body. When principles directly repugnant to these were first advocated within the walls of this chamber, though fresh in my seat here, my voice was raised against them. The first effort that was ever made here to support the present Carolina doctrine of nullification by a State Convention, made by the gentlemen from Tennessee (Mr. Grundy), now a happy convert to much of my political catechism, and sustained with a degree of ability which has hardly been surpassed in this debate, was opposed by me while feebly pressing the adversary principles now inculcated in the declaration of Delaware, to which I have adverted. It is my business, sir, to reassure that honorable member of the truth of his new articles of faith; and to tell him, too, that however unfashionable these tenets were at the time of our ancient controversy, there is now no other mode known among men whereby he can be politically saved.

"It has so happened, sir, that the principles with which I entered public life, and with which, by the blessing of God, I will live and die — the same principles for which I and my political friends have been contending during the whole period of my service in the Senate, have been discovered by the President, in this perilous crisis of our public affairs, to be the only truly conservative principles of the Constitution. As one of those who have steadily but unsuccessfully opposed what in my conscience I believe to have been usurpations of Executive and State power — doctrines leading to the present disastrous results, as I have often predicted, in reference to the veto message of the last session, and the whole course of our recent national policy towards the State of Georgia — true now,

sir, to the same principles, I find myself by a sudden revolution in the sentiments of the Administration on this subject, anxiously supporting its very strongest measures. At the same time, I find the President, without the aid of those friends with whom it has ever been my pride to be associated in the political divisions which have agitated this body, sustained only by a very small and hopeless minority of the American Senate.

* * * But my support of this measure (alluding to the reason given by Mr. Wilkins, of Pennsylvania, for his) is predicated on no servile submission to any Executive mandate, on no implicit and unlimited faith in any man. I will clothe the Executive with all constitutional power necessary to secure the faithful execution of the laws, and the preservation of the Union. I will confer stronger authority on the Chief Magistrate, because I can find no other chance of salvation for my country; and I will not be deterred from the adoption of this measure by any consideration of the source from which it has emanated, or because an unworthy reason has been advanced by others to sustain it. Whatever beauties the chairman may discover in this part of his own argument, whatever foreign missions or splendid offices may now glitter in the vista to dazzle and delight the visions of others, I see and wish to see no prospect of political advancement, arising out of this sudden revolution in Executive opinion, for any member of that proud opposition which has so long and so stubbornly maintained its lofty independence of character, and so triumphantly vindicated the cause of constitutional liberty in the halls of the Capitol of this country. If it be true that, in the honorable discharge of our sacred duty here, we have committed the sin, hitherto deemed unpar-

donable, against that being who is so prominent an object of the humble adoration of others, let that sin remain unexpiated by any atonement which we now have to offer; and should political death be the punishment to be inflicted upon us for our transgressions, let us at least perish hoping nothing from the smiles, and fearing nothing from the frowns, of Executive power.

"Nor, sir, as I trust, will any man here who has ever justly laid claim to the honorable title of 'National Republican' (the party name of the opposition at that time) be prevented from giving a liberal support to this bill, by the general denunciation of it as a Federal measure. We well know that this same ingenious stratagem has been resorted to for more than thirty years, alternately to elevate or depress the leading demagogues in this country. The best possible plan to escape the force of reason, is to appeal to the ignorant prejudices of mankind. One who has engaged in this debate traces, by the aid of the most marvellous powers of combination and deduction, the origin of the nullifying resolutions of Kentucky, in 1798, and their kindred resolutions of Virginia, adopted in the same era, to the old Federal party! An ingenious modern writer, sir, has derived the word 'cucumber' from 'Jeremiah King;' but even his praises might well remain unsung, while the superior ingenuity of the author of this charge against the men of other days, should, by bard and minstrel, be celebrated in Hudibrastic lays for the admiration of the world. The Kentucky resolutions, which gave birth to the whole heresy of nullification, are entitled to no respect, whether we consider the time of their adoption, or the mere object for which they were drawn. They were written by a

candidate for office, in a period of high party excitement, for the very purpose of securing his own election. They were well calculated to intimidate political opponents by the threat of ultimate disunion in the event of his defeat, and as such they were denounced by many of the other States, at the time and in the strongest language. They slept on the shelf after they had done their office, without an effort on the part of anybody to vindicate the principles contained in them, until after the lapse of thirty years, when they were awakened by the trumpet of discord resounding again throughout this happy country. I say, sir, that no considerable effort was made to defend them, or their revolutionary principles, from 1800 till the passage of the tariff act of 1824. Yet they were assailed and denounced in the hearing of the very men who, if they had been deemed defensible, ought to have been the first to stand forth in their defence. In the debate on the Judiciary, in 1802, Mr. Giles, of Virginia, having barely so far alluded to the subject as to mention the determination of the Federal Courts — that they are judges in the last resort of the constitutionality of your laws — to prove what he called their unlimited claims to power, was promptly met, in reply, on the whole question by Mr. Bayard, who indicated the true principles of the Constitution against the then recent and arrogant pretensions of State usurpation, by whatsoever name it may be called — State veto, State interposition, or State tyranny. Entrenched behind the very principles we now advocate, he threw the gauntlet to any champion on the other side who might choose to venture in defence of the doctrines avowed in those resolutions. Sir, no one then appeared in the lists to accept that challenge. The resolutions, which might

have been fairly claimed as covering the whole ground of this part of the debate, were not even named, much less defended, or held up as authority, by any one. They had served their purposes, sir. The party that framed them was seated in power, and it was their interest to neglect and despise them."

In a subsequent paragraph, recurring to the subject of the resolutions, he says:

"In opposition to all the authorities, honorable gentlemen quote the Virginia resolutions of 1798, and the report on them of 1799. Mr. Madison, who has lately explained a report of which he was himself the author, is considered by them as not now understanding what he himself wrote; and we are told that Virginia alone can expound what she meant by her resolutions. While I utterly deny her right to expound for the rest of the world the Constitution of the United States; while I hold lightly even her own resolutions, drawn and sent out, as I shall ever believe, chiefly for their political effect in a pending contest for political power between herself and another section of the country; I say to her representatives here, if she meant in 1798 or 1799 to deny the power of the Supreme Court, and arrogate to herself the authority to decide, in the last constitutional resort, on the laws of Congress, or the Constitution of the United States, she has repealed her resolutions by still later resolutions in reply to those of Pennsylvania in regard to the Olmstead case. My honorable friend from New Jersey (Mr. Frelinghuysen) has shown us that when Pennsylvania proposed in 1810 to amend the Constitution by appointing an ar-

biter between the decisions of the States and the General Government, Virginia, by an almost unanimous vote of her Legislature, in answer to the proposition, referred Pennsylvania to the court as the only arbiter, and recognized the very principles against which one of the Virginia representatives (Mr. Tyler) is now contending. Be it the part of others to attempt to exonerate her from the charge of inconsistency at these different periods — that is no task of mine. I think with the Senator from Maine (Mr. Holmes), that when she has been in power, as she was in 1810, she has generally been a safe expounder of the Constitution; but that her political expositions, made when out of power, and struggling to obtain it, as she was in 1798, should form no laws for others, as we know they have been disregarded by herself. The Senator from Virginia really endeavors to nullify the resolutions of his own State, in reply to the proposition of Pennsylvania.

Mr. Tyler having said in the course of his speech, "I deny that I am a citizen of the Government of the United States. I do not deny that I am a citizen of the United States," Clayton replied:

"It is no part of my purpose to bandy useless metaphysical distinctions with any member here. He is as much a citizen of this Government as a Frenchman is a citizen of the Government of France, or an Englishman of the Government of his country. But all the acknowledgment I desire of the honorable gentleman, in order to compel him to admit the justice of the principles upon which this bill is founded, is that he and all those upon whom the bill is in-

tended to operate, are citizens of the United States. When the gentleman has made that admission, in vain will he contend that his obligations to Virginia are higher than those which he owes to the Federal Government; in vain will he contend that his most valuable rights are best secured to him by the State. Were Virginia the separate nation which his argument would make her appear to be, her citizens would soon find the difference between that protection which they now enjoy as citizens of our common country, and such protection as she could give them. High as she now justly stands among her sister States, forming, with them, an impregnable bulwark for all our countrymen against foreign aggression, she would, single-handed, make but a very sorry figure in a contest with any considerable foreign power.

"Sir, were it not for sheer compassion toward some of those gentlemen who indulge us, so often, with extravagant declamation about State power and State supremacy, it would be well to ring the truth daily in their ears, until they are cured of these diseased imaginations, that neither the Oid Dominion nor even the Empire State, herself, could singly and successfully measure strength with one of the second-rate powers of Europe. The gentleman from Virginia, who has filled his present station with so much honor to himself and usefulness to his country, denies that he is a Senator of the United States, and asserts that he is only a Senator of Virginia. He denies the very existence of such a character as that of a Senator of the United States. Each member here, in his view, is bound to legislate for his own State, and can represent no other. But where is the clause in the Constitution which recognizes a Senator of Virginia,

of Delaware, or any other single State, in this hall? This is not the Senate of Virginia, but of the United States. The honorable member says that he acts here only in obedience to the wishes of Virginia; that he yields obedience to this Government only because Virginia wills it. The Constitution and laws of the United States have no binding force with him from any other cause than this — that Virginia commands him to obey them. The result of all this doctrine is, that whenever Virginia wills it, he will violate this Constitution, and set these laws at defiance. In opposition to all this, hear the creed of a National Republican: I obey this Constitution, and act as a Senator of the United States under it, because I have sworn to support that Constitution. I hold myself bound, while acting in my station here, to legislate for the benefit of the whole country, not merely for that of any section of it; and in the discharge of my duty, I will look abroad throughout this wide republic, never sacrificing the interests of any one part of it to gratify another, but always dealing out and distributing equal justice to all my countrymen wherever they may be located, or by whatever title they may be distinguished from each other.

Closing his speech, he said (referring to Mr. Calhoun):

"The honorable Senator from South Carolina has told us that all human institutions, like those who formed them, contain within themselves the elements of their own destruction; and that our Government is now exhibiting their operation. To this general philo-

sophic remark, I should not have objected but for its application. All the works of man are destined to decay; but while the American people shall remain true to themselves, their Government cannot be destroyed; for it contains, within itself, endless and ever renascent energies, which must bring it out in triumph, and with Antæan vigor, in despite of every effort to overthrow it. From foreign force it has nothing to fear: it dreads nothing now from any section of this Union which shall seek to prevent the just operation of our laws by foreign intervention. Yes, sir, a foreign alliance, sought by any member of this confederacy, for the purpose of making war upon us, would be the means, under Heaven, of immediately rallying every patriot, of every political party, under the broad banner of the Republic Popular virtue, however, is the only safe basis of popular government. This is the 'fountain from the which our current runs, or bears no life'; and I concede that the mortal blow to the liberties of this country may, at last, be struck by the hand of one who has been indebted to it for existence. The shaft which shall stretch the American eagle bleeding and lifeless in the dust, must be feathered from his own bright pinions; and bitter will be the curses of men, in all ages to come, against the traitorous heart and the parricidal hand of him who shall loose that fatal arrow from the string!

> " 'Remember him, the villain, righteous Heaven,
> In thy great day of vengeance! Blast the traitor
> And his pernicious counsels, who, for wealth,
> For power, the pride of greatness, or revenge,
> Would plunge his native land in civil war.' "

By the aid of himself and most of his political friends the bill for the collection of duties on im-

ports became a law; and its passage was looked upon, by the trembling friends of republican government throughout the world, as the signal for civil war. It was at this moment — big with the fate of the Government — that Mr. Clayton bent his whole energies upon the passage of the Compromise Bill prepared by Mr. Clay, as the only means left of saving the Union of States, and that protective system without which, as he thought, that Union was robbed of its greeting blessing. It is understood that while the bill was yet sleeping on the files of the Senate, he privately incited Mr. Clay to renewed and more vigorous action in its behalf. He convened a meeting of such of his brother Senators as were impelled by the same motives that actuated him, to decide that question, which had now become of such thrilling importance to the whole country, whether any, and, if any, what part of the then existing tariff should be surrendered for the preservation of the Union. No man whose name had ever been mentioned in connection with the Presidency was admitted to that meeting. Neither Mr. Clay, nor Mr. Webster, nor Mr. Calhoun; but half the New England Senators, with both the Senators from this State, were among those who took part in its deliberations. They, finally, resolved that if certain amendments were adopted, to the bill, as it then stood — among which the principle of assessing the duties on imports at the *home* instead of the *foreign* value of them, was the most important and a *sine qua non* — they would vote for the bill; but that if any one of the nullifying Sen-

ators should refuse to vote for each of these amendments, or should not support the bill on its final passage, they would reject the compromise, and henceforth look only to arms as the means of restoring the peace of the country. While these things were going on, Mr. Clay moved a reference of his Compromise Bill to a committee of seven members; and the Speaker *pro tem.* of the Senate, Hugh L. White, of Tennessee, was called upon, by every patriotic consideration, to select the most efficient members of the body over which he presided, to compose the committee. He faithfully performed that duty; and by that act, if he had never done any thing else for his country, he merited the eternal gratitude of his countrymen. The members of the committee were — Mr. Clay, chairman, Mr. Calhoun, Mr. Webster, Mr. Clayton, Mr. Rives, Mr. Grundy, and Mr. Dallas. What illustrious names!

And here, it is but proper to observe, a singular incident occurred, worthy of being recorded in connection with the history of this famous act. President Jackson, who it seems kept up a constant surveillance over the proceedings of the Senate, received, by some means, a list of the members of the committee but a few moments after their appointment had been publicly announced, and immediately dispatched a message to the President of the Senate, Mr. White, demanding of him the erasure of Mr. Clayton's name from the list of the committee men, on the avowed ground that Mr. Clayton was an open

friend of Mr. Clay and his bill, and an opponent of the Secretary of the Treasury and his *projet*, then pending in the House of Representatives. Mr. White replied, that he had appointed Mr. Clayton a member of the committee solely from the conviction that he was a man of integrity and great ability, and without reference to his relations, or friendships, to others. It seems, however, that the President was not satisfied with this, and that he was resolved to defeat the passage of the Compromise Act by excluding from the committee Mr. Clayton, whose influence with his brother Senators was perfectly understood at the time. Mr. White was sent for, and attended at the Executive Mansion — the Senate having adjourned after the appointment of the committee in the evening; and until a late hour of that night the President pressed upon the presiding officer of the Senate the importance of inserting another name, in lieu of Mr. Clayton's, on the committee to which was now entrusted the fate both of the protective system and the Union of the States. To the great honor of Hugh L. White, he refused to make any change, preferring what he considered the interests of his country, to the favor of its Chief Magistrate in his palmiest days of power. He would not yield to Executive behests He felt, doubtless, that when the time should arrive that the President could control the legislature of the country by directing the appointment of the committees, and especially upon an occasion so momentous as the present, the Constitution would virtually be at an end.

and the President substantially a monarch. He, in vain, told the President that a defeat of the Compromise Act would be followed by civil war, the shedding of American blood by American hands, and the destruction of the Union. But when his arguments had failed, he closed this midnight consultation with the avowal of his stern determination not to change the committee. Whoever is curious to look into this part of the history of the Compromise Act, will be interested by perusing the evidence taken by a committee of the House of Representatives of the United States a few years after. It was a committee to investigate the abuses of legislative power; and Henry A. Wise, of Virginia, was its chairman. In the report of that committee he will see the affidavit of the Hon. Hugh L. White, before mentioned, who was called upon by that committee and compelled on oath to disclose the extraordinary facts to which reference is here made. If he will look into the public prints of that day he will also see that, not long after the publication of the report of the committee, the President attacked Mr. White in the newspapers on account of his disclosure, alleging that there never was any personal hostility between himself and Mr. Clayton, or any feeling which could have had induced him to have acted such a part towards that gentleman. But Mr. White replied to him through the same channel of communication, and in the most solemn manner reasserted the truth of every word he had uttered.

The committee, as organized by Mr. White, met

again and again, without any successful results. Mr. Clayton pressed the amendments proposed at the meeting had with his friends, before referred to; *and they were all rejected*, a majority of five out of seven voting against them in committee. Mr. Clayton and Mr. Clay were the two who voted for them. After repeated meetings of the committee, it was finally agreed, by a majority of four against three, to report the bill without amendment; although every one was perfectly conscious that, unless the amendments were adopted, the bill could scarcely obtain the votes of one-third of the Senate. The enemies of the Compromise were thus far triumphant; but their success was destined to be of short duration. Mr. Clayton desiring, for obvious reasons, that Mr. Clay should assume the paternity of the whole of that great measure which he had originated, requested him to move the amendments when the bill reported to the Senate should be before that body as in Committee of the Whole. The motion was accordingly made by Mr. Clay, and a warm debate followed, especially upon the principle of assessing the duties upon the home value of articles of importation, in the midst of which Mr. Calhoun and others of his way of thinking, having declared their determination to vote against this part of the amendment as unconstitutional, Mr. Clayton arose and solemnly moved to lay the bill on the table, without any intention to call it up again during the session, — at the time avowing that the friends with whom he was acting, as well as himself, would never consent to pass the bill, while a sin-

gle Senator of the peculiar views of Mr. Calhoun refused to record his vote in favor of this part of the amendments, — that the principle of assessing the duties at the home, instead of the foreign, value, the concession of which in the most unequivocal form was now demanded from those who had advocated the nullification of the tariff, was a *sine qua non*, and unless it were conceded at this stage of the passage of the bill, they would now lay the bill on the table, where it would sleep to wake no more. At this moment several Senators from the South in vain urged that, if permitted to vote against the amendment providing for the home valuation, as they desired to do, there being a majority in favor of the principle, it would still be incorporated in the bill; and that on the final passage of the bill they would all record their votes in its favor, and thus of course for the amendment included in it. But the stern answer returned by the friends of the tariff was, that the home valuation was necessary for the protection of the industry of the people; and it was then that Mr. Clayton made the declaration mentioned — that he would pause before he surrendered the principle of protection, even to save the Union. The friends of protection demanded of those called nullifiers, before they would progress with the compromise an inch further, that they should record their votes in favor of the home valuation, at every stage in which the question should be presented — that the object of the concessions they now proposed, was to shut the mouth of every one who should offer to nul-

lify the tariff law, in all time to come — that to permit them to vote against the home valuation, on the motion to adopt it as an amendment to the bill, would be to open the door for those gentlemen to contend against it as unconstitutional, and to nullify again, when the principle came into active operation — that the votes of all the nullifying Senators and all other enemies of the tariff must now be recorded in favor of this great principle, which would secure protection to American labor in the Compromise Act, or that the bill should not live another instant after any one of them had refused to compromise on these terms.

Pending this motion, of Mr. Clayton, to kill the bill by laying it upon the table, after a brief consultation with some gentlemen from the South, the Hon. George M. Bibb, of Kentucky, himself a nullifier, requested Mr. Clayton to withdraw his motion, for the purpose of giving time to reflect on the issue now presented; and Mr. Clayton temporarily withdrew the motion for the purpose mentioned by Mr. Bibb; but avowed his determination to renew it the next morning, if the terms proposed by himself and his friends were not acceded to; and then, immediately, a proposition to adjourn until the next morning was moved and carried.

After a night's consultation, it was in vain proposed that the compromise should be passed with the final vote of all the anti-tariff Senators recorded in its favor; but that the Senators from South Carolina should vote against the pending motion to introduce the home valuation as a part of the bill. This was

sternly refused by the friends of the tariff — Mr. Clayton, with inflexible determination, persevering in his resolution to fix the bill to the table, if either of those Senators should refuse to record his solemn vote on the journal in favor of the principle; without which, he contended, the bill might be regarded as an abandonment of the protective policy, of which he never would be guilty; and he demanded the ayes and noes on the home valuation, which were forthwith ordered to be taken. The issue was thus brought home to the South in a way which could not be evaded. Those generous spirits in the Senate who had thus offered to save South Carolina from the consequences of her madness and folly, and who had thus proposed to surrender every thing but principle to avert the horrors of a civil war, and to save the blood of their countrymen, now stood at bay with the enemies of the tariff, and refused to recede an inch further; and they finally gave notice to Southern gentlemen that if, after all they had offered, the compromise should be declined by South Carolina, they would gather around the standard of the President, to suppress any infraction of the revenue laws, with the whole power of the nation, — that if war ensued, they would join the party of the Executive in voting every dollar in the treasury to enable the President to crush the rebellion, — and that they would not hesitate to insure the triumph of the laws even if they were driven to tax the people of the United States, so long as a dollar should be remaining.

Under these circumstances, the vote being called, it appears, from the journal, that every Southern anti-tariff Senator, whether nullifier or not, including both of those from South Carolina, *recorded his vote in favor of the home valuation, as well as all the other amendments now moved by Mr. Clay;* and then the question coming before the Senate on the engrossment of the bill, as thus amended, a spirited and warm debate occurred, in which Mr. Webster, with Mr. Dallas and others, opposed the bill, which was advocated by Mr. Clay, assisted by Mr. Clayton; at the expiration of which, the bill was ordered to be engrossed for a third reading by a vote so overwhelming that all further opposition to it was abandoned as hopeless.

Notwithstanding the compromise, the Executive took the earliest opportunity to show its real hostility to the tariff, even as thus arranged. It is believed that the friends of the tariff, who voted for that act, never imagined that it would be construed to abolish the whole system of *minimums* in previous laws, which constituted the surest basis of protection to American industry. Yet the Secretary of the Treasury, on the 20th of April, 1833, about six weeks after the passage of the law, issued a circular to the officers of the customs, fixing such a construction on the law as abolished the *minimums* altogether. This was the first and most destructive blow aimed at protection of home labor. There was nothing in that act to warrant it. But the Secretary, proceeding upon an arbitrary distinction between the assumed and the real value of

articles of import, without submitting the matter to the judgment of any judicial tribunal, and without consultation with any of the friends of the law, struck down at one blow all the manufactures of the country whose existence depended upon the preservation of the *minimum* principle. It was impossible for the friends of protection to bring the Secretary's construction of the act to the test of a judicial decision; because the Government, whose duty it was, as the only party interested, to controvert the Secretary's opinion, had not sufficient interest in the manufacturing system to make a case in court to ascertain the true meaning of the law. In addition to this, the party in Congress supporting the Executive, after the passage of the act, refused to pass any further act providing the details of a plan of home valuation; and every Secretary of that and the next following Administration omitted to make any Treasury regulations, in pursuance of which the duties, at the proper time, should be assessed on the domestic value of the articles imported.

This was the condition of things in 1841, when the Whigs came into power. They found that the Compromise Act had not been obeyed, as they conceived, by their predecessors, and they justly declined any longer to submit to a state of things in which one of the parties to the compromise absolutely refused to fulfil its part of the engagement. Contrary, as they thought, to its own plain meaning, and the intentions of the framers of the act, it had become the means of oppressing, instead of protecting, Ameri-

can manufactures. The Whig party therefore repealed it in 1842, by the passage of another act, which, shortly, became so firmly established in the regard of the people as not to be in any sense shaken by the ordinance of nullification. Reason reassumed her empire over the minds of our countrymen; the period of peril to the Union of the States passed away, and the protective system became again in full operation, having escaped the odium of that accusation, which would have crushed it, that it could be preserved only by the bloodshed of American citizens.

Before this important subject of the compromise of 1833 is dismissed, a fallacy must be noticed, which prevailed to a considerable extent among certain uninformed persons, that the Compromise Act did necessarily reduce the duties on imported articles, at the end of nine years from its passage, to twenty per cent. The greatest reduction of duties contemplated by the act, was that point in the descending scale where the amount collected had to be the sum necessary to an economical administration of the Government, no matter what the rate of duty might be *over* twenty per cent. That point was reached long before the passage of the act of 1842. The Government had actually become bankrupt in credit in 1840. A heavy national debt (for that time) had been incurred, to pay which no money had been provided. The Government loans were below par in the home market, and our credit was so low that foreigners refused to lend us a dollar. Yet the Administration of Mr. Van Buren, before it was

overthrown, gave no heed to another pledge in the Compromise Act, and omitted to arrest the reduction of duties, for the purpose of meeting the wants of Government. This fact shows with how bad a grace the friends of the tariff of 1842 were charged with having violated the Compromise Act of 1833.

The Land Bill.

Mr. Clayton was an active advocate of the Land Bill, which was passed at this important session of 1833. It was, indeed, a measure, the adoption of which assisted to procure the passage of the compromise itself; and may be said to form part and parcel of the compromise. So far back as the year 1830, Mr. Clayton, in his speech on the 4th of March of that year, strongly advocated the right of the old States to a share of the public lands; and, for the purpose of explaining the principles with respect to a subject so important, the following extract is copied from that speech:

"I am constrained to say that I cannot vote for this bill (the bill to graduate the price of the public lands, to make provisions for actual settlers, and to cede the residue to the States in which they lie). According to my mode of considering it, it is a proposition to give away the birthright of our people for a nominal sum; and I am yet to learn that the citizens of the Middle States have indicated any feeling in regard

to it, differing from that expressed in the vote referred to — when, with a single exception, all the Senators, representing States north of Mason and Dixon's line, opposed the measure. They do not look to these lands, as has been unjustly stated, with the eye of an unfeeling landholder who parts with acres as a miser parts with his gold. They view the new States as younger sisters of the same family, upon an equal footing with themselves, and entitled to an equal share of the patrimony; but having children to educate, and numerous wants to be supplied, they will think it ungenerous, unjust, and oppressive, should these younger sisters take away the whole. Sir, it is the inheritance which descended from our forefathers, who wrested a part of it from the British crown, at the expense of their blood and treasure; and paid for the rest of it by the earnings of their labor. It is not for me to say what are the feelings of the people of the Middle States on the subject. But it is their privilege to speak for themselves, and they will, doubtless, when they think it necessary, exercise that privilege. Yet I will say that if they entertain the sentiments of their fathers, they will never consent to cede away hundreds of millions of acres of land for a nominal consideration, or gratuitously relinquish them to any new State, however loudly she may insist on the measure as due to her rights and her sovereignty, or however boldly she may threaten to defy the Federal judiciary, and decide the controversy by her own tribunals and in her own favor. Those who are conversant with our Revolutionary history will remember that the exclusive claims of Virginia, and other members of our political family, to our public lands, were warmly resisted by New Jersey, Delaware, and Maryland, as soon

as those claims were avowed after the rupture with the mother country. The articles of confederation were not signed on the part of New Jersey until the 25th of November, 1878; although she had bled freely in the cause of American liberty, from the commencement of the struggle. One of the principal objections which caused this delay in the ratification of those articles, will be found in the able representation of the Legislature, presented by her delegates to Congress, before she acceded to the Union. 'The ninth article,' said they, 'provides that no State shall be deprived of territory for the benefit of the United States. Whether we are to understand by territory is intended any land the property of which was heretofore vested in the crown of Great Britain, or that no mention of such land is made in the confederation, we are constrained to observe that the present war, as we always apprehended, was undertaken for the general defence and interest of of the confederating colonies, now the United States. It was ever the confident expectation of this State, that the benefits, derived from a successful contest, were to be general and proportionate; and that the property of the common enemy, falling in consequence of a prosperous issue of the war, would belong to the United States, and be appropriated to their use. We are therefore greatly disappointed in finding no provision made in the confederation for empowering the Congress to dispose of such property, but especially the vacant and unpatented lands, commonly called the crown lands, for defraying the expenses of the war, and for such other public and general purposes. The jurisdiction ought, in every instance, to belong to the respective States, within the charter or determined limits of which such lands may be seated; but reason and

justice must decide, that the property which existed in the crown of Great Britain, previous to the present Revolution, ought now to belong to the Congress, in trust for the use and benefit of the United States. They have fought and bled for it in proportion to their respective abilities; and therefore the reward ought not to be predilectionally distributed.'

"And when in November, 1778, the Legislature of New Jersey determined to attach her to the Union, they did it, as they then expressed, in firm reliance that the candor and justice of the several States would, in due time, remove the subsisting inequality, yet still insisting on the justice of their objections then lately stated and sent to the General Congress. So too, Delaware and Maryland, for the same reasons, refused to join the confederation, until a still later period — the former ratifying the articles on the 22d of February, 1779, and the latter on the 1st of March, 1781. The State which I have the honor in part to represent here, had, on the 1st of February, 1779, adopted the following resolutions to authorize her accession to the Union:

Resolved, That this State considers it necessary for the peace and safety of the State, to be included in the Union; that a moderate extent of limits should be assigned for such of those States as claim to the Mississippi or South Sea; and that the United States, in Congress assembled, should and ought to have power of fixing their western limits.

Resolved, also, That this State considers herself justly entitled to a right in common with the members of the Union, to that extensive tract of country which lies to the westward of the United States, the property of which was not vested in or granted to individuals, at the commencement of the present war; that the same hath been or may be gained from the King of Great Britain, or the native Indians, by the

blood and treasure of all, and ought therefore to be a common estate, to be granted out on terms beneficial to the United States.

"But after the accession of Delaware, with this protest, Maryland still persevered in her refusal to join the confederation, solely on the ground, that she might thereby be stripped of the common interest, and the common benefits derived from the Western lands. She still insisted that some security for these lands was necessary for the happiness and tranquillity of the Union; denied the whole claim of Virginia to the territory northwest of the Ohio; and still pressed upon Congress that policy and justice required that a country, unsettled at the commencement of the war, claimed by the British crown, and ceded to it by the treaty of Paris, if wrested from the common enemy by the blood and treasure of the thirteen States, should be considered as common property.

"In February, 1780, New York made her cession, to accelerate the Federal alliance, and declared the territory ceded, should be for the use and benefit of such of the United States as should become members of that alliance, and for no other use or purpose whatever. And although Virginia attempted, for awhile, to vindicate her claim, yet other States, feeling a strong attachment to Maryland, and conscious of the justice of her representations, disliked a partial Union, which would throw out of the pale a people, standing, as Marylanders have always stood, among the bravest and most patriotic of our countrymen. The ordinance of Congress then followed, in October, 1780, declaring that the territory to be ceded by the States should be disposed of for the common benefit of the Union; and on the 2d of January, 1781, Virginia, in

that spirit of magnanimity which has generally prevailed in her councils, yielded up her claim, for the benefit of the whole Union. It is a remarkable circumstance that Maryland did not actually join the Union until after these cessions had been made by New York and Virginia, declaring at the very moment, and by the very terms of her accession, that she did not release, nor intend to relinquish, any part of her right and interest, with the other confederating States, to the Western territory. These facts, which have now become the familiar history of the country, furnish curious reminiscences in these latter days, when a new light has broken in upon us to show that the new States have title to all the lands within their chartered limits; and when we are told it would be most magnanimous and becoming in us, who claim to have imbibed the spirit and sentiments of our forefathers, to cede away our patrimony for a nominal consideration, let it be remembered that the feeling on this subject manifested by the two States of Delaware and Maryland, preventing their accession to the confederation, until so late a period, was with difficulty repressed, even by that ardent attachment to the cause of liberty for which they were then so much distinguished, and in which they have never been surpassed. Their troops went through the whole contest together, flanking and supporting each other in battle; commonly led on by the same commander; generally the first to advance and the last to retreat; their bayonets, like the pikes of the Macedonian phalanx, glittering in front of one and the same compact mass; and when they fell, they slept in death together, on the same part of the blood-stained field. It was that same spirit which prompted the combined exer-

tions of these people in the American cause, throughout the whole struggle; which also united them in resistance against every attempt on the part of any single section of the country, to appropriate, for its exclusive benefit, the territory which they were striving to conquer from the British crown. Sir, I think they will now combine again; I think they will, when considering this subject, bestow some reflection upon the millions which have been expended in the subsequent purchase of the southwestern portion of our public domain; on the sums which have been profusely lavished, in making and carrying into effect our treaties for the extinguishment of the Indian title; in making the surveys of these lands; and in the payment of officers and agents for the maintenance of our land system. From the feeling which formerly actuated them, I judge that their co-operation on this subject will be such as to resist every effort to bribe them with promises, or to sway them by means of political excitement, to give up that which could not be wrested from them by appeals to their strongest attachments in the darkest days of their adversity. They will claim, I think, sir, an equal portion of this territory, under the plain letter of the grants referred to. They may claim a large portion of it, by the paramount title of the right of conquest, which has never been by them relinquished; and by that title they can successfully defend it. Whatever foundation there may be for the imputation of motives, in other sections of the Union, to flatter and to woo the West, by the offer to her of this splendid dowry, if she will transfer her influence to a candidate in a Presidential election; we, I believe, shall not take part in any such bargain. The gentleman from Tennessee (Mr. Grundy) says the

West has been already wooed and won. It may be so; but we are not, and, I think, shall never be, *sub potestate viri;* and if we could be bought for any consideration to sign this release of our birthright, we should never agree, like Esau, to sell it for a mess of pottage."

He again spoke, that same year, in opposition to the Graduation Bill, while it was before the Senate. When Mr. Clay first reported the Land Bill to the Senate, Mr. Clayton advocated the printing of an extra number of copies of the report, which he then pronounced to be the ablest and most important that had been submitted in either house of Congress since he had been in the public councils, On all occasions he was found prominent among the supporters of that measure. In his speech on the 8th of February, 1836, in favor of the national defence, he thus alluded to the passage of that bill. The extract is quoted because it states a most important fact in the history of our legislation, which was not generally known at the time, and is perhaps known now to but very few, but which Mr. Clayton had the best possible opportunity of knowing, as he was an actor in the scene to which he refers:

"It has been further said that the object of the resolution is to defeat the bill to distribute the proceeds of the sales of the public domain among the States, according to their federative population. But such cannot be the effect of adopting a liberal scheme

of national defence, really adapted to the wants of the country. The land bill itself provides that no part of the money which it proposes to distribute, shall be disposed of, according to its provisions, in case of war with any foreign country; and it never has been any part of the object of the friends of that just and salutary measure to divert one dollar of the public treasure from the object of necessary defence. The passage of that bill could have had no such effect. As a sincere friend of that bill, I do ardently desire that it may, at some future time, receive the action of Congress, under more favorable auspices. At present, I cannot shut my eyes to the fact, that the President has once put his veto upon it, and has even resorted to what, I shall ever consider, was a most unjustifiable measure on his part to prevent Congress from passing it into a law in spite of his veto, by the requisite constitutional majority of two-thirds of each House. We have good reason to know, that when we passed the bill simultaneously with the Compromise Act, such was the state of kind feeling which the latter had awakened in the bosoms of gentlemen, who had before voted against the Land Bill, towards its friends, that, had the President, who received both the bills in the same hour, returned the latter to us with his qualified negative upon it, at the time when he sent back the Compromise Act with his approval upon that, the requisite constitutional majority of two-thirds was ready in this body, as well as in the other House, to make the bill a law in despite of his veto. He chose to keep the bill until another session, and then sent it back to a new Congress, many of whose members were not members of that which passed the act. Is there any evidence of a change in his determination as to

this bill? and, if not, can any man hope for the passage of the Land Bill into a law, while he, who resorted to such means to defeat it, as I have in part described, still has it in his power to resort to similar means again? No, sir; though I hold it to be my duty, uncontrolled by the Executive will, to vote for the measure as often it shall be presented, yet I feel that we must wait till other counsels shall prevail in the Executive mansion before the people of any of the old States, which conquered these public lands from the crown of Great Britain by the expenditure of their blood and treasure, can be permitted to touch a dollar of the money arising from the sale of them. But, without reference to this state of things, it is sufficient now to say, that the objection that a liberal system of appropriation for public defense might come in collision with the distribution under the land bill, proceeds upon the admission of what is erroneous in point of fact; for we have ample resources for national defence, without touching the funds that the bill was intended to affect; and, were it otherwise, I should not hesitate a moment in deciding, that not a dollar should be distributed, or applied to other purposes, while it remains necessary to put the country in a state of preparation to meet any and every emergency that may arise out of the unsettled state of our foreign relations.

"Another objection has been urged. The honorable gentleman from South Carolina (Mr. Calhoun) has offered a proposition, that now lies on the table, to so amend the Constitution of the United States as to authorize the distribution among the States of all the surplus in the treasury not necessary for the expenses of the Government, whether proceeding from the avails

of the public domain, or from any other source. If it be any part of the design of his resolution to defeat the appropriations for those objects (which I have already observed, are, in my estimation, paramount to all others), I have yet to learn it; and, whenever that shall be avowed as its object, or shall appear, in my judgment, to be its effect, I shall hold it to be my duty, without reference to any other arguments against it, to resist it to the utmost. Sir, I do not propose to discuss its merits, but I am free to declare, it is a proposition which, in its present form, can never be attended with any practical results. Many of those who desire the distribution, believe that the object can be attained whenever Congress shall pass an act to effect it; and that the proposed amendment to the Constitution is objectionable, not merely because it is unnecessary, but because it involves an admission of the want of power, already conceded to Congress. The elaborate addresses on this subject by a late Senator from New Jersey (Mr. Dickerson), now a member of the cabinet, were made in vain, if there were no considerable number of men friendly to the object, and yet confident of the existence of a power to effect it. The President, in his annual messages to Congress, has repeatedly avowed himself friendly to the object of distributing this surplus among the States; yet he had rejected the Land Bill, which is the only measure that has ever been proposed by friend or foe to carry out, by a practical effort, any part of his suggestion. Considering these things, and reflecting at the same time upon the difficulty, not to say the absolute impossibility, of procuring any change in the Constitution whatsoever, on any subject, I cannot view this proposition as presenting, even to the friends of the distri-

bution which it contemplates, any ground upon which an opposition to the great measure of national defence can be rested. Sir, it is visionary. If the surplus must accumulate until that proposition shall be adopted, it will never find an avenue through which it may escape to the people, to whom it rightfully belongs.

"Nor does that other objection, that, by these means, the expenditures for internal improvements will be arrested, stand on any better foundation. Sir, the expenditures for internal improvements are effectually arrested by Executive action alone, no matter what may be our decision on this or any other subject. The President alone now governs the destinies of the country, so far as national improvement is involved in them. * * * * Until the people shall desire it otherwise, and manifest that desire by the elevation of some one to the Presidential power who will consent that their money shall be expended in making railroads and canals, to bind and connect together the different sections of our country, as well as in the purchase of arms, the employment of fleets, the raising of armies, and the erection of forts, we have no alternative left to us but that of appropriating largely for the defence, or suffering this wealth to accumulate until the sum of its enticing glories shall win the heart of some one to use it for the mastery of us all, and the conquest of the liberty that is left to us. And, sir, I say again, in reference to this objection, as well as to all others of a similar character, that so long as the public money can be usefully applied to the indispensable object of the necessary protection and safety of the country, any and every other object of expenditure sinks, in my judgment, into inferiority with that."

It will readily occur to any one who will think upon the subject, that as the Land Bill passed cotemporaneously with the Compromise Act, it was part of a great system of measures devised, among other purposes, for the protection of American labor. We have seen that the *minimum*, or lowest point to which the duties could descend under the Compromise Act, was that point where the revenue derived from them was just sufficient for an economical administration of the Government. The Compromise Act expressly declares that the revenue necessary for that purpose shall be derived from import duties only. The fact, as above stated in the extract from Mr. Clayton's speech, shows conclusively that Southern as well as Northern men had, at the close of the session of 1833, agreed to pass the Land Bill, in spite of the President's veto, by the requisite constitutional majority of two-thirds. This important fact has often been stated, but we here have the tangible evidence to sustain it. Within less than three years after these events occurred, Mr. Clayton publicly states the fact, in his place in the Senate chamber, in the presence of all the Southern as well as Northern Senators, many of whom had participated in the exciting scenes of 1833, and who could have contradicted the statement, if Mr. Clayton had been mistaken. There does not seem to be room to doubt that the whole scheme of compromise agreed upon, contemplated the abstraction of the revenue derived from the sale of the public lands from the treasury of the nation, the distribution of it among the States,

and the support of Government from a tariff, which must necessarily be protective. The best part of the compromise, therefore, was crushed by the course of the President in withholding the bill from the Senate, and Mr. Clay and his friends were, as they conceived, most unjustly held responsible by their adversaries for all the distress that the country suffered until it got relief by the tariff, passed in 1842, before referred to. Everybody was taken by surprise at the non-action of the President, which was kept secret, till the last moment of the session, from his most intimate friends, except perhaps the Hon. Thomas H. Benton. Mr. Clayton, and the others with whom he acted, claimed that had the Land Bill become a law, and the whole compromise been faithfully carried out on both sides, — had the Secretary of the Treasury withheld his great and fatal blow at the *minimum* principle, faithfully executing the act according to the meaning of those who passed it, — had the biennial reduction of the revenue of ten per cent. been arrested by the succeeding administration of Mr. Van Buren, as the law directed, when the revenue raised from duties was about to prove insufficient for the expenses of Government,— and, above all, had the law been executed so far as related to the home valuation of imported goods, provided for by the act, the manufacturers would have been fully sustained, and the country would have escaped all the distress before referred to.

While a member of the Senate, Mr. Clayton appears to have been engaged in the discussion of all the leading questions of constitutional law which agitated and divided that body. Of his ability as a lawyer, a correct judgment may be formed by perusing the debates on those questions. The opinion of his brother Senators on that subject is not to be mistaken; for from the year 1833 till he left the Senate, he was regularly elected by the votes of the Senators as the Chairman of the Committee on the Judiciary, — the post for which the best constitutional lawyer is supposed to be selected. A higher compliment could not have been paid him by the Senate; and most faithfully did he labor for the service of the country while filling this most important place. To this committee all questions of constitutional law, indeed, all important legal questions, were referred. The heaviest claims against the Government were submitted to its consideration. Questions of boundary between the States of the Union; and all the important questions connected with the admission of new States; the organization of new Territorial governments, and the supervision of the laws for administering justice in the Territories; all questions relating to the courts of the United States, and the administration of justice by them; all Executive nominations of judges and marshals of the United States; nominations for the offices of Attorney-General and District-Attorney; appropriations of money to support the administration of justice in the United States, and to defray expenses incident to the courts, were

among the subjects which demanded the indefatigable attention of the committee, and especially the chairman. While acting in this capacity, Mr. Clayton reported from his committee the original law which first extended the jurisdiction of the United States over the immense Territory of Wisconsin, then embracing the Territory of Iowa, and established a Territorial government founded on the most liberal principles, over a country, part of which was then in a state of perfect anarchy, where murders and crimes of the deepest dye were perpetrated with impunity; or, if punished at all, were visited only by lynch law, to gratify the vengeance of an outraged mob. The delegate from Wisconsin, until the period when Mr. Clayton assumed the task of carrying a law for the government of the Territory through the Senate, had for a long time, at each successive session of Congress, urged the necessity of legislative action in its behalf. Such was Mr. Clayton's influence, as chairman of the committee, and such the confidence of the Senate in his discretion and judgment, that when he reported this important bill to the Senate, containing a frame of government for a country large enough almost for an empire, he succeeded in pressing it through all the forms of legislation, and finally passing it through the Senate, in a single day. No event could give us a higher opinion of the confidence of the Senate; and it is doubted whether any other instance of successful effort similar to this can be pointed to in the annals of Congress. This prompt action secured its passage in the House; and

Iowa, one of the most beautiful and fertile parts of our country, was thus rescued from the horrors of anarchy. In return for the interest in her affairs taken by Mr. Clayton (who may justly be regarded as the father of the first Territorial form of government established for her protection), the Territorial Council shortly afterwards gave his name to one of the largest counties in the Territory, and the name of Delaware to county adjoining it.

The Boundary Question between Ohio and Michigan.

Among the many interesting subjects to which Mr. Clayton devoted his attention as chairman of the Judiciary Committee, was the settlement of a question which created great excitement and alarm at the time, relating to the boundary line between the State of Ohio, and the then Territory of Michigan. The question deeply affected both the contending parties; and, by its consequences, the States of Indiana and Illinois, the former of which, upon the grounds assumed by Michigan, would have lost a portion of each of her six northern counties. The parties immediately interested threatened to settle the question by the arbitrament of the sword; and, under the direction of the Governor of Michigan, troops were marched into the disputed territory, which were, of course, opposed by the State of Ohio. At the same time Michigan was

demanding admission into the Union; and the settlement of the question, before her admission, became a matter of duty which would not admit of delay. The whole question of boundary was referred to the Committee of the Judiciary; and, at the same time, a select committee was appointed to report upon the application of the State for admission into the Union. Mr. Clayton was a member of this last committee also, and it was owing to his successful exertions that both questions were happily settled. In an elaborate report drawn by him, as Chairman of the Judiciary Committee, in February, 1835, he reviewed at great length the whole controversy touching the boundary line, and reported a bill to settle the question forever. And such was the force of the reasoning in that report, and so clearly was the right of the matter explained and enforced by it, that, although it had been considered one of the most difficult questions, and one which Congress had long labored, in vain, to decide, yet men who had, theretofore, entertained the most opposite opinions on the subject, were induced to unite in support of the boundary proposed by the committee. The committee itself was unanimous in favor of the report, five thousand extra copies of which were ordered to be printed; and the bill, reported by Mr. Clayton, shortly after passed the Senate by a vote of 39 to 3. The House concurred, and thus was peacefully settled, without the interposition of military force, which had been invoked by each of the contending parties in their application to the National Executive, a question of a

most dangerous character, which, at one period, seriously threatened the peace of the country.

When the bill for the admission of Michigan was before the Senate, Mr. Clayton advocated the grant to the new State of a territory west of the Lake of about 20,000 square miles — in part for the purpose of reconciling her to the loss of the territory in dispute with Ohio (to which she never in fact had any right), but chiefly, as he averred at the time, for the much more important purpose of so far diminishing the extent of the territory of Wisconsin as to prevent the necessity of dividing that large Territory, and forming out of it, in future, two new States, to be added to the Union. He foresaw that the balance of power between the slave-holding and non-slaveholding States of the Union, as a necessary consequence of the formation of *two* new non-slave-holding States out of the Territory of Wisconsin, would be disturbed. In the South, Florida alone remained for the formation of another slave-holding State: and he sought to maintain the safeguards of the Constitution in favor of Southern rights, by supporting that equality of representation in the Senate, which was soon to be lost in the House of Representatives. This was the true reason for the extraordinary addition of 20,000 square miles to Michigan, on the west of the Lake. Strange to say, after Mr. Clayton left Congress, the noisy advocates of *Southern Rights* entirely overlooked this important subject, and while their attention was engrossed by mere party matters, suffered a bill to slip quietly through Con-

gress, without the slightest opposition, forming two distinct Territories out of the Territory of Wisconsin, each of which was then ready and entitled to demand admission into the Union as a sovereign State. When they were admitted, the balance of power in the Senate was lost, and the last and only safeguard for the South, in a constitutional system of checks and balances, was taken from her forever.

While the bill was yet pending, Mr. Clayton moved a proviso that the act should not go into effect until the people of the State should, in convention, alter the boundaries, which had been fixed by a previous convention, so as to include a part of the State of Ohio, and assent to the new boundaries, which, while they immensely enlarged the area of the State, excluded the territory which had been in dispute between her and Ohio. The necessity of this proposition was so apparent as soon as it was suggested: the danger of a conflict between two sovereign States, each claiming the same territory, was so palpable: that, notwithstanding a strenuous opposition from Mr. Benton, after the subject had been discussed by himself and Mr. Clayton, the Senate, by an overwhelming vote of men of both parties, adopted the proviso; and the two States, as well as the Union, were secured against any possible danger of future collision. Mr. Clayton next called the attention of the Senate to the fact that, by the new Constitution which Michigan had adopted, and which Congress was now called upon by the Constitution of the United States to approve, before she could be ad-

mitted into the Union, aliens were entitled to vote at all elections. He gave it as his opinion, as a lawyer, that the admission of aliens to the right of suffrage before they were naturalized according to the laws of Congress, was a violation of the Constitution of the United States, and that the State ought not to be admitted until her Convention had adapted her State Constitution to the supreme law of the land. He then moved another proviso to the bill in accordance with his opinion. This brought on one of the most interesting debates that ever occupied the attention of the Senate. In vain did Mr. Clayton, who actively participated in the discussion, strive to prevent the question from assuming a party complexion. Mr. Benton led off in a political speech, addressed to his own party, in favor of the right of aliens to vote without naturalization; and, strange to relate, drew the whole force of his party in the Senate after him. At the close of about a week's discussion, the Senate seemed to be equally divided on the motion, when a Senator but lately arrived, who had been absent, and who had heard only the close of the debate, contrary to all expectations, threw his vote against the proviso, and gave a majority of one in favor of the admission of the State, and the allowance of the right of suffrage to all aliens, whether naturalized or not. So deeply was Mr. Clayton disgusted with this decision, which, as he conceived, prostrated the Constitution of the United States merely to secure the vote of Michigan, that he divested himself of any further care or charge of the bill, and imme-

diately left the Senate chamber; as did also, about the same time, nearly all his political associates. A bare quorum was left to pass the bill, which they accomplished, and thus succeeded in obtaining the vote of Michigan in favor of their candidate for the Presidency.

I shall not attempt to trace Mr. Clayton's history through the whole course of his Senatorial career. As chairman of the Judiciary Committee, he reported the bill to extend the territory of the State of Missouri so far west as to embrace the whole country lying eastward of the Missouri river, and south of the Iowa boundary; and successfully exerted his influence in favor of its passage. He took an active part in the discussion of the various questions arising out of the President's removal of the public deposits from the Bank of the United States, using, in a speech delivered by him in the Senate, the following prophetic language about the evils that would result from the veto of the President upon the re-charter of the Bank of the United States:

"In less than four years the pecuniary distress, the commercial embarrassment, consequent upon the destruction of the United States Bank, must exceed any thing which has ever been known in our history. . . . . The depreciation of paper operates as a tax on the farmer, the mechanic, and all the consumers of merchandise, to its whole amount. The loss of confidence among men; the total derangement of that admirable system of exchanges which is now acknowledged to be better than exists in any country on the globe; over-

trading and speculation on false capital in every part of the country; that rapid fluctuation in the standard of value for money, which, like the unseen pestilence, withers all the efforts of industry, while the sufferer is in utter ignorance of the cause of his destruction; bankruptcies and ruin, at the anticipation of which the heart sickens, — must follow in the long train of evils which are, assuredly, before us."

As chairman of the Committee of the Judiciary he made that most elaborate report on the attempt of the President and Secretary of War to remove the Pension Fund from the Bank in 1834. Six thousand extra copies of this report were printed by order of the Senate; and its effect upon that body was such that, in the midst of one of the most violent party excitements ever known in the country, and in despite of all the influence of the President and Secretary, the report which vindicated the right of the Bank to the Pension Agency, was sustained by the Senate by a vote of nearly two to one.

The Apportionment Bill.

One of those measures in which Mr. Clayton took great interest when it came before the Senate, was the bill for the apportionment of the Representatives in Congress. While he was a warm admirer of the high qualities of Mr. Clay and of Mr. Webster, he never yielded his own judgment to the dictates of either. His advo-

cacy of Mr. Webster's amendment to the Appropriation Bill of 1832 in opposition to Mr. Clay, and the support he gave to another great measure to which allusion will presently be made, are among the many evidences which existed that he sided only with either of those great statesmen from convictions of duty. The amendment proposed by Mr. Webster to the bill for apportioning the representation in Congress, presented a question purely legal and mathematical in its character. For forty years the Congress of the United States had proceeded on a false principle in distributing political power among the States; and such was its effect upon the State of Delaware, that during all that period, she had not obtained as fair and full a representation in the House of Representatives as the very slaves in Georgia. The States which had been oppressed were the smaller ones, whose right had been sacrificed by the transfer of their Representatives to the larger States. The object of the amendment was to prevent in future this injustice; to establish a just proportion between the number of the House and the ratio of representation, which had always been overlooked, under the wretched pretext that fractions could not be represented. In the protracted debate which ensued on the introduction of the amendment, Mr. Clayton took a more active part than any other member of the Senate, and on the 25th day of April, 1832, he delivered a speech on the whole subject, in reply to Mr. Dallas of Pennsylvania, which conclusively demonstrated the justice and propriety of the amendment. The result was, the adoption of the amendment by the Senate. The House, however,

refused to concur in the amendment, but the discussion had settled the principle forever; and Mr. Clayton appears to have anticipated that the next apportionment of representation in Congress would allow representation for fractions, as the best possible method, and the nearest approach to that exact justice contemplated by the Constitution. He predicted that the debate had settled the question for all time to come, and that the gross injustice which the apportionment laws had sanctioned, from the origin of the Government, would cease, when the subject became fully understood. His closing remarks, in this debate, were as follows:

"The Senator from Pennsylvania (Mr. Dallas) objects to the rule adopted in the amendment because he says it is complex and not obvious to the mind. It has been stated over and over again, to be nothing more than the common rule of three, or of practice, as the gentleman from Virginia (Mr. Tazewell) has called it, or of fellowship, as others call it. I thought it could not puzzle a Philadelphia lawyer to work it out, although the honorable gentleman denounced it so strongly for its mathematical intricacy. In truth, it is much more obvious to the common mind, as a principle of justice, than the rule of arbitrary ratios; and I willingly risk its success on the unbiased judgment of the people, whose sense of right will induce them to adopt it in preference to that system which, to say the least of it, is, to a great extent, anti-republican, unjust, and most unequal, and which has been denounced, in a recent letter from a gentleman in New York, who stands among the most distinguished jurists this country has produced,

as unconstitutional, and absolutely intolerable in its operation.

"Sir, the gentleman from Pennsylvania has said that the mode of apportionment proposed by the bill has been submitted to without a murmur for forty years; that it has now become like those settled institutions of the country to all of which the citizens of Pennsylvania are so much attached, and for the preservation and maintenance of which, in their own peculiar way, they are contending, have contended, and always will contend. But, sir, let me tell him that it yet remains to be shown that her patriotic people have ever, knowingly, sanctioned deliberate injustice, or downright usurpation, no matter through how many ages it may have withstood resistance, and defied the claims of justice. If the people of this country should now, generally, examine this subject, they would no more tolerate the principles of this bill, than they did the long-continued tyranny of the English monarchs, which, in 1776, was, at least as much as this, one of the settled institutions of the country. And so far from its being true that those who have been oppressed by this contrivance, have submitted without a murmur, I believe that at each succeeding apportionment, the complaints of the injured States have been uttered, not in threats or denunciations, but in the tone of firm, manly, and respectful opposition. We will go no further now, sir, than those who went before us. But it shall be our task to lay before our country the justice of our claim, relying, with perfect confidence, upon the honesty and good faith of our countrymen to right us, when they shall learn we have been wronged.

"My friend, the eloquent and able Senator from Ohio (Mr. Ewing), despising the petty advantage which might be gained by a large State over a small one by the

trickery of this bill, has, by his steady opposition to it, endeared to us more than ever the magnanimous people of that great and greatly growing member of our confederacy, whom he so honorably represents; while he has strengthened our confidence in the justice of our countrymen. Hitherto our complaints have been heard in vain; indeed, the inducement to make them was never before so great. Through all the earlier stages of our Union, the cause of complaint was much less, because the difference in the population of the respective States was comparatively inconsiderable. But as that difference has increased, so has the injustice, and the complaint of those who have been wronged by its increasing operation. In time, this evil will become so intolerable, that it must be changed, or the rights of the smaller States must be substantially abandoned. In the perfect conviction that this change must come, and in the belief that the old mode of apportionment will, at some future period of our history, be denounced as one of the strangest illusions that ever misled our countrymen, a defeat, at this moment, would neither increase my confidence in the justice of former decisions on this subject, nor diminish my hopes of a correct determination hereafter."

The expectation of Mr. Clayton was not disappointed; for in the law for the apportionment of representation in Congress, passed in 1842, the principle advocated by him and Mr. Webster, was triumphantly incorporated; and the manifest justice of it was such that it was not thought possible it ever would be abandoned.

President Jackson's Protest — Removal of the Deposits

In the year 1834 President Jackson made a direct issue, in his celebrated Protest, with each of those Senators who had voted in favor of a resolution condemning his act of removal of the public deposits from the Bank of the United States. Most intelligent persons, having knowledge of political affairs, are too well acquainted with the celebrated document and with the resolution that induced it, to require their production here. Suffice it to say, that the President, in his Protest, ostentatiously published the names of each of the Senators who had condemned his conduct, and made a direct appeal to the people against their re-election. Mr. Clayton was one of those whose six years term of office was about to expire, and was one of the most prominent of the "protested Senators," as they were, at that day, termed. Long before this time he had privately expressed a wish to his friends, to retire from public life; which he thought was a duty he owed to his family, then consisting of his two sons, his brother, a niece, and three nephews — all but the brother mere children. But when he saw the President's Protest, he immediately determined to join issue with him before the people of Delaware, to cancel his intention to retire, and to stand a full canvass for re-election. The President sought for a verdict of approval of his own conduct by the citizens of Delaware, as well as those of

other States, the terms of whose Senators were about to expire. Mr. Clayton thought that he could not, with honor, decline to meet the President on his own issue, by announcing his intention to retire before the election, and he determined that the President should hear the sentiments of the people of Delaware, who, he well knew, heartily approved of his own conduct in public life. This was the year of Mr. Benton's celebrated golden scheme, and the party friends of the President everywhere made the strongest appeals to the prejudices and ignorance of the masses,—as men will always do to support their views politically. The contest in Delaware was one of the most exciting ever known here. It resulted in a complete triumph for Mr. Clayton and his friends, and his re-election to the Senate was now made certain, in case he chose to accept.

Resignation of Senatorship.

After the election in 1834, Mr. Clayton issued the following card to the people of Delaware, which is to be found in Niles's Register of Dec. 5, 1834:

To the People of the State of Delaware:

"Fellow-Citizens: — At the close of the last session of Congress, I should have published my desire not to be considered a candidate for re-election to the Senate of the United States, but for the extraordinary position then occupied by the Executive, in relation to the Senate. The President, by his protest against the Sen-

ate's resolution of the 27th of March last (the resolution of condemnation for removal of the deposits from the Bank of the United States), virtually appealed to the people of the United States, and invoked their condemnation of a vote which then had, and still has, my hearty concurrence and approbation. I had joined with those who declared that, in their judgment, the then recent proceedings of the Executive, in relation to the public revenue, were in derogation of the Constitution and laws of the country. My Senatorial term was about to expire; and the Executive protest tendered to the people, who had the right to judge me, a direct issue, as to the propriety of my vote. My name was recorded on the journal of the Senate as a supporter of the resolution which incurred his censure; and was registered on his protest in conjunction with those of all the others whom that strange official paper denounced. Under such circumstances I thought it unworthy of me to shun the trial he desired, and contend only by substitute, for the principles which had governed my official conduct. I thought it due to him, as well as to myself, and still more to the people, to stand at the post which was the object of his assault, meet the question which he had raised, and abide the determination of the tribunal to which he had appealed. Had I then announced the desire which I had long felt, to retire from public life, I might have been regarded as a recreant to the political faith with which I entered your service, and with which, by the blessing of God, I will live and die.

"The question between us is now decided, by the only authority before which I will bow, or to which I have ever been amenable — the authority of the free citizens of Delaware. Two-thirds of each branch of her Legislature are avowedly opposed to the principles of the

Administration, having been, on that ground, elected by the people on the eleventh day of this month; and they are men whom no machinery of the Executive can influence or control. I am, and under other circumstances, I should have been, uninfluenced in my present course by the determination of other States. If the current of Executive power in other sections of the country, instead of being resisted as it has been, had set onward like the Pontic sea, which knows no retiring ebb, still, true to the interests and principles of the State, I should have been as anxious to represent her, had other considerations permitted it, as if she had been sustained by the whole nation. But now, after five years of public service, during the greater part of which I have been, necessarily, absent from home, finding that the post which I am about to leave will be occupied by a successor of the same political principles, I tender you, my fellow-citizens, my grateful acknowledgments for that support which, through my whole term of service, has never deserted me, and desire to relinquish public office. As your Legislature will not meet till the month of January, I hold it to be due to you to remain in the Senate till your immediate representatives can have an opportunity of selecting my successor.

"JOHN M. CLAYTON."

DOVER, DEL., *Nov. 24, 1834.*

To this address the following comment was added by the editor of the *Register:*

"The amount of this (as we understand it) is no more than that Mr. Clayton will decline a re-election, at the meeting of the Legislature of Delaware. This pro-

ceeding we think will be (*for so it ought*) regretted by the good men of all parties in the Senate — honoring talents, and respecting private worth, rather than party."

Mr. Clayton continued in the Senate till the meeting of the Legislature in January, 1835, when he transmitted to his friends in that body a letter declining a re-election, and resigning the residue of his Senatorial term. The answer made to him by the Legislature, immediately afterwards, was a certificate of re-election for another term of six years, and a letter signed by two thirds of both Houses, insisting on his continuance in the Senate, urging him by every consideration not to retire, and, among other things, stating the fact that the Whig members would find it impossible to agree upon a successor, in case he should persevere in his intention to leave the Senate. Under these circumstances, he found himself pressed by the necessity of continuing in Congress until, at the next biennial session of the Legislature, his friends might agree upon a successor.

National Defence — Benton's Resolution.

On December, 1835, Mr. Benton brought forward a resolution, pledging the surplus in the Treasury, after deducting enough to meet the expenses of the Government, to the purposes of national defence. The object ascribed to him by his opponents was to arrogate to himself and his party the exclusive title to the charac-

ter of friends of national defence; to attack the Whigs, by holding out the idea that they were its enemies; and, if possible, to drive them, by his denunciations, to do some act, in consequence of which he and others might be able to fasten upon them the odious charge of hostility to the fortifications of the country, and of neglect to prepare for a war which then seemed to threaten us with France. At the close of the session of 1835, the Whigs in the Senate had voted down what they considered the monstrous proposition, then sprung upon them after midnight of the day on which they were to adjourn, to appropriate three millions of dollars for the defence of the country, to be expended by the President *as he might think proper!* Mr. Benton's resolution was the signal for an attack upon the Whigs in and out of the Senate, for having dared to vote down a proposition they deemed outrageous. The debate on the resolution became general on both sides; in the course of which Mr. Webster declared that he could not vote for such a measure, were the guns of the French battering at the walls of the Capitol. You do not need to be reminded that the danger of a war with France at this period arose out of the refusal of the French Chambers to vote an appropriation of 25,000,000 francs to pay the indemnity agreed upon in Mr. Rives' treaty for spoliations on our commerce, under the Berlin and Milan decrees. Mr. Webster was furiously attacked both in and out of Congress for having given utterance to a sentiment, which party men, for party purposes, held to be treasonable to the

nation. In the midst of the bitter denunciations of him, John Quincy Adams, then a member of the House of Representatives from Massachusetts, made and persisted in repeated attacks upon the Senate for having voted against the three-million amendment for the fortification bill of 1835 — the proposition to which reference has already been made: and in the progress of one of his most violent philippics, to the confusion of his own friends and the delight of his enemies, he declared that for a man who had uttered such sentiments as Mr. Webster's, "there would be but one step more (a natural and easy one to take), and that would be with the enemy at the walls of the Capitol, to join him in battering them down." The political enemies of Mr. Webster in the House attempted to give point to this most cruel and unjust attack by giving three cheers to the orator. It was at this period of the debate, then going on in both Houses, that Mr. Clayton felt himself called upon, as well by the demands of private friendship for Mr. Webster, as by the dictates of public duty, to battle with the enemies of his party in their attacks, to vindicate his friends, and to turn the odium of the public upon their calumniators, if possible. The task was, indeed, a delicate and difficult one: but it was triumphantly accomplished. On the 8th of February, 1835, Mr. Clayton commenced his speech on Mr. Benton's resolution, by announcing his intention, before he sat down, to move to strike the word "surplus" out of the resolution, — a motion which, to use a nautical phrase, completely "took the

wind out of the sails" of Mr. Benton — avowing himself and his party to be the true friends of national defence, attacking the opposite party for all their neglect to prepare for war during the whole time when they had held a majority in Congress, and spreading before them such a history of their inattention, as he claimed it to be, to the real wants of the country in this respect, as soon convinced them that this war was a game that two could play at. He discussed the constitutionality of a three-million amendment, and, as his friends said, hurled back the imputations of the other party with such effect against themselves, as made even the least considerate among them anxious to dismiss the controversy. Then followed that vindication of Mr. Webster's sentiment, which, as soon as it was published, changed the torrent of obloquy against Mr. Webster, throughout the country, into one general burst of applause. Here is an extract from this part of his speech; but it is impossible to comprehend the force of it, without reading the discussion of the constitutional question which precedes it. The space devoted to this memoir, will permit scarcely anything more than reference to the speech itself. (It should be observed that the appropriation, referred to by him in this extract, was that above mentioned, proposed to be placed in the President's hands, without designation of the specific objects to which it should be applied.)

"Viewing the proposed appropriation of three millions of dollars, without restriction, specification, or limitation

of the objects other than the naval and military service, as not only unconstitutional, but as destructive of the first principles of representative government; having considered and expressed his solemn conviction, after a year's deliberation, that it laid the foundation for the introduction of dictatorial power in this Government, and contained the very language in which a dictator might be appointed, under a pretence of some future pressing emergency, the honorable gentleman from Massachusetts (Mr. Webster), in the midst of a strain of fervid eloquence and indignant remonstrance against the attempted outrage, which has not been equalled in the debate, and cannot be excelled, had declared that 'if the proposition were now before us, and the guns of the enemy were battering down the walls of the Capitol, he would not agree to it; that the people of this country have an interest, a property, an inheritance, in the Constitution, against the value of which forty Capitols do not weigh the twentieth part of one poor scruple.' Taking authority for so doing from another part of the Capitol, I read the following remark, as published as the *National Intelligencer*, in reference to this sentiment: 'Sir, for a man uttering such sentiments, there would be but one step more (a natural and easy one to take), and that would be with the enemy at the walls of the Capitol, to join him in battering them down.' And he who published this, has also published that when he uttered it, he 'was interrupted by a spontaneous burst of feeling and applause.' But, he adds, 'the indiscretion was momentary, and the most respectful silence followed.'

"Sir, I pass over, without notice, the account given of the 'applause,' and 'a spontaneous burst of feeling,' and 'indiscretion,' and then, 'the most respectful

silence.' Indeed, I know nothing of these allegations, except as I find them here stated. But in regard to that denunciation of my honorable friend from Massachusetts (Mr. Webster), who is this day elsewhere necessarily detained, and in reference to the particular individual who was the author of that denunciation, I have something to say.

"The opinion, expressed in this denunciation, is, that it would be a natural and easy step for the Senator from Massachusetts to take, to join the enemies of his country in war, — in other words, to turn traitor, and merit by his treason the most ignominious of all deaths, with an immortality of infamy beyond the grave!

"And for what. The Senator from Massachusetts had expressed a preference for the Constitution to the Capitol of his country. He had dared to declare that he prized the Magna Charta of American liberty, the sacred bond of our Union, the tie which binds together twelve millions of freemen, above the stones and mortar which compose the crumbling mass within whose walls we are assembled. 'The very head and front of his offending hath this extent, no more.' No man here has questioned, in the most violent moments of party excitement, nor amidst the fiercest of all political strife, his purity of purpose, in debate. Grant to him what all others, who have any title to the character of gentlemen, demand for themselves — that he believed what he said; grant that, in his judgment, as well as that of many here, the very existence of our liberties is involved in the surrender of the principle he contended for; grant that the concentration of legislative and executive power in the hands of a single man is the death blow to the Constitution; and that the Senator was

right in considering the proposed appropriation as establishing the very principle which gave that fatal blow, — and who is he that, thus believing, would support that position, because the guns of 'the enemy were battering at the walls of the Capitol'? Where is the coward, where is the traitor, who would not rather see the Capitol, than the Constitution of the country, in ruins? or who would lead himself to the establishment of a despotism among us with a view to save the building for the despot to revel in? Sir, in the days when Themistocles led the Athenians to victory at Salamis, he advised them to surrender their Capitol for the preservation of the Constitution of their country. That gallant people rose, under the impulse of patriotism, as one man, with a stern resolution to yield life itself rather than abandon their liberties, and surrender the proud privilege of legislating for themselves, to the delegate of a Persian despot who offered them 'all their own dominions, together with an accession of territory ample as their wishes, upon the single condition that they should receive law and suffer him to preside in Greece.' At that eventful period of their history, Chrysalis alone proposed the surrender of their Constitution to save the Capitol; and they stoned him to death! The public indignation was not yet satisfied: for the Athenian matrons then rose and inflicted the same punishment upon his wife! Leaving their Capitol, and their noble city, rich as it was with the productions of every art, and glittering all over with the proudest trophies and the most splendid temples of the world; deserting, in the cause of free government, the very land that gave them birth, they embarked on board their ships, and fought that battle, the name of which has made the bosoms of freemen to thrill with sympathy in all the ages that

have followed it, and shall cause the patriot's heart to beat higher with emotion, through countless ages to come.

"I repeat, sir, what no man, who knows the Senator, has ever doubted, and what no man who has a proper respect for himself will even question, that he was sincere in declaring that he received the proposition under debate as involving the surrender of the most valuable trust reposed in us by the Constitution, to a single man; and as one which, while it delegates the legislative power to the Executive, establishes a precedent to prostrate the Constitution forever. Then tell me, what should be the fate of that man (if such a man can be found) who, having owed his elevation to the highest office in the world to that gentleman and his friends, and having been sustained in the administration of it by the exertion of all the power of that giant intellect, which is now the pride of the Senate and the boast of the country, could, without other provocation, have published that such a friend, after giving utterance to such a sentiment as he did in debate here, would find it a very natural and easy step to turn traitor to his country, by joining with her enemies in war? Sir, all good men will say that the convincing argument which could have induced, from such a quarter, such a remark, the author of that comment will find, not in the observation he has condemned, but in his own heart; and those who are acquainted with past events will add that it has proceeded from one who has, habitually, found it a natural and easy step to turn traitor to his friends. Such a man should never be suffered, by honorable men, to stand in any party again; for this unprovoked denunciation proves that its author will be false to all

parties, and true to no friend. I will do those in power the justice to say that I do not believe they have even invited his embraces or proffered him any office, however that may be the true object for which he has thus shamefully denounced his friend and abandoned his party. No, sir; if he be a political traitor, they

> "Gave him no instance why he should do treason
> Unless to dub him with the name of traitor."

The following is a specimen of the defence of his own party from the attack of Mr. Buchanan and others, and of the manner in which the war was carried into the camp of the enemy; and is part of the same speech, just quoted, delivered on the 8th of February, 1836, upon the subject of national defence:

"The gentleman from Pennsylvania, with a view to make up the issue in such shape as would put the Senate on trial with the best advantage to himself, announced that the true question for discussion was. Who is blamable for the present condition of our seaboard? Sir, I shall not avoid the examination of that question. It presents no difficulty. As to the fact, upon which he dwelt so earnestly, that it is defenceless, he has already seen that I concur with him and others, who have proclaimed its defenceless condition. He may add as much more coloring to that picture, of the danger arising from this neglect, as his imagination can supply him with, and I shall not seek to deface or obscure it. He may ring it, again and again, in the ears of the people, that, in the event of a rupture with a foreign country, our cities would be

sacked, our coast pillaged, and our people butchered. The more he magnifies the danger, the greater will be the condemnation of those who, for seven years past, have held the power to prevent this state of things, and have neglected their duty. Sir, his political friends have held the reins for a longer period; for they had their majority in Congress, before the termination of the last Administration. In the other House they have, ever since, held an overwhelming influence; and in this, with the exception of the last three years only, they have also been in a constant majority. The other House never proposed a measure for defence, before last session, in which the Senate refused to concur; and, what is more worthy of note, they never proposed a bill for defence, to which the Senate did not add, largely, by amendment. For seven years, during which time I have held a seat here, the action of the Senate was always quite as prompt as that of the other House, on these subjects; and, indeed, if my memory be correct, we were generally in advance of them. Sir, it is all in vain that the gentleman seeks to cast that fearful responsibility, arising out of more than seven years' neglect of our Atlantic seaboard, upon the minority in Congress. In vain does he invoke the judgment of the public against that Senate which, during the two or three years when the Administration has not been able to control its vote, has been made the scapegoat to bear nearly all the other neglects and transgressions of those in power. The fact is, and every man now within the sound of my voice knows it, or ought to know it, that not only has our whole system of improvement been checked, but the defences of our country have been shamefully neglected, since the present party came into

power, on the miserable pretext of paying off the national debt,— a debt which was never pressing, and which would have been easily extinguished by the operation of the old Sinking Fund Act, long before it could possibly have been felt as an injury, if internal improvements had been still properly encouraged, and our sea-coast had been properly fortified. Witness, now, that wonderful exhibition of financial skill and statesmanship, by which, when all other debts had been disposed of, the odd thirteen millions, drawing interest at only three per cent., and nearly all in the hands of foreigners, was paid off, in spite of all remonstrances, for the sake of making the vain-glorious boast that, during this Administration, the whole national debt was extinguished. At the time we were paying these three per cents, the army, the navy, the fortifications, the roads and canals, the improvement of our rivers, and even the ordinary facilities for commerce, were neglected. Light-house bills, and bills to distribute a portion of the avails of the public domain among the States, for the purposes of improvement and education, were either voted down, or vetoed down, and all for glory,— ay, for the glory of paying off the national debt, by withdrawing from the people the use of their money, which was surely worth to them, not only for defence but for improvement, the legal rate of interest, and extinguishing a debt in the hands of foreign creditors drawing three per cent. only. Why, sir, the fact is notorious, that such has been this miserable and morbid excitement, industriously kept up to gratify party pride and folly, that scarce a week has elapsed, within the last seven years, in which some newspaper editor has not reminded us of the glory of the Administration in paying off the national debt; yet, during all

this time, the gentleman from Pennsylvania says, our whole seaboard has been left naked to any invader, our cities have been constantly in danger of being sacked, our coast pillaged, and our people butchered, without the means of resistance in the event of war. This glory has left us, all the while, at the mercy of any foreign power, which might have chosen at any moment to assail us.

"The only salvo now relied upon to sustain those in power from their own charge against the Senate, of leaving the whole seaboard defenceless, is, that a majority (not all) of their party friends in Congress did, at the last moment of the last session, propose and vote for this three million amendment. But what could have been effected with that money, if we had granted it? Would that have built up fortifications, and put the navy and army on a war establishment within the nine months allowed for its expenditure? Sir, if it had been applied to no mischievous purpose calculated to induce a war with France, which some think was its real design, its effects upon the sea-coast in erecting forts would not have increased the permanent security of the country, to a perceptible extent, before the meeting of Congress. If, through the whole period during which this Administration has been in power, we had been regularly progressing with a system of national defence, properly adapted to the wants and means of the republic, we should hardly yet have been in a state of preparation for war, becoming such a country and such glorious institutions as ours. Labor itself cannot always be commanded by money, and time is indispensable in the proper construction of all great works: and an error not uncommon in regard to our public works of every description, has been to do in months

what should be the work of years. But, in order to show the gentleman from Pennsylvania and his friends how utterly indefensible they are when arraigned on their own charges, let us now concede, for the mere purpose of argument, that this "three million amendment," upon which they relied, would have been sufficient for putting the army and navy on a war establishment; that it would have effected all this in nine months, and that it was necessary to expend it. I ask them, how comes it about that they have suffered two whole months of the present session to pass away without renewing this or some similar proposition? And how do they excuse themselves for not having proposed so salutary a measure at an earlier day during the last session? The moment of the vote on that amendment, the gentleman says, he shall always look upon as the proudest moment of his life. Doubtless, in his estimation, it was a most happy vote for him. Then, why not renew it? Why does that patriotism whose midnight vigils receive so much applause, slumber during the broad daylight, and why has it slept so long? He has known that the only objection, of many among us, to the proposition, was a constitutional objection, which by altering the proposition from a general to a specific one, he could obviate. Then, why has he not proposed it, or something like it, for the last two months, during all which time, according to his own language, we have incurred the danger of having our cities sacked, our coast pillaged, and our people butchered, for want of it? Since last session, all intercourse with France has been suspended; a powerful fleet, we are told, has been hovering near our coast, and acting as a fleet of observation, and, with the vigilance of a hawk, ready to stoop

on our unprotected commerce, from its commanding position, or to attack our naked seaboard at the slightest notice.

"To the question, why this measure was proposed only at the last moment of the last session, the honorable member from Pennsylvania has already attempted an answer. He took especial pains to bring us to the point of time at which the amendment was rejected. His object seemed to be to demonstrate that then the patriot should have spoken out, by the surrender of his constitutional scruples, and the delegation of his representative power over the public treasure, to the President. He reviewed the state of our relations with France, for the very purpose of showing that, at that period, our affairs were at a peculiarly dangerous crisis, and labored to excuse himself and his friends who brought forward this proposition at that time, by making the impression upon his hearers, that there was just then, a new impulse given, by recent intelligence from France, to the adoption of measures of a hostile character. But, sir, most unfortunately for this excuse, the intelligence, to which he has referred, was decidedly of a pacific character, and was precisely that very information by which any reasonable man, however apprehen- of danger before its arrival, would have been convinced that then there was not the slightest apparent necessity for a resort to any measures of a hostile character."

Mr. Clayton closed his speech (the best, in the judgment of some of his friends, that he ever delivered in the Senate) with his promised motion to strike the word "surplus" out of the resolution, thus pledging every dollar of the revenue for the national defence, which was carried by a large majority. The division of this

question threw all the leaders of the opposite party into a meagre minority, as all the Whigs voted in favor of it, and not a few of their opponents, who were not willing to be outdone by the Whigs in promising magnificent preparations for war; and then this famous resolution was passed by a unanimous vote. Those who had introduced it, and who had expended so much labor in support of it, by these means failed of their objects. The Whigs refused to be arrayed in hostility against the national defence, and gained the credit of being its principal advocates; while Mr. Benton saw that his secret and dearest object was utterly lost — which was to prevent the passage of any distribution law during that session giving the immense surplus in the Treasury, amounting to nearly forty millions of dollars, in just proportion to the States. Shortly after this party triumph, as it was considered, the favorite measure of the Whigs, that of distributing the surplus revenue to the States, was introduced, and carried through both Houses of Congress, in spite of Mr. Benton and his celebrated resolution. By the amendment of Mr. Clayton, the resolution had become a harmless and barren generality.

With this session of Congress, Mr. Clayton intended to terminate his Senatorial career. In the fall of 1836, resolved not to be presented by his friends in the Legislature a second time, he resigned the residue of his term of office to his friend Charles Polk, the Governor of the State of Delaware by the death of Governor Caleb P. Bennett, and betook himself to the practice of his pro-

fession; and in the January following, as before stated, he was appointed Chief Justice of the State. Immediately after Mr. Clayton's resignation became known to his brother Senators, in December, 1836, he received from gentlemen of all parties in that body the highest professions of regard and esteem for his private character and public services; and on the 3d of January, 1837, Mr. Buchanan, of Pennsylvania, a political enemy, but a generous one, expressed in the warmest terms his admiration of his high character, pronouncing him "a man of as clear a head and honest a heart as ever adorned this chamber." Such is his language, as reported in the *National Intelligencer* shortly after.

State Convention.

In the year 1831, a convention of the people was held to revise our Constitution. The subject had been agitated for some years with more or less of spirit, until finally an act was passed to test the popular sense. The result being a majority of votes in favor of it, a convention was duly called, and held its session in the Presbyterian church in Dover, in November of that year. Though a member of the United States Senate at the time, Mr. Clayton was elected one of the ten persons to represent Kent County, and took a very prominent part in the proceedings of that body. Among the other members, were three from New Castle county, of great distinction among us, — Willard Hall, James Rogers, and George Read, Jr. To say

nothing of the other men of note and influence, who were their colleagues, it may be safely averred that, as a whole, the body was as well qualified for discussion and legislation, whether fundamental or merely parliamentary, as ever sat in this State. All the members were men of large experience in the affairs of life, and the four I have named were universally regarded as being without superiors as lawyers also.

The chief object of the convention was to reform the then existing judicial system, which for a long time had been felt to be unnecessarily cumbrous. There were two courts of concurrent jurisdiction for the trial of cases by jury — the Supreme Court and Court of Common Pleas; and the Associate Judges in each were laymen, incapable, of course, from want of professional education, of passing intelligently upon questions of law. Different plans were proposed and thoroughly discussed, but the convention finally settled upon that which now exists, — which was Mr. Clayton's plan, and has borne the test of experience for forty-eight years.

Other subjects engaged the attention of the convention, most of them of a minor character, but all received, at his hands and those of the other members, full examination. In fact, but one spirit animated the entire body of members — that of doing their full duty as delegates and as citizens, irrespective of any considerations but such as should govern men of integrity and patriotism. This convention gave us biennial sessions of the Legislature (I think if they could at that time have looked into futurity, they would have made them less

frequent even), and enacted a most important clause with respect to acts of incorporation — requiring the concurrence of two thirds of each branch of the General Assembly, to pass them. This feature was greatly approved by Mr. Clayton, who was well aware of the danger of multiplying corporate bodies, and of giving charters conferring such large powers as were inimical to the interest of the public. This the debates show. There was superadded to it, at the instance of Dr. Handy, of New Castle county, who was its mover, the additional clause, also approved by Mr. Clayton, reserving to the Legislature an express power of revocation. No case has yet arisen, to test definitely the full extent and meaning of this clause—the State having fortunately had no such conflict with any of her creations, as required the exercise of the power reserved; but the advantage of the prior provision has been experienced over and over again, in the defeat of purely selfish schemes, as well as some of very doubtful, not to say perilous, character—such as the mammoth bank charter, as it was then characterized, at the extra session of the Legislature in 1836. It will not be deemed amiss, I feel sure, to give the names of the persons who composed that convention — that it may be seen how careful the people of Delaware were, at that day, to select for important trusts, men of the very best qualifications in all respects. While these gentlemen were nominated for election by potitical parties, there was at that time a spirit so conservative, influencing the minds of politicians, that they rarely offered for public suffrage, any but

the best qualified men on both sides. The journals of our Legislature in those days show that the members of the Houses were selected from the most fit of the people; and that each House had always in it at least two men who, from education and habit, were able not only themselves to understand, but, by discussion and examination, to make their fellow members thoroughly comprehend, also, every proposition submitted for their decision. Every one knows that it is not so now, — that nothing is really discussed in the Legislature, — that, with the most honest intentions, members are constantly voting in ignorance of the real effect of measures, — and that, from want of experience, and of intelligent exposition of schemes of legislation, the body is liable to be imposed upon, and sometimes is grievously misled, by lobbyists, whose opinions are volunteered whenever occasion offers to give them.

The names of the members of the Convention were as follows:

New Castle County.—Willard Hall, James Rogers, George Read, Jr., John Caulk, John Elliott, Thomas W. Handy, John Harlan, William Seal, Thomas Deakyne.

Kent County.—John M. Clayton, Presley Spruance, Jr., Elias Naudain, Peter L. Cooper, James B. Macomb, John Raymond, Charles Polk, Hughitt Layton, Charles H. Haughey.

Sussex County.—Thomas Adams, Edward Dingle, William Dunning, James Fisher, James C. Lynch,

Joseph Maull, William Nicholls, Henry F. Rodney, William D. Waples.

Honors from Yale.

In the year 1836 occurred in the public life of Mr. Clayton, an event which gave him exceeding gratification; in fact, he regarded it with more pride and satisfaction, than any, prior to that time. He always so spoke of it. In the latter part of August of that year he received the following letter, wholly unexpected, and all the more agreeable because the honor it announced had never been even contemplated by him as likely to be conferred. Here is its language:

Yale College, *Aug. 25, 1836.*

Dear Sir: — It is with no ordinary pleasure that I have the privilege of stating to you that the corporation of this college, at our late public commencement, conferred on you the degree of Doctor of Laws. I am well aware that these academic titles are in danger of losing their distinction, by being distributed with too lavish a hand. But this college aims to proceed on the principle of selecting those who will *confer* honor, rather than receive it, by being enrolled in the list of its favorites. We present to you this expression of our regard, not with the expectation of elevating the rank which you already hold in public estimation, but as

a just tribute of respect to distinguished merit. I have the honor to be, with high and affectionate regard,

Your friend and servant,

J. DAY.

HON. JOHN M. CLAYTON.

Mr. Clayton esteemed it a great honor to receive so high a degree from his Alma Mater — old Yale — but felt it to be greatly enhanced by the announcement made of it by President Jeremiah Day, in his letter containing such flattering language, and closing with expressions of his personal regard. He never assumed the title conferred upon him, but cherished it none the less, as a voluntary testimonial, from the highest quarter, to his merits as a public man.

RESIGNATION OF THE OFFICE OF CHIEF JUSTICE.

On the 16th day of August, 1839, Mr. Clayton resigned the office of Chief Justice, and entered with great spirit into the political canvass in support of the candidates of his party — Harrison and Tyler — and, in the course of the campaign, made, in and out of this State, some of the strongest political addresses which the contest called forth. Like every thing he really undertook, he did his work thoroughly, in that memorable struggle between what had then come to be known as the Whig party, and its opponent, the Democratic party. The whole country was agitated by politics; the

compromise that in 1833 had been fallen upon by patriotic men to save the country from civil war, was operating so inefficiently, to protect the industry of the country from competition with the cheap labor and money of Europe; the low prices of agricultural produce were so unremunerative to the farmer, that from one end of the land to the other came up the cry of *hard times*, and the demand of the people for a change in the public administration. The blame of this condition of things, by no means unproduced, as alleged, by the failure to re-charter the Bank of the United States, was laid, by the Whigs, upon the Democrats, their adversaries, who in turn charged it all, in the same way, upon their accusers — and so, there was about as lively a time as the country has ever witnessed. All the best orators of both sides took the stump, as we say, and poured forth their eloquence to greedy ears. It can be said, without exaggeration, that at no time in our history, before or since 1840, has such an array of popular talent and transcendent ability been made before the public. Some of my auditors remember, no doubt, that famous period, and wonderful outpouring of the people at Delaware City in the spring of that year. The attraction was the speeches to be made by *three men*, John M. Clayton, William C. Preston, and John J. Crittenden; and surely they came up to the full standard of popular addresses. The speakers were well known for their great oratorical powers, and men were unable to say which made the greatest speech. With their minds full of the sub-

ject of the country's distress, and their hearts of those high and swelling emotions, without which there can be no true eloquence, it is not to be wondered at that persons from a distance, familiar with the popular orators of the country, pronounced the addresses the finest they had ever listened to. Certainly they were very extraordinary. It was my good fortune to hear each of them, and their effect upon the mind and feelings was such that none were weary at the close, although for hours they had been standing in the sun of a day in May, almost as warm as midsummer.

Removal from Dover.

In the year 1842, in the spring, Mr. Clayton removed from Dover to New Castle, and took the fine old mansion known as the Read house, on Water street. He resided there, practicing law to some extent, and taking a deep interest in public affairs, until the season of 1845, when he removed to his new home on the State road below Hare's Corner, where he ever afterwards continued to reside. He had purchased the farm a year before, and built upon it a new and commodious house, with outbuildings of ample size. The Mexican war soon after occurring, and the brilliant success of Taylor having filled him with admiration, he called his home Buena Vista, in honor of one of his hero's great victories beyond the Rio Grande. The land of Buena Vista was extremely reduced; but having bought, built upon, and removed to it, with a

determination to become an agriculturist, he gave his thoughts and energies to that employment. When he took it in hand it was literally worn out from exhaustive tillage and neglect of the means of resuscitation, but he at once set to work to renew its wasted vigor, and soon created for himself the distinction of having accomplished more in the way of restoring the vitality of exhausted land, than any one before him. In fact the place soon came to be one of the very finest in the State, producing as high a yield of the cereal crops as any in that rich county. This was all owing to an unstinted use of money, judiciously employed. In order to know what to do, he commenced to read, and in fact devoured every work upon agriculture, scientific or other, that he could lay his hands upon; and, with his old habit when a lawyer in active practice, would talk of nothing else but his new pursuit. It was in vain to endeavor to draw his mind away from his subject; he would still return to it, with some such speech as this: "Oh, let us not talk of politics" (if that happened to be the theme), "my talk is of bullocks." After he had thoroughly stored his mind with book lore on agriculture generally, and the nature, qualities, and susceptibilities of soils, and had subjected his own to chemical analysis, so as to understand (as a wise man should) exactly what was best adapted to its nature, he laid all the best farmers of the county under contribution to find out what they had learned by reading, as well as himself, or by that experience of which as yet he had no store. Before he had been in the

country a year, it really seemed that he had found out everything about land, and the way to till it, the crops to be planted or sown upon it, and also the sort of stock that should be kept, and how much of it, so as not to make too great demand upon quantity of pasture provided for it, and provender gathered from the tillages. I mention these matters as illustrative of the spirit of the man — which was, to do everything he undertook with the thoroughness and intelligence success demands.

The Delaware Railroad.

Before I proceed to the narrative of this second period of Mr. Clayton's public political life, I will advert to his connection with a very important work in our State. He had always been a friend, and what was better, strong advocate, of all public improvements, national or State — never having felt any constitutional scruples of voting the public money for the one, or any reluctance to give his strong moral aid to the other. The loan of money to the old Wilmington and Susquehanna Railroad Company, since extended to the Philadelphia, Wilmington, and Baltimore Railroad Company, was made by and through his influence, which was all-powerful in this State, with the Legislature. The great results produced wherever railroads existed, and conspicuously in New Castle county, naturally turned his thoughts to what might be done for Kent and Sussex also; and accordingly, at the extra session of the Legislature of 1836, he caused to be passed the act to incorpo-

rate the Delaware Railroad Company, for the purpose of constructing a railroad from a point on the Philadelphia, Wilmington, and Baltimore Railroad, or the New Castle and Frenchtown Railroad, to the southern line of the State, in the direction of Cape Charles, with a branch to Lewes. He and General Mansfield, of New Castle county, and Col. William D. Waples, of Sussex, were appointed commissioners to cause a survey of its route to be made, and books of subscription to its stock to be opened; but the financial calamities that soon after befell the country rendered unavailing all efforts to procure the necessary funds to build a road. Long afterwards the charter was revived and made to serve the purpose of a projected scheme of travel from Dona Landing, in Kent, to Seaford; but nothing was done beyond grading that route, until the session of the Legislature of 1853, when an arrangement was made with the Philadelphia, Wilmington, and Baltimore Company, by which the route from Dover to Dona was caused to abandoned, and the line originally contemplated by Clayton, through New Castle county, was adopted in its stead. This is the history of the Delaware Railroad; and is given to show how great an interest Mr. Clayton took in internal improvements in his own State, as well as in the country at large, and how prompt he was to seize any opportunity to do the people of Delaware a service. He clearly foresaw the immense benefits that would accrue to us by a rapid mode of transportation of passengers and freight through the length of the State, and how much such an enter-

prise would develop those parts of it that lay remote from the navigation of either of the bays, Delaware or Chesapeake. At the same time he had greatly in view the final extension of the road to the end of the peninsula, so as to draw the passengers and products of the eastern part of the South through the counties of Virginia, Maryland, and Delaware, forming it. His original plan has never yet been carried out, but by some means or other, it probably will be, in the near future.

Re-election to the U. S. Senate.

At the January session of the Legislature of 1845, Mr. Clayton was again elected to the United States Senate, and by the vote of all the Whig members. He took his seat on the following fourth day of March, at the time of the inauguration of President Polk.

French Spoliation Bill.

The regular session of the Senate, after Mr. Clayton's second election, did not begin until the first Monday of December, next following his election. It lasted until late in the ensuing summer, and was a very exciting one, on account of the prevalence of the war with Mexico. There was opportunity enough, however, for Mr. Clayton to master a subject which had long been before Congress, and had been reported upon and passed by one House or the other several times, but

had not yet received the approval of the votes of both. I allude to what is known as the French Spoliation Bill. This measure was passed by Congress, to discharge the nation from the implied obligation that rested in honor upon it, to pay to those who had been despoiled in their commerce by France, at the close of the last century, and whilst the great political convulsions that shook the thrones of Europe were taking place, the amount of such spoliation. By an account of the claims made up, they reached a very high sum, all of which the United States released by the treaty with France, made on the 31st of July, 1801, and received full consideration therefor by its negotiation; such consideration being the abandonment by France of our previous guarantees of her West India possessions. Of course the nation thus made itself liable to pay what it had required from France in behalf of the claimants. Nothing can be plainer than that. However, under one plea or another — the staleness of the claims being, at a late day, the principal one (as if a Government should ever resort to such a defence) — no bill had ever been passed by Congress, recognizing the public liability for their discharge. Reports in favor of payment had been made, to the extent of at least twenty, one of the most prominent of which was by the old Revolutionary hero, General Marion. Only three have ever been made against them, and they were before the publication of the correspondence between the ministers of the two Governments, which led to the convention of 1800, that produced the treaty of 1801. Since

then, no committee of either branch of Congress has ever concurred in any report not strongly favorable to the claims, and they had also been approved by some of the first men in the nation; among others, the great lawyer, John Marshall, Chief Justice of the United States.

At the instance of friends interested in these claims, most of them representing the dead (for more than a generation had passed since they had been assumed), and particularly impelled by the appeals made to him by some of our own citizens, male and female, who were concerned in their payment, Mr. Clayton made up his mind to investigate the whole subject; and, if justified in so doing, to introduce the necessary bill to give relief to the claimants. Accordingly, he went to work (*more suo*), and the result was a bill for payment of the debt the country owed to the victims of the spoliations committed by France, and that it passed both Houses of Congress. All the old objections and arguments proved unavailing to defeat the measure: it passed — the country felt itself relieved of the imputation of injustice, the needy suppliants for the nation's justice were allowed their prayers for a bill, and all supposed that there was an end of the long struggle for justice. This was not so, however. The President, Polk, vetoed the bill, and the claims remain unpaid to this day. His reasons therefor, if they can be called such, appear, in his very brief message returning the bill unapproved, and the insufficiency of them, to Mr. Clayton's mind, are fully exposed in

his speech reviewing the veto, delivered on the 11th of August, 1846.

The Oregon Question.

Earlier in this same session of 1846, the Oregon question, as it was termed, was before the country. At this time all the territory west of the Rocky Mountains, and north of California, was known as the Oregon territory. Ever since our acquisition of it through the discovery of Gray of Boston, and the explorations of Lewis and Clarke, the British had claimed it, or the most of it, by reason of alleged prior occupancy, and its partial settlement by the subjects of the crown. On the 20th of October, 1818, a convention had been concluded between the United States and the King of Great Britain and Ireland, for the period of ten years, and afterwards indefinitely extended and continued in force by another convention, concluded on the 6th of August, 1827, by which it was agreed that the territory should, together with its harbors, bays, creeks, and the navigation of all rivers within the same, be free and open to the vessels, citizens, and subjects of both parties, but without prejudice to the claim which either might have to any part of the country — and with a proviso that either might annul the convention by giving twelve months notice to the other.

A resolution had been introduced into the Senate by Mr. Allen, of Ohio, and referred to the Committee of Foreign Relations for the abrogation of the convention

upon the prescribed notice. The committee reported to the Senate, in its stead, one of similar import, but providing that the twelve months should not begin to run until the receipt of the notice by Great Britain. Other resolutions had been presented to the Senate by Messrs. Hannegan, of Indiana, Calhoun, of South Carolina, and Crittenden of Kentucky. This was the state of things when Mr. Clayton rose in his place in the Senate on the 12th of February, 1846, to speak upon the subject. The country at the time was in a high state of political excitement. Those who brought the subject forward had succeeded in impressing the masses of the people with the idea that our right to the whole of Oregon was incapable of successful question, and that the British were trying to take it from us. Of course the joint occupancy, provided for by the convention, could not but produce as it did collisions of various kinds, if not actually physical, — the citizens or subjects of both parties occupying and trading, and being without any law except the unwritten common law of both their lands. Such conflicts were exaggerated; and, as no question can arise, with us, that is not made to take, sooner or later, a party form, it was not long before it turned out that one party was on one side, and the other on the other side. Leaders on both sides sought to make the most of the crisis; those of the dominant party charging their opponents with want of patriotism, in not taking what was called the American side, the Whig leaders retorting by accusing theirs of seeking to bring about a war to restore the waning popularity of their party.

There was an immense display of so-called patriotism at this time, — the multitude, stimulated by appeals to their nationality, clamoring for "the whole of Oregon or none," and adopting enthusiastically the cry, "fifty-four forty, or fight."

It was during this excitement that Mr. Clayton took part in the fierce debate that was going on in Congress over this exciting topic. He first caused to be read the resolution of Mr. Allen, next that of the Committee of Foreign Relations; and then Mr. Crittenden made a motion that the resolution submitted by him should be substituted, by way of amendment, for both of them. His resolution, after reciting the convention for joint occupancy, sets forth, in continuation of the preamble, that it has become desirable that the respective claims of the parties should be definitely settled that said territory might no longer than need be, remain subject to the evil consequences of the divided allegiance of its population, and of the confusion and conflict of national jurisdiction, dangerous to the cherished peace and good understanding of the two countries, and that steps should be taken for the abrogation of the convention in the mode prescribed in the second article thereof, that the attention of both countries might be most earnestly and immediately directed to renewed efforts for the settlement of all their differences and disputes in respect to said territory. The resolution itself authorized the President, in his discretion, to give to the British Government the notice, required by its aforesaid article, for the abrogation

of the convention of the 2d of August, 1827; but contained a proviso that, "in order to afford ampler time and opportunity for the amicable settlement and adjustment of all their differences and disputes in respect to said territory, said notice ought not to be given till after the close of the present session of Congress." In support of the Crittenden resolution Mr. Clayton made his Oregon speech, one full of patriotism and true statemanship, — in which he conclusively showed our utter unfitness to embark in any war to maintain our pretensions in that distant region. The resolution of Mr. Allen, and that of the committee, did neither of them hold out any idea other than that negotiations for the settlement of the dispute were not contemplated, — the former *directing* the President to give the notice, and the latter *advising* it, and neither of them having any qualification, or phrase, holding out to the country the prospect of anything but war; it being well known that the British never retreat from any position upon a threat of expulsion by arms. The resolution of Crittenden, and the speech Mr. Clayton delivered for it, by its tone and temper, and the spirit of candor and non-partisanship which characterized it, did more to cool down the fever of the impulsive, and rob the agitators, in and out of Congress, of their control over the public thought, than anything that, up to that time, had been done or attempted. This speech, and the others which followed it, and the constancy of leading papers throughout the country, elevated the public mind above the strifes and

the tumults of struggles for party ascendency, and caused it to contemplate the question presented, uninfluenced by aught but sober reflection. The consequence was that the whole trouble was settled in the only rational mode that had been suggested. The terms of the treaty were most advantageous to us, though entirely just to England. By them we were secured in all that part of the disputed region bounded northwardly by the line of the 49th parallel of latitude, until the middle of the channel of the Straits of Fuca is reached, and then down said channel to the Pacific.

So great was the confidence all over the country, among all classes and partisans, in the wisdom and sagacity of John M. Clayton, and such their belief in his sturdy patriotism, that I think I hazard nothing in saying, that there was hardly a man in the national councils whose speech would have made such an impression upon the public as his did, especially as it ran counter to the current that had already set so strongly in favor of expelling the English upon the treaty notice. At the conclusion, he paid the following just compliment to the valor of our people when called upon to support a just cause:

"The people of the United States have not manifested any want of confidence in the Executive; they have not formed themselves into parties upon this question; the difference among them, so far as any difference exists, arises from an honest difference of opinion as to the

foreign relations of the country. I believe that my countrymen are as ready to go to war in defence of their just rights as any people on the face of the earth. All that the Senator from Ohio (Allen) said, and all that he can say, in regard to their bravery or their ability to protect themselves, I heartily concur with. I do not underrate their prowess in battle — far, very far from it. But I believe if they could all be gathered together in one mass in front of the President's mansion, knowing that he has the power to decide the question whether we shall have war or peace, they would address him in some such language as was used to the conqueror of Agincourt, when he called his council around him and asked them to give him their honest, sincere opinion as to his right to go to war with France. On that solemn occasion they are represented by the greatest of our dramatic poets as saying to him:

> ——'God forbid
> That you should fashion, wrest, or bow your reading,
> Or nicely charge your understanding soul
> With opening titles miscreate, whose right
> Suits not in native colors with the truth;
> For God doth know how many, now in health,
> Shall drop their blood in approbation
> Of what your wisdom shall incite us to:
> Therefore take heed how you impawn our persons,
> How you awake the sleeping sword of war;
> We charge you, in the name of God, take heed!'

"Sir, while I admit, nay insist, that my countrymen are as brave as any people on earth, and as prompt to vindicate their rights; and while I well know that if you convince them that their title to Oregon is clear and indisputable, they will be as able and as

ready to maintain it as any nation in the world can be: I would charge this Senate also, should they be called upon to decide upon the question of war or peace, *to take heed.*

"If we are to have a war with England, an empire more powerful than ever was Rome in her palmiest days, let us have a just cause; then we shall all strike together, and I have no doubts or fears as to the issue. But first let the people, first let ourselves, be convinced that we are in the right. Do not let us go to battle in a bad cause; in one that is righteous, I know that we can fight as well as any people that ever lived.

"If this matter must come to a war, the responsibility will rest on the head of the President and his cabinet; and it will be, as has truly been observed, such a war as the world never yet saw. It will be the 'carnival of death, the vintage of the grave.' It will be a war between men who profess to be Christians; with a people allied to ourselves in feeling, more than all the nations of the world; a people far advanced before all mankind in intelligence and the arts and improvements of civilized life; a nation which approximates more than any other to our own principles of free government; a people who 'know their rights, and knowing dare maintain them'; a people skilful in war, brave to a proverb, and amply supplied with all the means and sinews of war.

"If we go to war with this people about our title to Oregon, at this time, the responsibility will not rest on me. Not on me — not on me, or mine, O God! let any portion of the guilt or the sin of such a war ever be found."

The Mexican War.

The year 1846 will be remembered as that of the commencement of the war with Mexico; the battle of Palo Alto having been fought in April of that year. It was the firm belief of Mr. Clayton and his political associates, the Whigs, that this crisis was unnecessarily brought upon the country by the Administration, to promote the supposed interest of the South by the acquisition of territory adapted to slave labor. Whether they were right or wrong in this opinion, is practically unimportant at this day. War commenced, as was alleged, by the act of Mexico; and at once the spirit of nationality was aroused all over the country, and the masses of the Whig party fell in with the popular movement in favor of it. The Whig leaders found themselves in an awkward dilemma; to oppose the war would be death to their party; for the first shedding of blood was by the Mexicans; and when blood flows, all reason is overborne by passion. They therefore were driven, by the requirements of party preservation, to smother any feelings of opposition to the conflict. But they still desired to preserve their consistency in so far as to hold their opinions, and express them if necessary. But their opponents intended they should do one of two things; either oppose the war out and out, or admit that it was just. To oppose it would destroy them with the masses, who, though not desiring war more than the few, yet strongly supported it when

made, from the feeling of patriotism; and to admit its justice would degrade them in the eyes of the most intelligent of their followers. It was the real purpose, however, of their opponents to compel them to show hostility to it, and they hit upon the ingenious device of attaching to their bill presented to Congress, for the means to prosecute the war, a preamble, or recital, declaring that war existed by the act of Mexico; and they refused to allow a vote to be taken upon it separately, but required that it should be voted for along with the first section which contained the enacting clause. In vain did the Whigs inveigh against the injustice of this course, alleging, and truly, that no evidence had been furnished the Senate, which any one had had time to examine, that war existed at all, and that some delay, if but for a few hours, should be granted for consideration of the proof alleged to be contained in the documents accompanying the message of the President to the Houses. The bill passed, and received the votes of all the Whigs but two who voted; but they took care to place themselves — as the debates show — on the ground that as the country was in the war, she should be supported by all.

This was the feeling that actuated Clayton, who declared repeatedly in debate that he was not only willing to vote the sum of ten millions asked for by the bill to support the war, but any sum that might be needed for that purpose, whether in the Treasury or not; but he claimed, and constantly exercised, the right to speak of the war *per se*, in such terms as he

chose; and they were never of approval, nor stinted in condemnation.

It is not to be denied that the feeling of nationality, which may be said always to have been very conspicuous in Mr. Clayton, was too strong to be suppressed by any considerations of pure justice. Like all other men of high tone and spirit, he was a devotee of the sentiment, "Our country first and always." It was with him no mere catch phrase to be used upon occasion, but an inspiration of patriotism that was interwoven with all his feelings in relation to public concerns. This may be called, by philosophizing moralists, a weakness; it may have been so, but such is not not the view most people take of it; for, after all, it is of similar quality with devotion to family, which we all feel and act upon, and to party also, which with most men is stronger than devotion to country.

This war produced General Taylor — or rather developed his fine qualities as a man and a soldier, and secured for us a vast extent of territory which for several years gave us great trouble on account of the struggles of the North and South to impress upon it their respective favorite notions of civil and social government.

During the progress of the war, no man took a deeper interest in it, and rejoiced more at the success of our generals, than Mr. Clayton — who throughout his whole life felt the strongest sense of admiration for great military commanders. The early and bril-

liant success of Taylor, with his gallant and hitherto almost untried forces, excited a feeling of admiration all over the country, while the later and more imposing victories of Scott and his troops, filled to the brim the measure of the country's exultation. Out of this feeling grew a kind of spontaneous purpose among men of all parties to reward the former by elevating him to the Presidency. Accordingly, he was ardently supported by Mr. Clayton, who by common consent was considered his great champion in the old States, — was nominated by the Whig Convention, in 1848, and was elected triumphantly at the then approaching election.

At the sessions of 1847 and 1848 Mr. Clayton was constantly in his seat, and participated in the debates upon all subjects of importance that came before Congress, displaying at all times that familiarity with them, and desire that the proper conclusions should be arrived at, which ever characterized him as a public man.

At this session the subject of the newly acquired territory, and what should be done with respect to it, was presented to Congress for its action. The South naturally looked to the acquisition as a means of counteracting the growth of Northern influence, by colonization of the Northwest; for it was supposed that the territory would be settled, chiefly, by Southern people, carrying their institution of slavery with them: and the North in its turn determined to defeat such expectations by refusing State organization without prohibition of

slavery. Here was a dangerous condition of things; and all the arts of partisanship, and of demagoguery, were employed to fan the excitement and turn it to the account of their respective sides. Though Mr. Clayton had the most perfect trust in the union-loving sentiment of the people at large, yet he well knew, from the observation of his whole life, that the passions of men ofttimes obtain such control over reason and patriotism, as to impair their influence. He knew that for a long time there had been growing up, generated by the slavery subject, a geographical distinction among our people — that feeling against the encouragement of which, the Father of his Country had so earnestly warned his countrymen in his farewell address — and his knowledge of human history taught him that hostilities between peoples are as often the outgrowth of mere lineal divisions, as of diversity of race or interest. *The North* and *The South* were, with him, ominous words, portending, by their very sound, evil to the country, at some day not distant. He had seen, with regret and disapproval (though a citizen of a slave State), a disposition on the part of certain impetuous, though able, Southern men, in and out of Congress, to press what they asserted to be the claims of their section, to undue lengths; and on the other hand, he could not shut his eyes, if he had wished, to the fact that in one way or another, the abolitionists of the North were gradually securing converts to their dogma that slavery was a crime, and augmenting their ranks with all that large class, who, not exactly adopting that theory, yet believed that the

interests of the whole required its restriction within its then legal limits. It is not to be denied that a great deal of this latter feeling grew out of the fact that the power of one of the great parties was supposed to rest upon the support of the slavery question — which, being one of pure interest, could at any time, when the emergency should arise, compel all of the section where it prevailed, to act in concert — or, as we say, *solid.*

As soon as the election of 1848 was over, the eyes of the whole country were turned upon Mr. Clayton, as the most suitable person for the office of Secretary of State. The great leaders, Clay and Webster, were practically out of the question; both having desired the Presidential nomination, neither having supported Taylor with much real spirit, and the latter having failed to show any signs of acquiescence even in the party's choice, until very late in the campaign, and after it was wholly unneeded. But from the first — nay, before any nomination was actually made — Clayton preferred Taylor to either of the others; partly on mere party grounds, the popular heart being with the hero of Buena Vista, and his election hardly a matter of any doubt; and partly, also, because the traits of character displayed by Taylor during the war, his placidity of temper, constancy of mind, unselfishness, freedom from passion and fanaticism, and high sense of duty, all seemed to fit him to be the Chief Magistrate of the nation. I may be allowed to say, at this lapse of time, that these high qualities were shown during

the whole period of his brief term. Mr. Clayton was unknown personally to General Taylor,—they never having met,—but the latter was a close observer of public affairs, and had long before been accustomed to consider him one of the chief men of the nation, and in whom the good of the country was a fixed and settled principle. Besides, he was aware that Clayton had openly favored his nomination over that of one whom he had sustained from the time he entered public life (the great leader, Henry Clay), and that he had devoted the season of the campaign to promoting his election. All this inclined him to seek out Clayton as his chief adviser; and he was encouraged to do so by his lifelong friend and chief advocate beyond the mountains, John J. Crittenden. In due time, the tender of the place of Secretary of State was made by General Taylor, and accepted. They first met at Cincinnati, when the new President was on his way to Washington to be inaugurated. Of course it then became certain that the adviser of the old soldier President was to be Mr. Clayton, than whom no one could have been more acceptable to the people. He was universally regarded as a man of pure purposes, and superior ability for the post, from his high patriotism and habit of investigating to the very bottom every subject which he was called upon to consider. Besides, he was the follower in the ordinary sense, of no man — though having the highest opinion of the great intellectual qualities and party leadership of one of the disappointed candidates — and

had no retinue of relations, or local politicians, to take care of. His local friends were not office seekers, and his known hostility to nepotism forbade the idea that he would, in the distribution of favors, be guided by any family feeling. It is a fact that no kinsman or connection of his was appointed to anything during Taylor's administration. I once ventured to say to him that I should like to be a bearer of despatches abroad, with compensation, and was promptly informed, in answer to my application, that he would not use his place to promote the interest or wishes of any member of his family. The other cabinet ministers were not selected until very near the inauguration; though two of them, Crawford and Preston, were persistently urged by two conspicuous Georgians, who claimed that their services to the cause entitled them to ask so much. Perhaps to these may be added Ewing of Ohio; though the Department assigned him was not created till the last day of the session of '48–'49. His conspicuous abilities and warm support of Taylor required, however, that he should be chosen for some prominent place. I have reason to believe that Mr. Johnson as Attorney General, and Mr. Meredith as Secretary of the Treasury, were Mr. Clayton's own choice. I know positively that the name of the latter was never mentioned for any place until Sunday, the 4th, and the inauguration took place the next day; it was presented to the President by Mr. Clayton. Certainly the cabinet of General Taylor was a very able one, composed as it was of Clayton, Ewing,

Johnson, Collamer, Meredith, Crawford and Preston; but the leading spirit of the Administration was the Secretary of State. Whilst the President gave to everything his position required of him a sufficient degree of personal attention, and was well able to form an intelligent judgment upon public questions, as well as those that affected his own Administration generally, yet it is no reflection upon him nor upon others to say that he ever looked to Clayton as the one man on whose judgment he could safely rely. His friends had told him to trust Clayton unreservedly, and he never departed from their counsel. While on the most intimate terms with other advisers, and having perfect faith in them; yet the repose of confidence in wisdom, prudence, sagacity, and fidelity, was in and for Clayton.

Perhaps no man who ever took high office for an unselfish purpose, had more to contend with in his career than the subject of this memoir. As I have before stated, both the great Whig leaders were candidates for the Presidency when Taylor was nominated, and Clayton preferred the old soldier to either of them. This was his offence; and it was never entirely forgiven. One of them, and the greater of the two intellectually, had no reason to expect any special consideration; for their relations had not for years been very intimate, and he had no strength as a party man outside a small body of negative politicians in New England and New York: negative, however, only in the sense of being inactive. The other had claims,

from his conspicuous and gallant leadership through many long years, when his high talents and brilliant advocacy of principle had produced for him a feeling almost akin to idolatry, and from their long standing friendship and perfect community of view upon almost every question of national concern. But there were higher purposes than serving men, that influenced John M. Clayton. With a feeling that may have been created or influenced by mere partisanship, but nevertheless a perfectly sincere one, he believed that the affairs of the country ought to go into the hands of the Whigs: and the former defeat of Mr. Clay, the intense hostility felt towards him by his opponents, the Democrats, so strong as to forbid the idea that he could secure any votes from their ranks, and his fatal weakness in writing the Texas letter — known to be no true expression of his mind, and treated with derision by his foes and received with painful regret by his friends — decided him to look to Taylor as the man who could be elected, and would best meet the requirements of the times, and destroy the acrimony of party contests. It was not expected that either of those gentlemen would be a warm supporter of the Administration, though it was that of his own party; but the hope was cherished that they would at least show a friendly spirit towards it; for that does not cost much. But neither of them ever did so. From the first there was coldness and want of sympathy; afterwards, in ways that cannot be described, there was something more. A time had come in their affairs when, as it happens to all men, people began to find

out they could get along without their aid; and this is the cruelest blow fate can inflict on a public man. But in the eyes of many they were great leaders still, and the wonder was why they were not puissant with the Administration? Their friends complained that they were not treated properly. When one of their favorites wanted office and did not get it, he contrived to make his leader believe it was owing to his well-known fidelity to him. Thus the Administration obtained no support at the hands of the rivals of the President for the nomination, but almost the contrary. This of course was reflected by the newspapers also. Some of the strong party sheets had nothing ever to utter, of praise, but sometimes ventured upon implied censure of the Administration. One professedly neutral paper, of wide circulation, made itself conspicuous by attacks upon it. Nothing could be done right; every thing was done wrong; and every one disappointed in his ambition of serving his country, abroad or at home, leveled his arrows at the Administration, and always aimed at Clayton, who was regarded as its head and front. In fact, he was beset on all sides, by reason of this cold reserve, if not more, of Webster and Clay; and if he had not been inspired in his course, all through it, by what he believed the true interests of the country, his party (where such a consideration was allowable), and a perfect unselfishness, he would have broken down utterly. But when he became aware of the state of feeling towards himself personally, for no real wrong on his part, he resolved that he would fight his assailants, open and concealed,

with the only weapons he could employ, capacity and fidelity to his trust, and resolute adhesion to the right. Though his own private affairs were suffering for attention, and he had repeatedly expressed to the President a desire to retire to private life, he yet remained at his post, until the decease of the President, which occurred on the 9th of July, 1850, gave him the liberty of return to Delaware, which he so much desired.

Before entering upon a view of the Administration of General Taylor, or rather, a consideration of some of its features and acts, I recall your attention for a moment to a debate which ran in the Senate for a long time in the summer of 1848, upon the subject of governments in our newly acquired Territories of Oregon, California, and New Mexico, called "the debate on the Territorial or Compromise Bill." This bill was reported to the Senate by a special committee of eight members, four from the free and four from the slave States, and equally representing the two great parties, viz.: Messrs. Clayton, Calhoun of South Carolina, Underwood of Kentucky, Atchison of Missouri, Phelps of Vermont, Clarke of Rhode Island, Dickinson of New York, and Bright of Indiana; and passed that body on the morning of July 27th, by a vote of 33 yeas to 22 nays. On the next day, the 28th, it was taken up in the House; and without debate or discussion, it was, on the motion of Mr. Stephens of Georgia, laid on the table, by a vote of 112 yeas to 97 nays. The Oregon Bill, having afterwards passed the House, was presented to the Senate, when Mr. Clayton arose and seized the

opportunity to defend the Senate bill. After stating that no opportunity was offered to discuss the Territorial Bill whilst it was on its passage in the Senate, he entered upon a defence of it against those who had assailed it, and showed how it had been misunderstood by the extremists of both parties. The particular feature of this bill (for he had drawn it as chairman of the committee) was, that it promised an effectual means, if it had been adopted, of settling forever the slavery question, as to all the territory acquired from Mexico by the treaty of peace of Gaudalupe Hidalgo. It provided that a writ of error or appeal should be had, at the suit of either party, in case of a claim of freedom by any negro in either California or New Mexico, to the Supreme Court of the United States. Every power which Congress ever had over the subject was reserved, because no word in the bill proposed to devolve that power on the court, or any other tribunal. The power of Congress over the subject was declared by him to be political and legislative, and that of the court simply judicial. "The great question," he said, "to settle which the select committee was raised in the Senate, was whether the citizens of the slaveholding States of this Union have a constitutional right to emigrate to the Territories, which have been acquired by the common efforts of all the States, with their slaves." This question had been debated for weeks in the Senate with a degree of fierceness that threatened the most serious consequences, when, to allay the excitement, and find

some mode of settling it, fair to all, the idea occurred to him of raising the special committee which reported the Territorial or Compromise Bill, with the entirely new feature embodied in it, that the question causing so much heat in debate, and so much alarm in the minds of those who knew the lengths to which the fell spirit of partisanship will drive men — of the right of the slaveholder to carry his property to one of those Territories and hold it there, should be submitted to that arbiter which all men respected, not only as a pure body, but one created to settle grave questions affecting the welfare of the whole people in the protection of their constitutional rights, the Supreme Court of the United States. One would suppose that men of all shades of political thought or personal interest, would have caught at, and supported, a scheme so happy in its conception and statesmanlike in its fairness. There could be nothing juster to both sides — the one claiming that the Constitution threw the mantle of its protection over the institution in the public domain, not yet governed by State laws, and the other that slavery can exist nowhere but by positive law, which no one claimed had ever been enacted to recognize it. A fairer mode of settling that question than by its submission to judicial decree, and that of such a court, cannot be conceived: but the interest of party (I speak not now of mere political divisions) was stronger than reason or candor. The geographical distinctions against which Washington had warned his compatriots, and which were sure to be strength-

ened and possibly fixed by the agitation of the question, were contemplated by the foes of the Compromise Bill; but the warnings of the Father of his Country were unavailable to stay the strife. Misrepresentation on the one hand, and the rancor of the discussion on the other, prevented judgment from asserting her authority. Passion ruled the hour when that bill was defeated, and has done so since, in relation to other grave subjects, from time to time, and will do so hereafter, until men shall come, by some terrible blow inflicted upon the vitality of their free republican government, to regain their reason. It is with nations as with individuals; they become drunk with passion and excitement, requiring some sudden stroke to "stun them into sobriety."

In defending his proposition — for submission of the question of the right to carry slaves into the Territories and hold them there — to the Supreme Court ultimately, he used this fine language:

"The Senator from Tennessee (his friend, John Bell), as well as others, inquired of me, how this bill could settle the controversy between the slaveholding and non-slaveholding sections of the Union. I answer — precisely in the same quiet mode by which the court in the last resort provided by the Constitution, has decided a thousand other questions which have arisen between the people of different States and sections of the Union. It is the greatest glory, the proudest boast of our countrymen, that they are governed only by *law*, and *that* law made by their own

servants and interpreted by men selected by them or by their agents. They bow to the majesty of the law, in deference to themselves. Their own self-respect teaches them to obey the edicts promulgated by their authority, or that of their fathers. For this reason, the true American is a more law-abiding being than the citizen of any other nation on earth. The inscription on the monument of the Spartans who fell at Thermopylæ was, "*Go, stranger, and tell the Lacedemonians that we lie here in obedience to the laws.*" Obedience to the laws, is the cognate spirit, if not the characteristic, of rational civil liberty. Resistance to tyranny is the result of the same love of freedom which dictates submission to the civil magistrate of our own choice; and every truly free people on earth, have been distinguished for their deference and respect for the judgments of their civil tribunals. When we shall so far degenerate from the spirit of genuine civil liberty as to despise and trample under foot the solemn decrees of the great judical arbiter appointed by the republicans of the olden time, to decide our controversies, allay our heart-burnings, and restore fraternal feelings among the contending geographical divisions of our common country, we shall cease to respect the memories of our forefathers, and to honor our own truth."

This is one of the ablest and most statesmanlike speeches that was ever made by Mr. Clayton in the Senate — showing, as it does, his great sagacity as a public man, and the pure patriotism that inspired all his actions. In it he felt called upon to refer to the course of Senators individually, and he did it with a fearless speech, addressed as well to his personal

and political friends, as to those opposed to him. He had a cause to maintain, which he believed a good one; he had a measure to vindicate, which had been denied justice; and in all his life, professional and political, when these circumstances existed, he spared neither friend nor foe, who stood opposed to him. Not that he descended to what are treated as mere personalities, but he referred to arguments or assertions as those of individuals mentioned and employed the strongest thoughts and most vigorous language, to expose the fallacy, insincerity, or partisanship of their positions. He plainly, but sorrowfully, viewed the question he attempted to settle by his bill, as dangerous to the Union he loved so much. No one can form an adequate idea of that speech by extracts from it, or statement, generally, of its language; it requires to be read throughout, and will be found to be a complete view of the state of the slavery question at that time, the scheme of the bill to settle it, the hostility it met with, particularly from the North, and an exemplification of his concern for the safety of the country if the strife could not be allayed. At the close of it he used this prophetic language:

"The refusal to submit to the arbitrament of the very tribunal which the founders of the republic established — the scorn with which the Constitution has been treated, in the contemptuous repudiation of a sacred constitutional right to try the question made by one whole section of the Union — the contumely and

reproach now poured out without stint or measure on both sections — and the shouts of victory by one section over another, as if a triumph had been achieved over a foreign foe,— all announce not only the dawning but the perfect day of an attempt to alienate one portion of the Union from the other. How and when is this suicidal madness to be arrested? It is now palpable that no bill of any kind, to organize governments in the Territories acquired from Mexico, can pass Congress at the present session, though ineffectual efforts will be made to pass one; and that he who shall attempt to stand between the contending sections in their hostile array hereafter, will be the first man struck down by both. Who will take the hazard of that position hereafter? Gentlemen both of the North and South will now go home and seek to sustain their respective grounds by inflammatory addresses to their constituents. The people will become excited, and their representatives will return to these halls at the next session still more riveted in their opposition to one another. Before Congress can act on this question, it may run beyond the reach of any settlement. Is there not real ground for alarm? Sir, I envy not that man's feelings, who can look upon the approaching struggle without apprehension. The fiery Southron, finding the doors of justice barred against him, may seek to storm them, or to enforce his claims by violence; and in that event, the very first men to shirk responsibility will be those who have provoked this tempest, by their violent denunciations of all compromise and all justice."

He closes with this expression of devotion to the Union, whose perils filled his mind with gloom, —

enlivened, however, by the hope which never wholly deserts the breasts of any who have the same confidence which he had in the ultimate good sense, and, at all times, honest purpose, of the masses of his countrymen :

"For myself, I confess that there is one object which I never could and never shall be able to contemplate, in imagination, without terror. It is that of my native land, rent by discordant, sectional factions, divided and torn into fragments, and finally drenched with fraternal blood. To avert that calamity, I will, at any time, sacrifice all other considerations, and seize upon the first opportunity to allay feelings which can, by any possibility, lead to such a catastrophe. And, gloomy as the prospect may be, I will not cease to hope. The bill which was defeated in the House by fifteen votes, passed the Senate by a majority of eleven. Of two hundred and sixty-four votes in both Houses, the majority against the bill was but four. No other proposition could have, possibly, approached so near to a successful result. In the future, therefore, amid all the darkness and difficulties of our position, we may finally find our safety in the judiciary, to which the Constitution itself directs us. On the entablature over the eastern portico of this capitol stand, in beautiful relief, the marble figures of Hope, Liberty, and Justice. Hope, leaning on her anchor, is represented as inquiring of Liberty, how the Constitution, and the Union it secures, may best be preserved? and Liberty points to Justice for her answer. The moral ought never to be forgotten. Let us look to the court which the charter of our liberties has established. That is the diamond which glitters through the gloom that

surrounds us, and by that sacred light, we may yet be directed to the preservation of our glorious Union, without which the hopes of all men who love liberty must sink in darkness forever."

If the bill in question had passed both Houses, it would, no doubt, have received the approval of the President, and thus the way would have been opened for settlement of our troubles at that time, and afterwards, growing out of the dispute about the right to carry slave property into the Territories, and hold it there. The wonder is that the North, which held the majority in the House at that time, did not seize the opportunity to bring a question so purely legal before the judiciary: but the denunciations of the abolitionists, and that tenacity of purpose which the passengers of the Mayflower transmitted to their posterity, forbade it to consent to any thing short of surrender by the South. The high spirit of the latter would not submit to that: and therefore agitation continued, alarm spread, hopes sunk, and the country gradually but steadily drifted into a sea of blood and havoc, lashed with all the fury which fratricidal strife could create.

When the Administration of General Taylor commenced its action, no government had been provided by Congress for these Territories of California and New Mexico: and the people of the former — that is, the emigrants from the old States, before and after the treaty of peace, — were clamorous for protection from Washington. They complained, and justly, that they

were exposed to constant danger, from the want of Governmental recognition; and they claimed that their case was one that called for assistance: but their complaints had not hitherto received much attention. It was discovered, perhaps, that the emigrants would be likely to declare against slavery, and those who governed the country then, were not concerned that a new State should come into the public family, which would be sure to send anti-slavery representatives to Congress. The Administration of Mr. Polk, however, had not been exactly indifferent to their appeals — an agent, Mr. Vorhies, having been dispatched to California to give the people there such assurances as was thought best to keep them quiet and inspire hope: but it is not too much to say, that the food was not such as the craving appetite of the Eastern emigrants sought. They wanted something more definite than vague words — some faith that Congress would at once act for their case, or leave them at liberty to do it for themselves. All that was yielded to them was the declaration, that the government established by the military occupation was displaced, and the former one reinstated, and that this state of things would remain until a Territorial government was given them by Congress. This assurance was sent from the State Department to the Californians through the medium of the instructions to Vorhies, dated the 7th of October, 1848.

In less than a month after the inauguration of President Taylor, viz., on the 3d day of April, 1849, Clayton delivered to Thomas Butler King, a distin

guished citizen of Georgia, and former member of Congress, a letter of instructions for his guidance in the agency, then conferred upon him, of visiting California and performing such duties as the President charged him with. They differed from those of Vorhies (who was recalled), and showed a warmer interest in the welfare of that distant people; assured them of the protection of the Government, its solicitude for their welfare, and that the naval and military commanders there would be instructed to co-operate with the friends of order and good government so far as could be useful or proper; and they said, also, and the agent was instructed to assure them, that it was the sincere desire of the President to protect and defend them, in any formation of any government, republican in its character, thereafter to be submitted to Congress, which should be the result of their own deliberate choice. "But," added the Secretary, "let it be at the same time distinctly understood by them, that the plan of such a government must originate with themselves, and without the interference of the Executive."

On the 17th of January, 1850, the Senate passed a resolution calling upon the President, in every form of expression deemed best calculated to draw forth everything, for information, as to what had been done by the Executive authority with respect to California and New Mexico — the territory acquired by the Treaty of Guadalupe Hidalgo. The call was promptly replied to on the 23d following, and it is from the communication to the Senate by the President, that the fore-

going facts are stated. With the frankness which characterized the old soldier, the President did not content himself with a simple response to the call; but treated the general subject at some length, and related all he had done with respect to the formation by the Californians of a State Constitution. This course, he says, was in accordance with his wishes, but was not taken because of them, as he had been anticipated in his action by agents sent there by his predecessor. He gives as his reason for favoring a State government, instead of a Territorial one — that the latter, when moved in Congress, would be sure to excite the same bitterness that had before existed on similar occasions. This was a wise course to pursue, and shows how free from all partyism, or sectionalism, the Administration of General Taylor really was. The people of California have reason to be very grateful to the Administration of General Taylor for the active part it took in aiding them by its countenance and good wishes, in springing into political life at one bound, instead of halting upon the Territorial plane. It was not however till the year following this, and after the good President had been gathered to his fathers, that the Constitution, prepared by the California people, was approved by Congress, and the State created: nor was it until after the measure of admission had been wrested from the place given it in the celebrated Omnibus Bill of Mr. Clay, and presented to the Senate by Mr. Pearce of Maryland (an able and strong friend of Mr. Clayton, and co-operator

with him for the benefit of California), that justice was at last done to her people.

The Hungarian Revolt.

The President and Secretary of State were both ardent friends of freedom — of the right of a people to work out their own political destiny, and manage their own individual concerns in their own way. The policy of our Government and the desire of our people had always been to recognize, and help (so far as countenance and encouragement could do it) to come into the family of nations, those of other lands who were able to maintain autonomy, and especially such as showed a desire to adopt institutions similar to our own. The sympathies of Americans have always been warm and active for the oppressed everywhere; they had ever remembered, unlike the Israelites who had to be constantly reminded of it, how, by the favor of the Most High, they had been enabled to throw off the yoke of oppression. I think that no man was a more ardent lover of republican liberty than John M. Clayton. I have known him sorely tried by the defeats of his party in its struggles, when everything seemed to favor its success; I have seen him greatly crushed and broken by that which he deemed disastrous to the country's interest; but there was never utter despair, and never the indulgence of a belief that any other form of government was better than that we had. His confidence, that the good sense and patriotism of the

people at large would in the end overcome the mischiefs done by attachment to mere party, was never, for a moment, seriously shaken.

Hungary, under the lead of extraordinary men, chiefest of whom was Kossuth, had determined to throw off the chains of Austria, and re-establish her ancient autonomy as a political State. The people, of America of all classes, looked with eager interest at the strife between the spirit of despotic rule on the one hand, and rational freedom on the other. Our people, old and young, sympathized with the Hungarian patriots, and anxiously looked for their success. These sentiments were fully shared by the Administration of General Taylor; and accordingly, very soon after the struggle began, and with a view of being kept constantly advised of its progress and prospects of success, Mr. Clayton dispatched a private messenger, or envoy, from his Department to Europe, to observe the struggle and study its causes, objects, purposes, and prospects, on the spot, with a view to the recognition of that people by our own Government, at the earliest moment when it should become certain they could resist, with success, the imperial efforts to re-subjugate them. The President and Secretary particularly desired that if Hungary could sustain herself, the United States should be the first to recognize her. This would have been eminently appropriate, from her anomalous situation as a republic surrounded by despotisms, — a sister State in the wide sense of that term. Besides, she would have a long border, with

ports and harbors from the boundary of Austrian Venetia on the northwestern, almost to the kingdom of Greece on the southeastern coast of the Adriatic Sea, embracing within that distance, the province of Dalmatia, as well as the other important territories. But, alas! what superiority of forces, and abundance of the sinews of war, could not do to crush the hopes and defeat the armies of gallant Hungary, treachery accomplished; and she sunk back into the grasp of her rival, to achieve, however, it is pleasant to believe, independence qualifiedly, in another way. In his message of the 28th of March, 1850, to the Senate, in answer to its call for copies of the correspondence with the agent, Mann, General Taylor expressed himself as follows:

"My purpose, as freely avowed in this correspondence, was to have acknowledged the independence of Hungary, had she succeeded in establishing a government *de facto* on a basis sufficiently permanent in its character to have justified me in doing so, according to the usages and settled principles of the Government; and although she is now fallen, and many of her gallant patriots are now in exile or in chains, I am free still to declare that had she been successful in such a government as we could have recognized, we should have been the first to welcome her into the family of nations."

Sir John Franklin.

At this period the whole civilized world was deeply interested in the all-too-probable fate of the great

explorer, Sir John Franklin, and his brave comrades in his two ships, the Erebus and Terror, with which he had been despatched by his Government to search for, and if possible make, the north-west passage around the American continent to the Asiatic shores of the Pacific; and, incidentally, to fathom the deep secrets that had hitherto been locked up in the icy chambers of the region around the North Pole. The expedition had sailed years before; but from the time it entered into the region of ice and night, nothing had been heard from it. What had become of it, and what was the fate of the commander and those who sailed under him, no one could tell. Although Sir John Franklin was well known as a sailor and captain of great knowledge and of prudent wisdom; and although his Government, — never niggard in supplies of every description for her explorers, or thoughtless of aught that could protect them from disaster, — had equipped and furnished his ships with ample stores for quite three years at least; yet when more than two years had elapsed without any intelligence of the expedition, not only his own Government and people became concerned for his safety, but other Governments and peoples also; because discoveries of all kinds, geographical, geological, or mechanical, become, sooner or later, the common property of all, in their influences upon the culture or the general interests of society. Wider than these effects that were in the possible future, was the universal throb of human hearts in sympathy for the suffering, whether in ships imprisoned by ice

in the dreary regions of perpetual cold, or at home, pining with but little hope of seeing their loved ones again. While human nature every where was thus responding to the appeals of distress, Lady Franklin, Sir John's wife, addressed the following eloquent letter to President Taylor, with explanatory notes appended to it:

BEDFORD PLACE, LONDON, *April 4th, 1849.*

SIR: — I address myself to you as the head of a great nation whose power to help me I cannot doubt, and in whose disposition to do so I have a confidence which, I trust, you will not deem presumptuous.

The cause of my husband, Sir John Franklin, is, probably, not unknown to you. It is intimately connected with the northern part of that continent of which the American Republic forms so vast and conspicuous a portion. When I visited the United States three years ago, amongst the many proofs I received of respect and courtesy, there was none that touched and even surprised me more than the appreciation, everywhere expressed to me, of his former services in geographical discovery, and the interest felt in the enterprise in which he was then known to be engaged.

The expedition fitted out by our Government for the discovery of the north-west passage (that question which, for three hundred years, has engaged the interest and baffled the energies of the man of science and the navigator) sailed under my husband's command in May, 1845. The two ships, "Erebus" and "Terror" contained one hundred and thirty-eight men (officers and crews), and were victualed for three years. They were not expected home unless success had early rewarded their

efforts, or some casualty hastened their return, before the close of 1847, nor were any tidings expected of them in the interval. But when the autumn of 1847 arrived without any intelligence of the ships, the attention of Her Majesty's Government was directed to the necessity of searching for and conveying relief to them, in case of their being imprisoned in ice, or wrecked, and in want of provisions and means of transport. For this purpose, an expedition, in three divisions, was fitted out in the early part of last year, directed to three different quarters simultaneously, viz.: 1st, to that by which, in case of success, the ships would come out of the sea to the westward, or Behring's Strait; 2d, to that by which they entered on their course of discovery on the eastern side, or Davis' Strait; and 3d, to an intervening portion of the Arctic shore, approachable by land from the Hudson's Bay settlements, on which, it was supposed, the crews, if obliged to abandon their ships, might be found. This last division of the expedition was placed under the command of my husband's faithful friend, the companion of his former travels, Dr. Sir John Richardson, who landed at New York in April of last year, and hastened to join his men and boats, which were already in advance towards the Arctic shore. Of this portion of the expedition I may, briefly, say, that the absence of any intelligence from Sir John Richardson, at this season, proves he has been unsuccessful in the object of his search.

The expedition, intended for Behring's Strait, has, hitherto, been a complete failure. It consisted of a single ship, the "Plover," which, owing to her setting off too late, and to her bad sailing properties, did not even approach her destination last year.

The remaining and most important part of the

searching expedition consists of two ships, under the command of Sir James Ross, which sailed, last May, for Davis' Straits, but did not succeed, owing to the state of the ice, in getting into Lancaster Sound, until the season for operations had nearly closed. These ships are now wintering in the ice, and a storeship is about to be despatched from hence with provisions and fuel to enable them to stay out another year; but one of these vessels is, in a great degree, withdrawn from active search by the necessity for watching at the entrance of Lancaster Sound for the arrival of intelligence and instructions from England by the whalers.

I have entered into these details with the view of proving that, though the British Government has not forgotten the duty it owes to the brave men whom it has sent upon a perilous service, and has spent a very large sum in providing the means for their rescue, yet that, owing to various causes, the means actually in operation for this purpose are quite inadequate to meet the extreme exigence of the case; for it must be remembered that the missing ships were victualed for three years only, and that nearly four years have now elapsed, so that the survivors of so many winters in the ice must be at the last extremity. And also, it must be borne in mind that the channels by which the ships may have attempted to force a passage to the westward, or which they may have been compelled by adverse circumstances to take, are very numerous and complicated, and that one or two ships cannot possibly, in the course of the next short summer, explore them all.

The Board of Admiralty, under a conviction of this fact, has been induced to offer a reward of £20,000

to any ship or ships, of any country, or to any exploring party whatever, which shall render efficient assistance to the missing ships, or their crews, or to any portion of them. This announcement, which, even if the sum had been doubled or trebled, would have met with public approbation, comes, however, too late for our whalers, which had, unfortunately, sailed before it was issued, and which, even if the news should overtake them, at the fishing grounds, are totally unfitted for any prolonged adventure, having only a few months' provisions on board, and no additional clothing. To the American whalers, both in the Atlantic and Pacific, I look with more hope, as competitors for the prize, being well aware of their numbers and strength, their thorough equipment, and the bold spirit of enterprise which animates their crews. But I venture to look even beyond these. I am not without hope that you will not deem it unworthy of a great and kindred nation to take up the cause of humanity which I plead, in a national spirit, and thus generously make it your own.

I must here, in gratitude, adduce the example of the Imperial Russian Government, which, as I am led to hope by His Excellency the Russian Ambassador, at London, who forwarded a memorial on the subject, will send out exploring parties this summer, from the Asiatic side of Behring's Strait northward, in search of the lost vessels. It would be a noble spectacle to the world, if three great nations, possessed of the widest empires on the face of the globe, were thus to unite their efforts in the truly Christian work of saving their perishing fellow-men from destruction.

It is not for me to suggest the mode in which such benevolent efforts might best be made. I will

only say, however, that if the conceptions of my own mind, to which I do not venture to give utterance, were realized, and that, in the noble conception which followed, American seamen had the good fortune to wrest from us the glory, as might be the case, of solving the problem of the unfound passage, or the still greater glory of saving our adventurous navigators from a lingering fate, which the mind sickens to dwell on, though I should, in either case, regret that it was not my own brave countrymen in those seas whose devotion was thus rewarded, yet I should rejoice that it was to *America* we owed our restored happiness, and should be forever bound to her by ties of affectionate gratitude.

I am not without some misgivings, while I thus address you. The intense anxiety of a wife and a daughter may have led me to press too earnestly on your notice the trial under which we are suffering (yet not we only, but hundreds of others), and to presume too much upon the sympathy which we are assured is felt beyond the limits of our own land. Yet if we deem this to be the case, you will still find, I am sure, even in the personal intensity of feeling, an excuse for the fearlessness with which I have thrown myself on your generosity, and will pardon the homage which I thus pay to your own high character, and to that of the people over whom you have the high distinction to preside.

I have the honor to be, sir, with great respect, your obedient servant,

JANE FRANKLIN.

To that letter the following answer was made by the Secretary of State:

DEPARTMENT OF STATE,
WASHINGTON, *April 25, 1849.*

MADAM:—Your letter to the President of the United States, dated April 4, 1849, has been received by him, and he has instructed me to make to you the following reply:

The appeal made in the letter with which you have honored him, is such as would enlist the sympathy of the rulers and the people of any portion of the civilized world.

To the citizens of the United States, who share so largely in the emotions which agitate the public mind of your own country, the name of Sir John Franklin has been endeared by his heroic virtues, and the sufferings and sacrifices which he has encountered for the benefit of mankind. The appeal of his wife and daughter in their distress has been borne across the waters, asking the assistance of a kindred people to save the brave men who embarked in the unfortunate expedition; and the people of the United States, who have watched with the deepest interest that hazardous enterprise, will now respond to that appeal, by the expression of their united wishes that every proper effort may be made by this Government for the rescue of your husband and his companions.

To accomplish the objects you have in view, the attention of American navigators, and especially of our whalers, will be immediately invoked. All the information in the possession of this Government, to enable them to aid in discovering the missing ships, relieving their crews, and restoring them to their families, shall be spread far and wide among our people; and all that the executive government of the United States, in the exercise of its constitutional powers, can

effect, to meet this requisition on American enterprise, skill, and bravery, will be promptly undertaken.

The hearts of the American people will be deeply touched by your eloquent address to their Chief Magistrate, and they will join with you in an earnest prayer to Him whose Spirit is on the waters, that your husband and his companions may yet be restored to their country and their friends.

I have the honor to be, very respectfully, madam, your obedient servant,

JOHN M. CLAYTON.

LADY JANE FRANKLIN.

Lady Franklin's reply is these words:

BEDFORD PLACE, LONDON, *May 24, 1849.*

SIR: — The letter with which you have kindly honored me, conveying the reply of the President of the United States to the appeal I ventured to address to him in behalf of the missing Arctic expedition under my husband's command, has filled my heart with gratitude, and excites the liveliest feelings of admiration in all who have had the opportunity of seeing it.

Relying upon the reports of the American papers just received, I learn that the people of the United States have responded, as you foresaw they would, to the appeal made to their humane and generous feelings, and that in a manner worthy of so great and powerful a nation — indeed, with a munificence which is almost without a parallel.

I will only add, that I fully and firmly rely upon the wisdom and efficiency of the measures taken by the American Government.

I beg you to do me the favor of conveying to the President the expression of my deep respect and gratitude, and I trust you will accept yourself my heartfelt acknowledgments for the exceedingly kind and feeling manner in which you have conveyed to me his Excellency's sentiments.

I have the honor to be, sir, your obliged friend and obedient servant,

JANE FRANKLIN.

The tone which pervades this correspondence, on the part of our officials, agrees well with the touching language and sentiment that inspired Lady Franklin. The page of history furnishes no brighter example of devoted wifehood than her unceasing efforts, never allowed to flag by despondency or resignation, to ascertain if her husband were yet alive, or, if dead, what record of his sufferings was left for her perusal. The action of General Taylor's Administration was but the expression of the feeling that warmed every American bosom; but who could have clothed them in such befitting garb as the Secretary of State?

THE CENTRAL AMERICAN QUESTION.

There was another subject which caused the Administration of General Taylor concern of a different character; this was the action of the English in or about what is known as Central America, — that is, the territory lying between Mexico and the then republic of New Grenada, at the Isthmus of Darien.

At the time of the acquisition of California by the treaty of Gaudalupe Hidalgo, above mentioned, the railroad system of this country was in its infancy. Less than fifteen years before, locomotive engines had not come into use, except on, it may be, a single road; and at the time of this treaty, the 30th of May, 1848, there was, perhaps, no line running west from the Mississippi, for a length of more than one hundred miles. A railroad to the Pacific ocean was not dreamed of by the most visionary — nothing being positively known of any part of the vast wilderness of plain and mountains west of the 100th meridian of longitude, except the scanty information supplied by the explorations of Lewis and Clarke. Fremont and his followers had not as yet penetrated its recesses, scaled its mountains, traversed their valleys. The country was virtually a blank. Of course the attention of the Administration was drawn earnestly to the fact that California, with the inexhaustible mineral wealth that had begun to be developed there, was in great need of the most jealous care. She might fall a prey to a greedy power before succor could reach her; she might also set up for herself, tempted by her vast internal resources, the unexampled flow of population into her bosom, the wonderful adaptation of her soil and climate for the richer and rarer productions of the temperate and torrid zones, the great facilities her situation offered her for traffic with the East, and the advantage with which she might, some day, annex, on the one hand, all the land of her former

ruler worth having, and on the other, that splendid region north of it, bounded, like herself, by the Pacific, and which had a mere joint occupancy, where each of the holders had little more than an asserted right. With what is now Oregon, added to her northwardly, and southwardly and eastwardly such of the Mexican provinces as were desirable, she would be a nation, not only respectable in size, but in wealth and power also. Now these and other considerations presented themselves, from time to time, and frequently, to General Taylor and his Administration; and it was thought of the utmost importance that nothing should be left undone to secure the United States against all risk of the loss of our Pacific possessions. The only open access to them was by way of Panama, up the Chagres river in flat-boats, and thence overland to the bay to the other side. All intercourse was by that route, which was through a foreign country, whose territory could not be entered with armed troops, without infringement of international law. Of course the way was open for all the world, around Cape Horn; but such a passage required months for its accomplishment, the distance for us being more than half way around the world. There was also the additional fact, which caused great anxiety, — the British, under one pretext or another, were obtaining a foothold in Central America, which was thought to endanger our transmontane possessions, by interfering with our interest to have an Isthmian route of transportation and travel

for our citizens, that would enure to them as a com mercial people, and as a nation.

One of the first steps determined upon by the Taylor Administration was the dislodgement of the British from Central America. But this must be undertaken carefully; for Great Britain was then the first power in the world, strong in wealth and in preparation for war by land and sea, and strong also in her determination to yield nothing which it was her interest to retain. She had long had a sort of *de facto* occupancy, or title, to a petty district, on the north-eastern corner of Guatemala, called locally the Belize, but, by her, British Honduras. This was, originally, a simple right to cut logwood there, granted to certain of her subjects; but was made to serve another purpose (owing to the weakness of the chief authority), that of being treated as part and parcel of British territory. And it had so far been recognized as an accomplished fact that during a former Administration, a consul had been appointed for that place, and his *exequatur* had actually been asked of and given by the British Government. This British logwood right, and its subsequent enlargement, were long before the famous recommendation to Congress of Mr. Monroe, in 1823, called the *Monroe doctrine*. Among the first acts of the Secretary of State, was one to recall the consul from Belize. This cleared the way somewhat for the negotiation, afterwards had, resulting in the treaty of April 19, 1850, ratified the 4th of July of that year. But there was another claim maintained by the British in that region;

which was the so-called *protectorate* of the Mosquito Kingdom — a *habitat* of miserable savages, who, taking advantage of the weak condition of Nicaragua and the hope of help from the British, had conceived themselves to be the owners of the long reach of coast line, with quite a broad stretch inland, called the Mosquito coast, sometimes Mosquitia. This protectorate was a mere pretext for another foothold — the poor puppet of a king of those wretched Indians having none of the paraphernalia of state even, to say nothing of his utter want of troops or forces of any kind. As this protectorate was considered dangerous to our interests — the line of Mosquito coast covering most of the front of Nicaragua upon the Caribbean sea — it was determined that it should be put an end to. But how to go about this was the question.

In pondering over the subject, Mr. Clayton remembered that fifteen years before, during the Presidency of General Jackson, he had introduced into the Senate, at an executive session held the 3d of March, 1835, the following resolution: "*Resolved*, That the President of the United States be respectfully requested to consider the expediency of opening negotiations with the Governments of other nations, and particularly with the Governments of Central America and New Granada, for the purpose of effectually protecting, by suitable treaty stipulations with them, such individuals or companies as may undertake to open a communication between the Atlantic and Pacific oceans by the

construction of a ship canal across the isthmus which connects North and South America, and of securing forever, by such stipulations, the free and equal right to navigate such canal to all such nations, on the payment of such reasonable tolls as may be established to compensate the capitalists who may engage in such undertaking, and complete the work."

Here, then, was a basis upon which to rest his work of neutralizing the Isthmian territory. The necessity for action seemed to the Administration of Taylor to be imminent, if we intended to properly protect California, and make her safe and content in being part of the republic. It almost seemed like a special interposition of Providence, that the conception contained in the resolution should have arisen in the mind of the Secretary, so long before. With it at the bottom of his action, as a motive to be shown, but with an earnest desire, that would not be silenced, to deprive the British of their Central American claim, as well as to secure California, he invited the British minister, Sir Henry Lytton Bulwer, sent over for that purpose, to confer with him upon the subject of the inter-oceanic canal. The result of that conference — maintained for a long time, and often threatened with rupture from various causes, but never allowed to break, by reason of the determination of Clayton to accomplish his purpose in inviting it — was the convention known as the Clayton-Bulwer treaty — an achievement which was declared in my hearing in the Senate to be *the first universal fact in the his-*

tory of the human race. Why should such language have been used with respect to that instrument? Because, by it, Great Britain withdrew her claims to a territory which she had asserted and exercised the right to control; and that it stands upon the plane of nationality acting unselfishly. While no pretence of *territorial right* to the Mosquito coast had ever been claimed by her, she still, under an alleged arrangement with the miserable puppet treated by her as the king of that region, asserted the right, and was tenacious of it, to protect him in his assumed claims. The duty of protection of course required, if occasion arose, the right of occupation to perform it. It was Clayton's aim to take that away, and that of Sir Henry Bulwer to adhere to the compact with the so-called king. But the latter finally yielded, and affixed his name to the treaty, which was afterwards ratified by his Government, as it was by ours, the exchange of ratifications taking place on the 4th day of July, 1850. Its language, with respect to the subject in hand, is very remarkable for its fullness; and was thought, by the author of it, to put it beyond the power of human ingenuity to misconstrue it. But human ingenuity is an indeterminable factor in all transactions; misconstruction of the apparently definite language employed having been made afterwards, and, unfortunately for them, by distinguished Senators. But let us consider the treaty alone. We cannot do that without quoting its language. Here is the whole document, precisely as it passed from the hands of the negotiators:

Convention between the United States and Her Britannic Majesty.

The United States of America, and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship canal which may be constructed between the Atlantic and Pacific Oceans, by way of the river San Juan de Nicaragua, and either or both of the lakes of Nicaragua, or Managua, to any port or place on the Pacific Ocean; the President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States; and Her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of Her Majesty's Most Honorable Privy Council, Knight-Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose: and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

Article I.

The Governments of the United States and Great Britain hereby declare that neither the one, nor the other, will ever obtain, or maintain, for itself, any exclusive control over the said ship canal; agreeing that neither will ever erect, or maintain, any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise, any dominion over Nicaragua, Costa Rica, the Mosquito

Coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any State, or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, or of assuming or exercising any dominion over the same; nor will the United States, or Great Britain, take advantage of any intimacy, or use any alliance, connection, or influence, that either may possess, with any State or Government, through whose territory the said canal may pass, for the purpose of acquiring, or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce, or navigation, through the said canal, which shall not be offered, on the same terms, to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain, traversing the said canal, shall in case of war between the contracting parties, be exempted from blockade, detention, or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal, as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said canal, the contracting parties engage that if any such canal shall be undertaken upon fair and equitable terms, by any parties having the authority of the local Government or Governments through whose territory the same may pass, then the persons employed in making the

said canal, and their property, used or to be used for that object, shall be protected from the commencement of the said canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure, or any violence whatever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise with any State, States, or Governments, possessing or claiming to possess any jurisdiction, or right, over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or Governments to facilitate the construction of the said canal by every means in their power; and furthermore, the United States and Great Britain agree to use their good offices, whenever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

ARTICLE V.

The contracting parties further engage that when the said canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may be forever open and free, and the capital invested therein, secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either

Government, if both Governments or either Government shall deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon, as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties, over the commerce of the other, or of imposing oppressive exactions, or unreasonable tolls, upon passengers, vessels, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other.

Article VI.

The contracting parties in this convention engage to invite every State, with which both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans, for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting such treaty stipulations; and should any differences arise, as to right, or property, over the territory through which

the said canal shall pass — between the States or Governments of Central America — and such differences should, in any way, impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the two contracting parties.

Article VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention; and if any persons or company should already have, with any State through which the proposed ship canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulation of which contract neither of the contracting parties in this convention have any just cause to object, and the said person or company shall, moreover, have made preparations, and expended time, money, and trouble, on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company, to the protection of the Governments of the United States, and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding

their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company, that shall be prepared to commence and proceed with the construction of the canal in question.

Article VIII.

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protections to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain, that the parties constructing or owning the same shall impose no other charge or conditions of traffic thereupon, than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State

which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

ARTICLE IX.

The ratifications of this convention shall be exchanged at Washington, within six months from this day, or sooner if possible.

In faith, thereof, we the respective plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington, the nineteenth day of April, Anno Domini, one thousand eight hundred and fifty.

(Signed) JOHN M. CLAYTON, [L. S.]
HENRY LYTTON BULWER, [L. S.]

It was well said by the late William H. Seward, in his remarks in the Senate before referred to, on the occasion of the ceremonies at the announcement of Mr. Clayton's decease, that the treaty was "*the first universal fact in the history of the human race.*" When before, had any public act been done, the design of which was to benefit not only those whose agents performed it, but the whole family of nations as well? Our relations with our younger sisters of Central America, and the Isthmus, were more than friendly; there was a similarity of government between them and us growing out of the revolt of each against trans-Atlantic rule; and the future success of all in the experiment of self-government was linked, no one could tell how completely, with that of each. There could, therefore, be no doubt that whatever *we* desired, how exclusive

soever the benefit might be, would be freely granted by *them* — sentiment and interest both agreeing. But no separate treaty, with respect to inter-oceanic communication for separate ends or objects alone, had ever been made with any of them — all Administrations refraining from using our influence, as a great and constantly growing power, for that purpose. Whatever may be said of the neglect of previous Governments here to make a show of responding to the spirit and recognizing the policy of the Monroe recommendation, it cannot be charged that any Administration had sought to use our importance with our feeble co-republics, for gains of our own merely. It is not the genius of the people of the United States to acquire, unfairly, any right or advantage. At the same time they are watchful of their interests. It was in a spirit of unselfishness that the mere provisions about the canal were made; but at the same time the advice, "*carpe diem*," was not lost sight of. The opportunity offered was a good one to secure ourselves against all trouble hereafter from the British in Central America. How it was availed of, the language of the Clayton-Bulwer Treaty best explains. It might have been supposed that this treaty would have been considered, at least by our own people, as a signal example of diplomatic skill, entitling the Administration of General Taylor to unqualified praise, for, to observe it, not only required of Great Britain the abandonment of all claim to a foothold in Central America, including the Mosquito Coast, for any purpose whatever, but it engaged her

powerful services (which no spirit of disparagement can undervalue) for the protection by herself, in co-operation with the United States, of any canal, or railway, that might be made to connect the oceans, or establish transit from the one to the other; and also required, and bound, the contracting parties, by an engagement, to invite *all other States with whom both or either had friendly intercourse*, to enter into like stipulations with them — to the end that such States might share in the honor and advantage of having contributed to so great an enterprise. This was not the case, however. A sort of fatuity seems, at a subsequent date, to have possessed some of the great men in public life, as was shown by the result of a debate upon the treaty during the Administration of Mr. Pierce.

Death of General Taylor and Retirement of Mr. Clayton.

On the 9th of July, 1850, General Taylor unexpectedly died, and Mr. Clayton thus obtained the release from public cares which he had sought almost from the first of his taking office in the Administration. Nothing but his strong personal attachment to the President, and determination that the latter should not be disappointed of the aid at his hands, upon which he so much relied, induced him to remain at Washington so long as he did. If he had died when

the President did, his name would have gone down to posterity as one of the brightest that had adorned the national page; but he was destined, at a later day, to figure again in public life, as will hereafter be shown, and to add to his renown, as an orator and debater in Congress.

Nor was the life of John M. Clayton, after the decease of General Taylor, and, before his return to the Senate in 1853, undistinguished by any public act or expression. On the 14th of October next after his return to his home, a meeting of his political friends was held in Wilmington, for the purpose of honoring him with a public dinner. It was presided over by the venerable John Connell, and a committee of invitation was appointed, of which his friend, the Hon. John Wales, was chairman. In response to their complimentary letter, his reply of acceptance contained, among other things, the following language:

"My object in waiting upon you will be to offer my thanks to my fellow citizens of this, the State of my nativity, for all the confidence and kindness they have so uniformly extended to me through a long public life. At different periods I have held most of the public places of trust and honor within their gift: and now I shall be most happy to evince my gratitude, not in thanks for future favors, but for those which, by their partiality and friendship, have been profusely bestowed upon me. The very flattering terms in which you have spoken of my public services, are greatly appreciated, and I desire now to express my

acknowledgments to those who have deputed you to honor me with such an invitation, and to you, gentlemen, for whom individually I have long cherished sentiments of the highest personal regard."

The company was presided over by the late Charles I. DuPont — a very devoted friend of the guest — and in answer to a complimentary toast, prefaced by a speech from the President, Mr. Clayton made an address characterized by all his eloquence, and a more than common share of the cogency and earnestness that marked his public utterances. It was the first opportunity that presented itself for an exposition of the policy of the Administration, and its vindication from the assaults which had been unceasingly made upon it; and he took the fullest advantage of it. Look where you will, you will find nothing superior to the complete defense he made of the Administration of General Taylor, claiming for himself nothing — though he might have aspired to much — and uttering the finest sentiments of patriotism. Referring to President Fillmore, he said he had no doubt that he would do his whole duty; and hoped that they would be willing to join with him, in sustaining him in the discharge of that duty. He added:

"In his patriotism, and that of the members of his cabinet, I have the utmost confidence. I have no reason to believe that either of them would have refused his aid at any moment to the settlement of these vexed questions (those he had been speaking about)

on the basis proposed by President Taylor. They have acquiesced in what appeared to them to be the only practicable scheme of adjusting those difficulties. They seek to sustain the Constitution and the laws of their country, and I honor them for their purpose. While they stand by the Union, I shall be with them and for them. If there be any one sentiment in my bosom more deeply seated and more deeply cherished than all others, it is that of love and veneration for the institutions which our fathers have left us; and for the country, the whole country, covered and protected by the American Constitution. There will be no help for me or mine when this Union shall be broken up; and should that melancholy period ever arrive, I shall be a wanderer without a home. I can take no part for one section against the other; to me the preservation of this Union is a matter of interest above all others; and, if necessary, I shall be true to those who sustain it, to the last of my blood and my breath."

Commodore Jones.

No man had a greater admiration for deeds of heroism, in the field or upon the deck, than John M. Clayton. With the history of every great captain, of whatever age, or race, he was perfectly familiar, so far as research or personal inquiry could give him knowledge. Where the records of the past furnished the information, he searched them; where tradition and his own inquiries could alone serve him, he possessed himself of all they could afford. The enthusiasm of his

regard for distinguished heroes tended to imbed more deeply in his tenacious memory, all that he could learn of them. Growing up at a time when there were many survivors of that gallant band, the Delaware Regiment, whose deeds of valor occupy so broad a page of the record of the nation's heroic strife for liberty, and attaining his manhood and part of the distinction which awaited him in early life, while the brave sailors, Jones and McDonough, were yet upon the stage of existence, he gathered from them all, an immense mass of fact concerning the wars, and their own personal experience in them, which not only gratified himself, but enabled him to afford pleasure to others in the recital of them. A *raconteur*, as the French call it, he was, in the highest sense of that term — a relater of facts and anecdotes of personal history, whose equal is rarely found. As I have said, in treating of Mr. Clayton personally, he never forgot anything worthy of being remembered; and whatever concerned the importance of the State — whether with respect of her relation to her sisters, as an equal in sovereignty, or the high deeds of her public men — was as familiar to him as if he had but just read it out of a book. Hero worship, of a noble kind, was a feature of his character. By the hour, over and over again, many of us have listened to such recitals, the interest of which never flagged for a moment; nor did it appear that the store could be exhausted. Dates were to him matter of great importance, and seldom if ever were forgotten. When a fact was stated, involving action,

the very day would be given, and when it added value to the circumstance itself, he had learned the hour of its performance.

It was these well known qualities, which, added to a long subsisting personal friendship and admiration for his high courage and great simplicity of life, that prompted the invitation that Mr. Clayton received, to deliver a memoir and eulogy upon Commodore Jacob Jones. It seems that during the latter part of his life, the old hero expressed a desire, that when he died, his bones might be laid in his native soil of Delaware. This being known to the people of this city, many of them applied to the family of the Commodore, as soon as they received intelligence of his death, for the removal of the remains to Delaware; which request being granted, they were brought here on the 25th of October, 1850, and now repose in the cemetery of Wilmington, a lot in which, for the purpose of their interment, had been generously given by the Wilmington and Brandywine Cemetery Company. It being thought fit that the occasion should be marked by some public expression worthy of the dead, and of the people who honored him, Mr. Clayton was invited to deliver an address upon his life and services, which, as an admirer and long-time personal friend, he was considered peculiarly qualified to do. No connected biography of Commodore Jones had ever been published, nor was much of his personal history known, except to a few close personal friends. On the 17th of the following December,

that duty was performed, in the saloon of the Odd Fellows' Hall in Wilmington, before a large assemblage of citizens of the State, and at its close, the late Hon. Willard Hall was called to the chair for the purpose of giving expression, by the meeting, of their thanks for the address. A resolution "that the thanks of this community be presented to the Hon. John M. Clayton, for the eloquent and appropriate address delivered this evening, on the life, character, and public services of Commodore Jacob Jones," was passed, and another that "Mr. Clayton be particularly requested to furnish a copy of the address for publication," — which request was complied with. This address is commended to the perusal of all for its minute relation of facts in the life of the subject of it, the fine display of his valorous services for the country, and the strong and graphic language in which every event treated of is related. Would that others of our distinguished dead had so capable and enthusiastic a historian!

State Convention.

At the session of the General Assembly of this State, commenced and held in the month of January 1851, an act was passed to call a convention of the people to revise the Constitution of 1831. There had been no steps taken, as provided for in that instrument, warranting the passage of any such law; but, nevertheless, a statute was passed on the 26th of Feb-

ruary, 1851, to take the sense of the people upon the question of a convention, at an election to be held on the first Tuesday in November then next following, those favoring a convention to vote "*for a convention,*" and those not favoring to vote "*against a convention.*" Other provisions were made in the same bill for holding the convention.

There are some words in our language, a skilful use of which always leads the public mind captive,—for a time at least. One of these is the word *reform.* There are but few men who are altogether content with what is around them; and they are never active citizens, and but rarely men of decided party attachments. But all the busy-bodies; the malcontents; the discontents; the disappointed aspirants for office; the would-be leaders of the people; the young men who are ready for anything, if they have no well-grounded moral principle; and that large class, whose misfortunes or follies have shipwrecked their fortunes, and who look forward only for *something which may turn up,* are sure to be for *reform.* The term sounds well; it played a successful part in 1831, *convention and reform* being then the catchwords, and it was not doubted that the phrase would be equally potent twenty years afterwards; and so in fact it was. A majority was *for a convention,* and the Legislature, on the 4th day of the following February, passed an act for holding it on the first Tuesday of December, then next, and for the election of delegates thereto at an election to be held on the preceding second Tuesday

of November. The mere politicians of the Whig party gave way to their fears that their opponents would reap rewards from the movement, and took part, in one way or another, in it, else it could have had no real strength. This is one of the fatal mistakes which manœuverers always make. As the call for the convention was deemed to be, in reality, a revolutionary act, under the disguise of law — the requirements of the Constitution for calling a convention not having been observed — Mr. Clayton resolved to defeat the object of the movers in the scheme, if possible. The Whig party had not yet been swallowed up by what was called the *American* movement; but had still much of that rare vitality which enabled it, so long, with a meagre majority of two or three hundred in the State, to resist the assaults of its watchful and astute adversary. It had been defeated, it is true, in the gubernatorial contest of 1850; but it still retained the Legislature and a majority of the popular vote, as appeared by other evidences. Such being the case, a convention, of one hundred delegates from each county, was called, to meet at Dover on the 8th of June, 1852, really to take action in regard to the convention, but apparently for other purposes also. It was composed of the best men of a party which (now that it is buried with the past of other political organizations) it can offend no one to speak of, at this day, or on this occasion, as a party that felt always the responsibility upon itself of selecting suitable men for important places. Before the convention adjourned,

it adopted and spread before the people an address, as an opposition to the legality of the proposed convention, which, for force and clearness of argument, vigor of expression, lucidity of language, and careful view of all the questions urged by the friends of the measure, and the refutation of them, is worthy of the highest praise. Mr. Clayton prepared it, and it answered the purpose — not to prevent the holding of the convention; things had gone too far for that — but to defeat its offspring, when submitted for approval by the people. It was rejected so decidedly, although a few able men helped to construct it, that the subject has never been seriously agitated since. By the time the ratification election came around, the conservative mind of our people had gained time for reflection; and they wisely determined "rather to bear the ills they *had* than fly to others that they knew not of."

Re-election to the Senate — Clayton-Bulwer Treaty.

The general election of 1852 resulted in giving to the Whigs a majority in the House of Representatives of this State; but the Democrats had the Senate. This condition of things was brought about through a breach in the ranks of the Whig party, caused by the secession, in 1850, of gentlemen who honestly thought thus to advance the cause of tem-

perance reform, though the Whig party might be defeated by their course. The great end of temperance legislation was thought to outweigh political considerations.

As the term in the United States Senate would expire on the 3d of March, 1853, it was said on all sides that the State would go unrepresented by *one* Senator in the 32d Congress; because the Democrats of the State Senate would not go into joint meeting, as the Whigs would have a majority when the two Houses were together. Mr. Clayton was in quiet retirement at Buena Vista, taking no active part in political affairs, and not desiring again to enter public life. He would have felt justified in his state of inaction, but for an event that roused him from his repose, and sent a thrill of excitement throughout the whole country. It was this:

On the 6th of January, 1853, General Cass introduced into the Senate, the subject of the Central American Treaty, heretofore spoken of, — commonly called the Clayton-Bulwer Treaty. This he did by way of what is called a personal explanation; and in making it, charged the late Secretary (Clayton) with having recognized the British title to Belize or British Honduras — and also, indirectly, with falsehood, in stating in his letter to Sir Henry L. Bulwer, of the 4th of July, 1850 (the day of exchange of ratification of the treaty), that the chairman of the Committee of Foreign Relations of the Senate, William R. King, of Alabama, perfectly understood that Belize

was not included in the treaty. Here was a charge of two things: the compromise of his Government, by the Secretary, and a false representation, as excuse for it. If there was anything that especially characterized Mr. Clayton, it was his complete understanding of every subject he undertook to deal with; and no man, also, was more sensitive when falsehood, in whatever form, was charged upon him. The imputation of false statement to the British diplomatist produced upon him the effect the direct charge by Lord Marmion wrought upon the old Douglas, "it shook his very frame for ire." His wrath was great, but what could he do? Answer the charges in the newspapers he promptly did; showing the facts and fortifying himself, in support of them, by testimony of others, including a letter from Col. King. All this was seen by the Michigan Senator, but he reiterated his charges, and as he was known to be a gentleman of vast information and influence, and had, but four years previously, been honored by his party with a nomination for the Presidency, the attention of the whole country was attracted to the controversy between these men — unequal, however, in one sense, that the *assailant* stood on the high plane of his Senatorial position — "the observed of all observers," while the *assailed* was withdrawn from conspicuity, by the obscurity of private life in the country. The newspaper press of General Cass's party, of course, made the most of the charges, and rung their changes from one end of the country to the other. The opportunity to crush the Whigs by show-

ing that their Secretary of State had, through ignorance, or worse, given away the interests of his country, and then basely tried to shield himself from the indignation such conduct deserved, was not to be neglected. What little of vitality there remained in a decaying organization that had proved to be, in its palmy days, and under the leadership as well of Clayton as of Clay, so sharp a thorn in the side of its great rival, was to be crushed out. The spur of destruction of a foe, was the prick to the sides of party intent: and it was used unsparingly. While the assault was commenced by General Cass — a very chivalric, though not always (as was proved in this case) safe leader — yet there were others prepared to follow and support him, as the sequel showed.

The people of this State were, of course, especially concerned about the charges of General Cass; but what could be done to place the antagonists upon the same footing? With the Legislature composed as it was — the Senate Democratic, the House Whig, — it was not supposed that a joint session could be secured, and Clayton sent back to his seat in the Senate. Men looked on, in grief and despair. The case seemed hopeless; an innocent man was to be ruined forever, in the estimation of his fellow-citizens, and there seemed no help for it. Such was the intensity of party feeling among us, that the Whigs had no hope that their idol could be sent back to meet his foes upon a common arena. They had seen, from the publication that Clayton had made, immediately

upon the opening of the charge by General Cass, that if an opportunity were given him to meet his accuser face to face, a complete defence and refutation would be made. But there was the obstacle of a hostile Senate — that could not be overcome!

Fortunately for the reputation of Mr. Clayton, and what is much more, that of his State — whose pride and honor, both friend and foe had felt, were safe in his keeping, but which would greatly suffer by the imputation cast upon him — party politics, though characterized in Delaware by the same zeal and fervor that prevailed elsewhere, had not yet made enemies of men, personally. Some of the strongest partisans in this State, of opposite politics, were warm personal friends; and it was the boast of our people, that none of the acrimony of party was ever, except upon the rarest occasions, at the polls, allowed to transfuse itself into, and transform the affections into hostilities. When the battle was over, all were friends. Besides, the people of our little commonwealth, with the Anglo-Saxon blood flowing in their veins, were lovers of fair play, and had ever, in their private and public life, accorded to a person accused the benefit of the legal presumption of innocence, till it was overcome by proof of guilt. These noble feelings, added to an admiration all felt for the talents and virtues of Mr. Clayton, stirred the Democratic heart; and, to their great honor, they consented to a joint meeting of the Legislature, so that Clayton should go back to Washington and meet his assailants at the bar of public

judgment. This determination on the part of the Democrats was greeted, everywhere, as an act of high patriotic conduct, as it deserved to be.

Mr. Clayton felt deeply grateful for his election, which took place on the 12th day of January, and came to Dover as soon as it was announced to him; and at the earliest period that preparation could be made for that purpose, entertained at dinner, at the chief hotel in Dover, the General Assembly, the State officers, and the principal men of both parties, all over the State, particularly selecting the leading Democrats, to whose party he felt so grateful for its magnanimity. The event was one never to be forgotten by those who were present. The best of feeling prevailed throughout; and the speech delivered by himself, when called out, was a calm, convincing statement of the propriety of his course in the treaty negotiation, and satisfied everybody that when he could obtain a hearing in the Senate, his vindication would be complete. He greatly pleased his political adversaries by the manly sentiments expressed throughout his remarks in regard to the relations of a personal kind, which should never be disturbed by the strife of party. Many who were present responded afterwards in a like spirit; and the occasion has ever since been regarded, by those who participated in it, as one of the most agreeable events of our party life in Delaware. Here and there, among a few men, the feeling so universal at that period, shows itself now-a-days; but the rule

is, either active personal enmity, or a smothered rancor, all the more bitter because concealed.

Eager to vindicate the Administration of General Taylor, on account of the treaty, and himself as our negotiator of it, and reassure the country, he lost no time in repairing to his post of duty; there was also the additional motive of shielding the State he loved from the dishonor and loss of prestige that would befall her, by the disclosure that one of her sons had proved faithless to, or ignorant of, the business he had undertaken to do. To those who knew Mr. Clayton's sensitive nature, it need not be said that he suffered intensely from the reflections that crowded upon his mind at this time, — and that he chafed at the time which must elapse, before the opportunity could be given him for his vindication. There was another sting added to these — that he should seem to have been "*outwitted*" by Sir Henry Bulwer. (Sir Henry had been trained in the school of diplomacy — a science requiring great natural acuteness of intellect, as well as intimate knowledge of international law, diplomatic history, and all the delicate and subtle arts — I will not say, of *finesse* — that qualify men for intercourse and negotiation as representatives of their Governments.) It galled him, that he, who as, he believed, had sounded the "depths and shoals" of all that his place required of him, should be thought to have given up anything he ought to have insisted upon, in making that treaty — should have recognized the title in the British to any part of Central America, which it was the inter-

est of this country he should not do. There was the further feeling, that his personal reputation would suffer with his friends, if it should appear to them that he was not equal to any task he saw fit to undertake. As I have said, he was deeply touched, that his political foes had given him the chance to explain and defend; and he gratefully remembered it as long as he lived.

On the 8th of March following his election to the Senate, Mr. Clayton entered upon his answer to the speech of General Cass — opening his address with this language:

"In rising, for the first time, after a long absence, to address the Senate, I labor under some embarrassment from observing that gentlemen around me are generally strangers to me, and that not a single individual of my ancient associates, who served with me in this body twenty-four years ago, is now present. I am irresistibly led back to the events of a period over which nearly a quarter of a century has spread its mantle, when those who filled this chamber, as the representatives of the sovereign States of this Union, mingled in discussion on the great issues then before the country, and when the walls of this chamber daily rang with the echoes of their voices, as they poured forth 'the logic, and the wisdom, and the wit,' for which they were so pre-eminently distinguished. Their debates were but justly compared to the procession of a Roman triumph, moving in dignity and order to the lofty music of its march, and glittering all over with the spoils of the civilized world. The last of them who

left this scene of their strifes and contentions, was the present Vice President of the United States, the Hon. William R. King, who presided over the deliberations of the Senate nearly twenty years, with unsurpassed ability and impartiality, and who, during a long period, occupied the post of chief distinction here, as the chairman of the Committee of Foreign Relations:

> 'Statesman, yet friend to truth, of soul sincere,
> In action faithful, and in honor clear.'

"I confess also, a feeling of embarrassment from another source. I am called upon to vindicate myself against charges of the grossest character, preferred against me here, during my absence. It is the first time in the course of a long life that I have found it necessary to defend myself against degrading imputations before any public tribunal. The calumnies which have been uttered here, were all made in connection with the treaty of the 19th of April, 1850; and I intend, if health and strength permit, to vindicate the course which I adopted while acting as Secretary of State under the lamented Taylor, in regard to the negotiation of that treaty. It is a duty incumbent on me to speak; not, however, merely for my own vindication, but to enable others now in the Administration of the Government to understand a subject upon which truth has been more perverted, and falsehood more industriously propagated, than on any other topic of the day. In discharging this duty, I shall endeavor to speak of others with all possible respect, consistently with what I owe to truth, to the country, and to myself. All who recollect my course of conduct when I occupied a seat in this chamber, will bear me witness that I never assailed any man per-

sonally in debate — never was engaged in any controversy, personal in its character, with any one, unless it was previously provoked by him, *odi accipitrem.* But now, let it be well understood by all here, that for every word I utter in debate, I hold myself personally responsible everywhere as a gentleman and a man of honor. I have very great contempt for that class of puppies whose courage is evinced by their silence when they are hung up by the ear. When attacked, I will defend myself, without the slightest regard to consequences; and in doing that, as I am liable to the infirmities of other men, I will carry the war into Africa whenever I think the assailant worthy of my notice. On this occasion much of what I had intended to say must be omitted, in consequence of the absence of the distinguished Senator from Michigan (Mr. Cass), who introduced the discussion in this chamber on Thursday, the 6th of January last. I regret his absence, and the cause of it. I cannot say those things which I had intended to say to him, if he were here, for I do not much approve of the modern plan of attacking absent men, who can have no opportunity of defending themselves on the spot. However, in speaking of the subject referred to in that debate, in which that Senator was my principal accuser during my absence, I must necessarily speak of him, because my own defence, for which I have demanded liberty of speech at the the first moment after the Senate could probably hear me, would otherwise be unintelligible. And I will say further, that I am willing to remain here till harvest, if necessary, in order that all others who may choose to reply to anything I shall say, may have full and ample opportunity of doing so."

Then followed a vindication of the Administration from the charges made against it, which enchained the attention of the Senate, and opened the eyes of the whole country also to the true facts which governed the negotiation of the treaty, as well as to the success of our diplomacy in securing the Central American territory, in all time, from colonization by the British, and from occupation, or fortification, for any purpose. We became equally bound, of course; but we had no foothold, or protectorate, there, as Great Britain had claimed to have, and besides, it was not our interest as a nation to own any territory in that quarter, separated by more than the width of the Gulf of Mexico from any of our possessions. What we desired, and what our interest required, was that the Central American States, having free government like our own, should preserve their autonomy, and that England should not possess, there, any power whatever. This was secured by the treaty — with the additional engagement to protect any persons, or company, who might undertake the business of digging a canal, or making a railroad, across any part of their territory. And there was secured also this further important stipulation — that each should endeavor to induce other nations to enter into like conventions.

It is entirely unnecessary to give the speech of Mr. Clayton, or those of the Senators, supporting General Cass, who replied to it, as they are printed at large in the *Congressional Globe.* Those Senators were Messrs. Mason, of Virginia, and Douglas, of Illinois —

both able men, the former of long experience in diplomatic affairs as a member of the Foreign Relations Committee, and the latter one of the most talented debaters that ever held a seat in the Senate. The speech to which they replied had been delivered by Clayton without any interruption, except a single explanation by Mr. Douglas, and was a calm, clear, exhaustive examination of the whole question from the beginning, and with an argument pervading it calculated to convince all rational minds that the interests and welfare of the country had been safe in the Secretary's hands. But either from being unable to view the matter in the light Clayton did, or failing to understand the true merits of the case and the difficulties that beset any attempt to make a treaty of *extrusion*, or possibly from a desire to belittle the services of the Secretary, and at the same time to create a subject for party service, those gentlemen brought to their aid, in their respective replies, an immense amount of ardor, and (what seemed to Clayton) not only uncandor, but fierce spirit of condemnation Leaders of sentiments, as those gentlemen undoubtedly were — the one of the strong anti-British feeling of the South, and the other of the rampant doctrines of *young America*, — their speeches attracted a great deal of attention. In the general ignorance of the whole subject which prevailed, men were more than usually inclined to rely upon the words of their party chiefs; and, as the Democratic party was in majority at that time, the treaty was in great danger of being

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