

political system. We do not say that he has never fallen into error of opinion; we cannot ascribe to him infallibility; but, as an honest man in the most extensive signification of the term, Mr. Campbell enjoys universal respect and confidence. He is a native of Georgia, and son of the late Col. Duncan G. Campbell, a distinguished citizen of that State. Mr. J. A. Campbell is probably thirty-eight years of age.

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## VI.

## AUGUSTIN S. CLAYTON.

THIS distinguished man has written his own history at the bar and in the many situations which he has filled worthily to himself and usefully to the public. With regard to his ancestors, his nativity, education, and early life, something will be said in another part of this memoir. The usual course will be somewhat varied, by proceeding at once to the manhood of AUGUSTIN SMITH CLAYTON and following him in his career of activity.

In 1810 he was twenty-seven years of age when selected by the Legislature to compile the statutes of Georgia from 1800. This work he completed, and soon afterward prepared a volume of Forms for Justices of the Peace and other public officers, with the common and statute law applied to the duties of each. It had a large circulation, being the first of the kind in Georgia. With careful revision by L. Q. C. Lamar, Esq., another edition went through the press, a few copies of which may still be found in the offices of some of the older members of the bar and magistrates.

His rank in the profession caused him to be elected a judge of the Superior Court in 1819, when there was a little more *aristocracy of merit* in fashion than the popular taste now chooses to patronize for judicial dignities or other high employments, and was re-elected in 1822. Besides performing the labors of his circuit faithfully and with much reputation, Judge Clayton contributed to the press many profound articles on the sources of Federal power, the sovereignty of the States, our Indian relations, and all that class of topics which divided the people of Georgia into two great political parties, designated as Troup and Clark, after the competitors for the Executive. The communications signed "Atticus," sustaining Gov. Troup and his measures, push-

ing the doctrine of State sovereignty far ahead of any previous avowals by politicians, were masterly performances, and exerted great influence over public opinion. Troup was elected Governor by the people in 1825; but the Legislature contained a majority of Clark men. The consequence was that Judge Clayton was not re-elected, though a candidate. He was succeeded by the Hon. William H. Underwood, as Judge of the Western Circuit. In 1828, he was restored to office; and during his term the great disturbances took place in the Cherokee nation, which taxed his energy of character and judicial firmness to an extent of which some details will be given.

In 1829, the Legislature extended the laws of Georgia over the territory occupied by the Cherokee Indians within the limits of the State, annexing it to the jurisdiction of certain bordering counties, by which the Western Circuit embraced a share.

Passing over the mania which drew hundreds of adventurers from all quarters—home and abroad—to trespass on the public lands in search of gold, so that Gov. Gilmer was induced to convene the Legislature in 1830 several weeks in advance of the usual time, only two or three principal cases with which Judge Clayton became officially identified are here noticed. One of these was the Indian Tassels for killing another Indian; a second was the case of Butler and Worcester, two missionaries who continued to reside in the nation contrary to law, which made it a penitentiary offence for any white person to reside among the Indians without first taking an oath of allegiance to the State of Georgia, except public agents. The third difficulty arose by an attempt on the part of the Cherokees, through their counsel, Mr. Wirt, to assert their independent national character before the Supreme Court of the United States against the alleged usurpation of Georgia. Mr. Wirt wrote a letter to Gov. Gilmer, suggesting the propriety of making a case by consent, the purport of which was communicated by Gov. Gilmer to Judge Clayton, under date of July 6, 1830. The following is the closing paragraph of Gov. Gilmer's letter\* to Judge Clayton:—

There is, too, no probability that the State of Georgia would submit to the orders of the court if it should determine that the laws of the State in relation to the Indians were void. It is therefore important that no case should be transferred from the courts of the State to the Federal courts. I have been induced to write thus freely and fully, because it is understood at Washington City that you are desirous that the Federal court should assume the jurisdiction of determining the extent of the

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\* Georgians, p. 357.

right of the State to govern its Indian people. I have no doubt but that the opposition are very desirous of bringing that question before the Federal court, in order to keep up the resistance of the whites and the half-breeds to the removal of the Cherokees. Our lawyers ought to know the object of the opposition, and refuse to be concerned in such a case.

At August Term, 1830, of Clark Superior Court, in his charge to the Grand Jury, Judge Clayton said :—\*

Besides the fact officially announced in the council of the Indians lately assembled, I have received information from the Executive branch of this Government that counsel have been employed by the Cherokee nation to raise, for the adjudication of the Supreme Court of the United States, the question "whether the State has a right to pass laws for the government of the Indians residing within its limits." Now, without intending the least disrespect to that court, to whose Constitutional authority this and all other State courts will, I hope, cheerfully submit, this question can never go up from a court in which I preside until the people of the State yield it, either from a conviction of error, ascertained by their own tribunals, or the more awful sense of their weakness to retain it.

Again, in another part of the same charge, he says :—"So long, however, as the law remains unrepealed, the country has a very solemn pledge that it shall be faithfully and impartially administered so far as I am concerned. I only require the aid of public opinion and the arm of the Executive authority, and no court on earth besides our own shall ever be troubled with this question."

Though Georgia *declined* obeying the mandate of the Supreme Court citing her to appear before that tribunal, the case of the Cherokee nation was submitted and determined, after solemn argument for the plaintiffs.† The Indian Tassels, who was convicted of murder, sought the protection of the Federal courts in vain. Sentence was executed in defiance of an informal service of process, and *no collision between the two sovereignties* was produced thereby.‡ The missionaries§ also tried their fortunes in the Supreme Court, and failed to obtain their liberation; whereupon the subject was brought before Congress, in June, 1832, on a memorial from Dutchess county, New York, by Mr. Pendleton, to authorize their discharge by *habeas corpus*,—which was laid on the table in the House of Representatives by a vote of 105 to 57. Judge Clayton was a member of the House at the time, but from a proper sense of delicacy did not speak on the question. The rights of Georgia were ably vindicated by her other sons on the floor, and among them the Hon. Henry G. Lamar and the late

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\* P. Clayton's pamphlet, p. 9.

† Georgians, p. 873.

‡ 5 Peters's Rep. p. 1.

§ 6 Peters's Rep. p. 515.

Hon. Thomas F. Foster, both of whom replied to the assaults on Georgia.

It is only an act of justice to the liberality of the Executive to say that, when the twelve men who had been convicted in Gwinnett Superior Court, at September Term, 1831, for illegal residence in the Cherokee territory, arrived at the penitentiary, and before they were imprisoned, Gov. Gilmer\* offered them all a full pardon if they would give assurance not to violate the law again. They all accepted the terms and were discharged, except Worcester and Butler, who preferred suffering as martyrs to their principles,—as they assumed by their obstinate course.

A little anecdote went the rounds of the newspapers at the time, in substance that Judge Clayton attended church in Philadelphia on the Sabbath, when a very earnest prayer was offered by the minister in behalf of the poor missionaries imprisoned in Georgia, and for the *cruel judge* who passed sentence of condemnation upon them! Little did the minister and audience suspect that the “cruel judge” was present and heard the prayer, and who, no doubt, heartily joined in the supplication.

As the case of the missionaries excited much attention, a more particular notice is here given of the proceedings. The defendants, Elizur Butler and Samuel A. Worcester, were indicted at September Term, 1831, of Gwinnett Superior Court, for the offence of residing in that part of the Cherokee nation attached by the laws of Georgia to said county, without a license or permit, and without having taken the oath to support and defend the Constitution and laws of the State of Georgia, as required by the act of the Legislature passed December 22, 1830. They severally pleaded to the jurisdiction of the court. The following extract shows the nature of the pleas:—

And the said Samuel A. Worcester, in his own proper person, comes and says that this court ought not to take further cognizance of the action and prosecution aforesaid, because, he says, that on the 15th day of July, in the year 1831, he was and still is a resident in the Cherokee nation; and that the said supposed crime or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this court, and not in the county of Gwinnett, or elsewhere within the jurisdiction of this court. And this defendant saith that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation in the capacity of a duly-authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the

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\* Georgians, p. 421.

President of the United States, and has not since been required by him to leave it; that he was, at the time of his arrest, engaged in preaching the gospel to the Cherokee Indians, and in translating the Sacred Scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the Government of the United States for the civilization and improvement of the Indians; and that his residence there for this purpose is the residence charged in the aforesaid indictment; and this defendant further saith that this prosecution the State of Georgia ought not to have or maintain, because, he saith, that several treaties have from time to time been entered into between the United States and the Cherokee nation of Indians, to wit:—

At Hopewell.....	November 28, 1785,
Holston.....	July 2, 1791,
Philadelphia.....	June 26, 1794,
Tellico.....	October 2, 1798,
Tellico.....	October 25, 1804,
Tellico.....	October 27, 1805,
Washington City.....	January 7, 1805,
Washington City.....	March 22, 1816,
the Chickasaw Council-House.....	September 14, 1816,
the Cherokee Agency.....	July 8, 1817,
Washington City.....	February 27, 1819,

All which said treaties have been duly ratified by the Senate of the United States of America; and by which treaties the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized to govern themselves and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America in reference to acts done within their own territory; and by which treaties the whole of the territory now occupied by the Cherokee nation, on the east side of the Mississippi, has been solemnly guaranteed to them; all of which treaties are existing treaties at this day, and in full force.

The plea alleges other matter to render void the action of the Georgia Legislature over the Cherokee Territory, and thus concludes:—

Therefore this court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence or offences alleged in the bill of indictment, or any of them; and therefore this defendant prays judgment whether he shall be held bound to answer further to said indictment.

Judge Clayton, who presided at the trial, overruled the plea, and, upon hearing the evidence, the defendant was convicted by the jury. The following order or sentence was then passed by the court:—

The State *vs.* B. F. Thompson and others. Indictment for residing in the Cherokee nation without license. Verdict, Guilty.

The State *vs.* Elizur Butler, Samuel A. Worcester, and others. Indictment for residing in the Cherokee nation without license. Verdict, Guilty.

The defendants in both of the above cases shall be kept in close custody by the sheriff of this county until they can be transported to the penitentiary of this State; and the keeper thereof is hereby directed to receive them and each of them into his custody, and keep them and each of them at hard labor in said penitentiary for and during the term of four years.

A writ of error was allowed by Associate-Justice Baldwin, and a mandate issued to the State of Georgia to show cause why the judgment of the Superior Court should not be reversed by the Supreme Court of the United States, which mandate was served on Gov. Lumpkin and on Charles J. Jenkins, Esq., Attorney-General, returnable on the second Monday in January, 1832. The exemplification of the proceedings in Gwinnett Superior Court was certified on the 28th day of November, 1831, by John G. Park, Esq., the Clerk. The State authorities paid no attention to the mandate, and declined appearing in the appellate court.

The case was argued for the plaintiff in error by Messrs. Sargeant, Wirt, and E. W. Chester. The last point taken was,—

4. That the indictment, conviction, and sentence, being founded upon a statute of Georgia which was unconstitutional and void, were themselves also void and of no effect, and ought to be reversed.

The opinion of the court, delivered by Chief-Justice Marshall, was very elaborate, reviewing all the authorities, with conclusion:—

It is the opinion of this court that the judgment of the Superior Court for the county of Gwinnett, in the State of Georgia, condemning Samuel A. Worcester to hard labor in the penitentiary of Georgia, for four years, was pronounced by that court under color of a law which is void, as being repugnant to the Constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.

The same judgment was given in the case of Elizur Butler, plaintiff in error, *vs.* The State of Georgia, and a special mandate was ordered to the Superior Court of Gwinnett county to carry the judgment of the Supreme Court into execution.

Again the State authorities heeded not the judicial thunder from Washington City, and the missionaries were kept in prison, working out their term, until at length they notified the Governor that they had abandoned their cases in the Supreme Court, and all expectation of relief from that quarter, and threw themselves on the clemency of the Executive. Georgia having vindicated her sovereignty, and no sign of opposition to the exercise of her rights

appearing from any quarter, Gov. Lumpkin but reflected the wishes of his constituents when he granted a pardon to these misguided men and set them at full liberty.

Butler and Worcester returned to the Cherokee nation, resuming their missionary labors, and when the Indians removed they accompanied them to the West, where, in all probability, they still reside. To show the work they were engaged in some ten years ago in the Cherokee nation west of the Mississippi, a report from Mr. Worcester to the United States Agent is here introduced, from Document No. 4 (p. 360) of the House of Representatives, which accompanied the President's Message to Congress in 1846:—

PARK HILL, August 18, 1846.

SIR:—In reply to your communication of July 3, received August 12, permit me to say, first, in regard to the number of preachers in the Cherokee nation, under the care of the American Board of Commissioners for Foreign Missions, there are at present,—

*Missionaries.*—Rev. Elizur Butler, M.D.,\* at Fairfield,  
Rev. Worcester Willey, at Dwight,  
Rev. S. A. Worcester, at Park Hill—3.

*Native Preachers.*—Rev. John Huss, at Honey Creek,  
Rev. Stephen Foreman, at Park Hill—2. Total, 5.

Rev. D. S. Buttrick still resides at Dwight, but has asked and received a dismissal from the service, being in very feeble health.

The numbers of churches under the care of the missionaries of the same board, as nearly as known, are,—

Church at Dwight .....	45
Fairfield.....	88
Park Hill.....	35
Mount Zion.....	30
Honey Creek .....	51
	249
Total.....	249

The only schools at present under the care of the board, in the nation, are a female boarding-school at Dwight, and neighborhood schools at Fairfield and Park Hill. The last-named has, for some time past, been partly supported by tuition-fees from the scholars. Respecting the schools at Dwight and Fairfield, you will, I suppose, receive information from the missionaries at those stations. The school at this place the past year has had only about 33 scholars in all, attending more or less. Average about 16. Five were whites, (four of them my own children,) the rest Cherokees.

You are aware, I suppose, of the existence of the printing-press under

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\* Dr. Butler died at Van Buren, Arkansas, February 4, 1857, aged sixty-two years.

my care at this station. Since my last report to your predecessor in office, which was dated July 18, 1845, we have printed,—

*In the Cherokee Language,*

		PAGES IN ALL.
The Cherokee Almanac for 1846,		
half English.....	12mo.....36 pp.....1000 copies...	36,000
Cherokee Primer, fifth edition .....	24mo.....24 pp.....5000 “	120,000
Sermon and Tract.....	24mo.....24 pp.....5000 “	120,000
		276,000

*In the Choctaw Language,*

Regeneration, Repentance, and Judgment	12mo, 28 pp., 2000 copies...	56,000
Salvation by Faith, and other pieces....	“ 12 pp., 2000 “	24,000
Fraud Detected and Exposed.....	“ 9 pp., 2000 “	18,000
Choctaw Arithmetic.....	“ 72 pp., 2000 “	144,000
Choctaw Spelling-Book.....	18mo, 86 pp., 1000 “	86,000
Choctaw Spelling-Book.....	“ 108 pp., 1000 “	108,000
		386,000

*In the Creek Language,*

Muscogee Catechism .....	24mo, 31 pp., 600 copies...	18,600
Total pages .....		680,600

We have prepared at this station, and had printed in Boston, a Singing-Book in the Cherokee language, consisting of 88 pages, 8vo, 600 copies.

Very respectfully, yours,

S. A. WORCESTER.

Colonel JAMES McKISSICK,

*United States Agent for the Cherokees.*

In November, 1831, the Troup party, to which Judge Clayton belonged, had a majority in the Legislature, and of course the power of electing judges for all the circuits, except one or two which had to be chosen at another session. Owing to some decision which he had made, sustaining the right of the Indians to dig gold on the lands to which their possessory title had not been extinguished, he rendered himself unpopular, and he was superseded in office by the Hon. Charles Dougherty. There is no doubt that Judge Clayton was intensely mortified at his defeat. He felt conscious of having acted right, according to his honest convictions of duty, without regard to the caprice or interest of lottery-speculators or other classes, who considered it almost a crime to allow that the Indians had any rights at all in competition with the desires of the white man. It was not in the nature of Judge Clayton to hesitate between principle and expediency. The latter had to yield at any cost, as became a virtuous man and upright judge.

The confidence and respect of his political friends did not in the least abate, though he was not continued on the bench. There being a vacancy in Congress caused by the resignation of Gov. Lumpkin, they nominated him to fill it, and he was elected. A new



career was thus opened to him, in which he acquitted himself with distinguished ability. The two leading measures which engaged most of his attention in the House of Representatives were the Tariff and Bank of the United States. His course on both will briefly appear in these pages.

While the bill proposing a reduction of duties on imports was under consideration in the House of Representatives, June 10, 1832, Judge Clayton offered an amendment to the effect,—

1. That, after the first day of January, 1835, all duties should be *ad valorem*, and for no other object but *revenue*.

2. That, for the first year, all duties above should be reduced to 35 per cent.; for the second, 25; and after that they should be regularly 15 per cent., until altered by law.

3. That, for the purpose of constitutionally and equally protecting manufacturers, Congress should freely give its consent to any State that chose to manufacture to lay such duties as it might deem necessary to encourage that business within its own limits upon any imports or exports to or from any foreign nation: *Provided*, such duties were paid into the Federal treasury.

He at the same time delivered a carefully-prepared speech, filling a pamphlet of more than forty pages of large size. In the first paragraph he remarked:—

Mr. CHAIRMAN :—The question before us is *an important one*; and if appreciated in the degree of its profound interest, and the still more absorbing character of its probable results, it involves a responsibility too big for utterance. To my mind, admonished by facts, and warned by the feelings of the country, I am almost tempted to predict that, unless an auspicious issue attends the present deliberations, they are the last that will ever engage the attention of this body within these walls. It is not now a question of dollars and cents, but of LIBERTY and EQUALITY. Every thing done on this occasion will soon be delivered over to history, and he who now stands by the cause of freedom, posterity will stand by him. A fame of enduring honor awaits the firm, and a name of lasting infamy shall follow the faithless.

Judge Clayton then proceeded to examine the powers of the Federal Government, resorting copiously to the fathers of the Constitution and other statesmen of that day. He denied that burdens could be imposed on one section of the country for the benefit of another section. His arguments were searching, and well supported by authority. To abridge them would be unjust, and to insert them entire would occupy too much space in this memoir. After showing the unconstitutionality and injustice of a tariff for protection, and enumerating the grievances of the South, Judge Clayton said:—

These are the oppressions of which I promised to speak, and which rise superior to all law, and would of themselves, though they violated no written principle of the Constitution, justify a people "in the pursuit of life, liberty, and happiness" to provide themselves with new forms of government. I stated in a previous part of this argument that an admission on the part of our adversaries that the consumer pays the tax would be sufficient for my purpose in establishing the great inequality of the burdens, and that it rested upon the Southern people. I think I have made out the case. I will now attempt to show what is very much disputed,—that the producer pays the tax, or that the coincidence between the producer and consumer is so little variant as to make no sensible difference in the two characters.

I shall show it in three relations: first, in that of an individual, secondly, as a family, and, lastly, as a whole country; and I shall select the article of cotton for the illustration. If all the cotton of the South, which is said to be one million of bales, was made by one individual, and he were to carry it to Liverpool, sell it for cash, (say \$30,000,000,) lay it out in goods, and bring them to this country, he would have to pay one-half in duties. This, however, it is said, returns to him when he sells out the goods to the various consumers. But as money, which is the only free-trade article in the world, is as much property as goods, and as liable to taxation, suppose, instead of bringing back goods, the individual should bring back the proceeds of his cotton *in cash*, and should find a duty upon that as well as goods: does not every one perceive that his fifteen millions of taxes would go into the public treasury without the hope of any future recovery, and consequently, as producer, he will have paid the tax on the whole of that article? Now, that same result would run through the sales of all the planters if they sold the cotton themselves, and paid the tax on their money instead of paying it on the articles they consume.

2. I contend that the consumption of a family whose head is a producer extends to all persons that draw upon his produce for any services rendered him. That is to say, his blacksmith, tailor, carpenter, schoolmaster, shoemaker, physician, and indeed all whose labor he has employed, are as much his family as if they lived in the same house with him, and, to the extent of their several demands against him, are, with him, not only consumers, but producers; for his production constitutes a part of their production, and with it they purchase their articles of consumption. By reason of this connection, unless the producer has a balance left after defraying the expenses of his family, he is the payer of all the taxes to which his crop has been applied. And who, I would ask, in any part of the South, is able, under such a burden of duties, to meet all his engagements? I know I am as economical and saving a planter as any of my neighbors, and I declare to this House, if it were not for other resources which it has been my good fortune to enjoy, my planting-interest would not have supported my family: and this, I can safely say, is the condition of thousands upon thousands.

3. The tariff-system proceeds upon the principle that the Northern manufacturer cannot labor as cheap as the English manufacturer. And what is thought to be the difference? Surely, this is indicated by the average per cent. of duties laid upon the articles which the last fabricates; and that, we have seen, is fifty per cent. Everybody perceives the American manufacturer cannot compete with the European. What is to be done? The former looks away to the South, and there finds a people

who make the raw material that supplies the latter, and for which they receive his manufactures. The Northern manufacturer immediately sets about a contrivance to cut off the trade between these two parties. What is it? By the artful device of legislation he imposes a duty of fifty per cent. on the foreign manufactures: this at once raises them to the price of his own. Now, what is the effect—nay, what is the real motive—of this measure? Is it not, first, to divert the trade from the European, and, second, to divert the raw material to the American, manufacturer? Suppose, then, it should succeed to the extent of the wishes of the friends of the tariff, that the trade with Europe should cease altogether, and every pound of cotton should go to the North: is there any man so blind as not to see that the producers of this article have not only lost their former market, where they were in the habit of getting what they wanted at half-price, but have been compelled to exchange it in another market at a loss, by way of bounty, of half its exchangeable value? By this process the English manufacturing-labor is raised to the price of the American, and actually done at the expense of the Southern planter. Then, as producers of the article of cotton, they do most unequivocally throw into the lap of the Northerner the fifty per cent. which raises the labor of the English manufacturer. Thus I have shown, as an individual, as a family, and as a country, the producer pays the taxes of imports. But, I will repeat, it is enough for us, and more than we can bear, to pay it as consumers.

It is needless for me to say that this is the effect produced upon all our valuable staples in the South; and we have now a new article of production which will be subjected to its ravenous appetite. I allude to the immensely valuable gold-mines stretching from Virginia to Alabama. Every dollar that is raised by the gold-digger—and surely no one works harder for his money—will be immediately divided with the rapacious manufacturer. Because it is gold, and almost money itself, it will not escape the fate of cotton, rice, and tobacco; for they are taken from the earth by the same hard labor, and quite as convertible into money. Little does the hard-working miner dream that, while standing in water to his knees, with a scorching sun blistering his back, every stroke which is applied to the unyielding rock presents a case in which one is for himself and the other for a Northern master.

Amplifying these views still further, Judge Clayton referred to the examination of Dr. Franklin before a committee of Parliament previous to the Revolution, in which he stated that “an external tax is a duty laid on commodities imported; that duty is added to the first cost, and other charges on the commodity, and when it is offered for sale makes a part of the price,” and then proceeded:—

The gentleman from Pennsylvania (Mr. Stewart) has said such has been the improvement of machinery in England that one million of hands can perform the labor of two hundred and fifty millions. Then, sir, just mark the consequence: if labor is multiplied two hundred and fifty fold, an article must be cheapened almost in the same ratio.

But, sir, if high duties cheapen articles, there must be a point to which, if the duties are raised, the goods will come *at nothing*. If the gentleman will sit down, and, with his immense powers of calculation, just demonstrate that exact point to my satisfaction, from that moment I am a tariff-

man: I will give up my opposition and fall into the ranks. I greatly fear, however, that it will turn out like the case of the stoves. You have all heard of the Yankee who, in describing the great advantages of his stoves to an Irishman, said, among other things, not that high taxes cheapened the article, but that they saved half the firewood. "Then," said the Irishman, "I will take two of them and save the whole."

Why is it, Mr. Chairman, if high duties cheapen articles, that so many letters from manufacturers have been read upon this floor, stating that their business will be utterly ruined if the duties are reduced? That must be a bad rule that don't work both ways. One would suppose that if you raised a duty from a given point, and the price of the article fell in consequence of it, it would surely rise up to the same price if you took the same duty off. This is a very curious matter, Mr. Chairman. Would you believe it? the country presents this singular aspect:—one portion is crying to be relieved of taxes, without which they must be ruined; while the other part bitterly complains that, if you take off their taxes, *they* will be prostrated! I would rather *guess*, meaning no offensive allusion, that this fact points to the quarter where live the tax-paying *consumers*.

This same gentleman made another remark, at which I should have felt, if not contempt, at least indignant, if I had not believed that just at that moment he became greatly shortened of ideas, and that he did not know exactly what to say, for everybody saw that he was evidently *stumped*. I mean his saying that the Southern people wanted to make the Northern free laborers slaves to their free negroes. For the reason just mentioned, I will pass over this *came-by-chance* piece of wit, and examine his doctrine as to the great difference between free and slave labor. Mr. Chairman, this distinction has been mentioned frequently on this floor, and I confess it has excited my supreme disgust every time. What do they mean? Does the offspring of that very ancestry who made not only their livelihood, but the very fortunes which now constitute the capital of the American system, by trading in human flesh,—who robbed fathers of their children, children of their fathers, husbands of their wives, and wives of their husbands, and carried them to be sold to the Southern States,—now dare to reproach me with the sin of slavery? Oh, no, sir! it cannot be! They greatly mistake the matter if they think we feel the slightest emotion at such a censure. The only wonder is how it can be made without a blush.

But, sir, I have lately been as far as Philadelphia, (for the first time in my life,) that city of brotherly love, and wish gentlemen to explain some things which I saw there, first asking them if they make any difference *there* between *free negro labor* and *free white labor*,—for these two classes seemed to perform promiscuously all the menial services. If they do, then I would beg leave to have these difficulties solved. In the hotel where I stayed a free negro waited on my table and a white man cleaned my boots: which of these was the free labor? They were both equally polite, and they both made the same *foot-scraping* bow when I gave them a quarter of a dollar. I saw in the same city a free negro mounted on the box of a coach, and a white man behind it: the latter let out the grandee which it contained at the door, while the former sat like a lord on his seat. Which was the free labor in this case? This is only one class of service.

Now, sir, I happen to know something of the *free labor* in cotton-factories. When the factory in which I am concerned first started, we had a

good old honest gentleman from the North connected with us, and we commenced chiefly with white hands. He happened to bring with him a printed copy of rules and regulations, such as are used in Northern factories, and which he wished adopted in ours. They had a striking analogy to penitentiary regulations. They required that the poor little hands should be at their work by light, should have three-quarters of an hour to eat their breakfast, an hour at dinner, should labor in winter until seven o'clock at night, should have a part of their wages remitted for any part of the machinery which they broke or injured, every skein they tangled, every five minutes they were absent,—indeed, just enough of pains and penalties to take all their wages. Besides, the *strap* was to be used if necessary. It is scarcely necessary to say, Mr. Chairman, such rules were scouted from our establishment. We soon told our friend the free people of the South would not bear that kind of regimen; indeed, it would hardly do for our slaves. Now, sir, where is the difference between this kind of labor and slave labor? I can tell you, sir, it is only in the color of the skin and the duration of the service. The same capital that buys a slave for life can hire one for a day; and, during these respective periods, the quality of the service is exactly the same.

But, sir, this very distinction serves to show what power will finally do in this matter. If, under the present tariff-system, it is boldly claimed for free labor, as it is called, a legislative privilege over slave labor, what will they not do when we begin to manufacture with our slaves? If we should be driven to this business, which I verily believe we can more profitably conduct at the South than it is at the North, will not the same power which sets up the right of preference now exact it hereafter by some discriminating tax upon slave-labor productions over those of free labor? No doubt of it. So that, if this distinction is to last, I boldly affirm we cannot live together, and the sooner we part the better.

In the speech just quoted, Judge Clayton made a statement similar to the following, respecting the profits of the factory near Athens:—

*Letter from Judge Clayton to the Editor of the Globe.*

MR. BLAIR:—I notice in the *Boston Courier* an extract of a letter from me in answer to one asking information on the subject of a cotton-factory in which I am concerned, for the use of the New York Convention. I regret the whole letter was not published, and ask now the favor to have it done, and especially to give its true date, for I know it was written in time for the Convention, which met in October. The letter purports to have been written on the 7th December, 1831, and the garbled extract is intended to convict me of inconsistency. There is not, however, the slightest difficulty in this thing, and I am glad the matter is so much questioned as not only to give great uneasiness to the manufacturing gentlemen, but to afford me an opportunity of exposing their long-concealed impositions. In the month of January last our company purchased out the Northern partner, which made it necessary to go into a full investigation of our concerns, and to take an accurate account of every thing we had done, which had never before been even attempted; for most of our yarns and cloths had been placed in the hands of distant agents and scattered throughout the State, from whom we had not received regular

returns. Since my arrival here I have been advised of the settlement, and the following are some of the extracts of letters on the subject.

One of the partners writes, under date of Feb. 9, 1832 :—"The old gentleman hates to give up. He says we are making at the least calculation 200 per cent. clear." My son, on the 15th of April, informs me that, after much difficulty with our Northern partner, he claimed nearly twice as much as the rest conceived to be due. The affair was referred to arbitrators of his own choosing, and their award gave the following uncommon result :—

"Capital, \$4004 98—His nett profits, \$4182 78."

This included the business from about the 1st of January, 1830, up to the 1st of January, 1832.

One of the arbitrators writes, 2d of May :—"You have no doubt been informed of the settlement of the factory-business. Thereby I had a peep into your affairs, and, without publishing it abroad, I will say that beyond all doubt it is the best investment of money in Georgia, so far as I know or believe. It is a great business indeed, and increasing in profit."

By this time, I apprehend, all the inconsistency has vanished. When I wrote in *September* (as I believe) we had made no dividend, nor had we down to that time done any thing but spend money, for we kept increasing our machinery from the proceeds of the factory; but, as well as I can now recollect, that letter gives a flattering account of our future prospects, which seem to have been even "brighter" than I had anticipated. But for the purchase above mentioned we should not have known our true situation perhaps for a year to come. As soon, however, as I did know it, I was determined the world should know the truth about it; and I only wish, instead of trying to smother its effect, the example could be followed by those gentry who do not like to give up their *cent. per cent.*

I will take this occasion to correct the report of my speech, as far as it is given. I am made to say that I had "operated as a sponge upon my neighbors, and had sucked up this from their hard earnings." This is not what I said. My remarks were these: "If the capital invested by the company to which I belong, say somewhere about 30,000 dollars, has doubled itself in two years, what is the consequence?—The gentleman from Tennessee, (Mr. Bell,) who so eloquently painted the exactions and influence of wealth, and the miseries which the sudden and rapid accumulation of money must create in any community, spoke truly when he said some one must lose when another gains. Now, sir, apply this truth to the fact I have related. Thirty thousand dollars, in two years, have been soaked up as with a sponge within a certain circumference. While we have gained it, our neighbors have lost it; and though they are too generous to complain of *us*, knowing that neither our motives or feelings so enter into the system as to desire its continuance at the expense of principle, yet this is its true effect throughout this whole country. And yet it must be helped by the hard-handed labor of our honest planters, to whose fruits all other trades and professions must look for support."

A. S. CLAYTON.

July, 1832.

As a zealous opponent of the protective policy, Judge Clayton actively assisted other gentlemen who had assembled at the college commencement in Athens, August, 1832, to get up a State Convention against the Tariff. For this purpose a circular, signed by

the Hon. J. M. Berrien, A. S. Clayton, and others of the committee, was issued, inviting the people of Georgia to send delegates to an Anti-Tariff State Convention, to be held at Milledgeville in November then next ensuing; in compliance with which, primary meetings were held in most of the counties and delegates chosen. The result was the assemblage of delegates from sixty counties (four-fifths of the whole number in the State) in a deliberative body distinguished for intellect and high moral position, over which Gov. Gilmer presided. A list of delegates and a more particular account of its proceedings may be seen in another part\* of this work. The Committee of Twenty-One, to report matter for action, consisted of Messrs. Blackshear, Berrien, Forsyth, Cumming, Clayton, Cuthbert, Gamble, Reese, Spalding, Tait, Rockwell, Beall, of Bibb, Taylor, of Burke, Bailey, Warner, Dawson, Haynes, Gordon, of Putnam, Clark, of Henry, Janes, and Harris.

Most of these names are well known to the public; several belong to fame.

Judge Clayton had another opportunity of assailing the Tariff, at the great State-Rights meeting in Milledgeville, November 13, 1833, over which the Hon. C. B. Strong presided. Hon. N. C. Sayre and Hon. A. B. Longstreet were the Secretaries. On motion of Judge Clayton, it was

*Resolved*, That a committee of thirteen be appointed by the chairman, to prepare resolutions expressing the sentiments of the State-Rights party in this State, and report to this meeting at its sitting.

The following gentlemen were appointed the committee:—Judge A. S. Clayton, Judge William H. Crawford, Dr. W. C. Daniell, Col. Seaborn Jones, R. W. Habersham, D. P. Hillhouse, Col. S. Rockwell, Col. A. H. Chappell, Col. Geo. H. Young, Gen. R. A. Beall, Col. Newton, Gen. Eli Warren, and Judge Charles Dougherty.

The report of the committee was made by Judge Clayton, as chairman, condemning the Tariff, Proclamation and Force Bill, and, among other things,—

*Resolved*, That the present meeting be organized into an association to be denominated the STATE-RIGHTS PARTY OF GEORGIA, and recommend meetings in all the counties for the purpose of constituting similar associations to be connected with that which will be formed at Milledgeville as the central association.

*Resolved*, That the doctrines of the Virginia and Kentucky resolutions, as construed and understood by Mr. Jefferson, and triumphantly acted upon in 1825, '26 and '27, in this State, constitute the creed of the State-Rights party of Georgia, and that, as all unconstitutional laws are null and void, we will, whenever the proper exigency arises, resist them in any manner the sovereign power of the State may order and direct.

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\* Memoir of R. A. Beall.

The report was taken up by sections and agreed to. This was the first "platform" ever laid down in Georgia by a political party with a view to organization.

It is not deemed necessary to follow Judge Clayton any further in his consistent and persevering efforts to abolish a protective tariff. His sentiments have been fully announced.

His course on the Bank question will next be considered. How much earlier than 1830 Judge Clayton waged open hostility to the Bank of the United States, the author is not prepared to state; but in that year he published a very caustic review of Mr. McDuffie's celebrated report in Congress vindicating the institution. He charged that the main and most forcible arguments of the report were *plagiarized* from certain proceedings in Philadelphia adopted by the leading supporters of the bank, among whom were the best legal and commercial minds of the North. Judge Clayton knew the power of his adversary, and employed his utmost ability to overwhelm him. The review was artistically pungent, and replete with scornful declamation, as if he expected to conclude all reply. Mr. McDuffie issued his manifesto in strong but courteous language, declaring that the report was entirely his own work, and that the imputation of *plagiarism* was technically a *libel*, for which a court of law would grant him redress, if he chose to invoke that tribunal; and that he required no other expounder of the doctrine of libel than the learned jurist who had perpetrated it upon him to serve a cause. The controversy did not become personal; nor was it intended as such. The two gentlemen respected each other's character, while they warred as giants, with sword and shield, for honorable victory. They afterward served in Congress together, and the matter was no doubt forgotten. A public dinner was given to Mr. McDuffie at Athens, in 1833, at which Judge Clayton performed the civilities with his usual elegance and humor.

On the 2d of March, 1832, the House of Representatives had under consideration a resolution offered by Mr. Clayton in the following words:—

*Resolved*, That a select committee be appointed to examine into the affairs of the Bank of the United States, with power to send for persons and papers, and to report the result of their inquiries to this House.

The speech delivered by Mr. Clayton in support of his motion for a committee covers some forty pages in pamphlet. In the beginning, he stated that his opposition to the bank was no recent thing,—that he had been writing against it for seven years,—and he referred to the gentleman from South Carolina (Mr. McDuffie) to



bear him out in the assertion, for he had "not even spared his own far-famed report."

Upon all subjects which he discussed, Judge Clayton evinced much warmth, and at times used expressions which his friends and admirers had cause to regret. For instance, the word *italicized* by the author (a liberty which he takes with reluctance) in the following sentence is not in the very best taste; and certainly a better word could have been selected to make as strong an impression:—

When I perceive gentlemen affirming, with so much earnestness, that it is all-important to recharter the bank at this time, that it is unfair and ungenerous to assail it upon political considerations, and that the present measure is intended not so much for the purpose of faithful inquiry as to avoid the exercise of honest responsibility, I stand ready to declare, by every sanction imposed under the highest solemnity,—nay, by all my hopes of peace here or hereafter,—that my opposition to the bank is founded upon its sole, separate, naked, and individual unworthiness, unconnected with any consideration save the *damning* influence it has already exerted, and will continue to spread, over every interest in this young and growing country.

After many allegations to prejudice the public, founded no doubt in sound policy respecting the bank, Judge Clayton said:—

I do not intend to go fully into the merits of the bank question at this time: I hope on another occasion to probe that matter to the bottom. I merely wish to explain the nature of the charges which I have brought against the bank, occasionally throwing out such reflections as are obviously connected with the facts, and well calculated to stamp those facts upon the mind with a steadfast and abiding impression. A few of those general ideas at this part of our discussion will not be unprofitable, especially as I design what I am now about to say more for the public ear than for the benefit of this House. I will candidly confess that I am extremely anxious to use my present station to speak to the people on the subject of this destroying bank, and to urge them, by every consideration which can forcibly appeal to the love of country, to a regard for their government, to a respect for liberty and equal rights, to their hatred of monopolies, to their disgust for extortion, to their horror of oppression, and their detestation of privileged orders in this happy country, to pause before they permit the continuance of an institution involving within its influence and control all the foregoing relations.

The Bank of the United States, so called to give it the advantage of a great name, is located at Philadelphia, and has twenty-seven branches scattered throughout the Union. The whole of this immense money-making machine belongs to a few privileged individuals, who have an express assurance that no similar establishment shall be erected by the General Government in the United States. These are some of the leading general principles of the institution:—

1. The mother-bank will not receive the bills of her branches without a premium.
2. The branches will not receive those of the mother-bank without the same.

3. The branches will not receive the bills of one another without the same.

Now, what is the consequence of this? These favored few have a monopoly of all the moneyed transactions of the Union. Their capital is thirty-five millions of dollars, and this they lend out at a certain interest, and then send out agents to shave their own paper. They first make a profit by lending their notes, and then a profit by paying them off at a discount. Can any practice be more dishonest? If an individual, by reason of his wealth, were to do this,—were to impose upon the necessities of his poor neighbor to whom he had given his note, by shaving it afterward,—he would be justly esteemed a dishonest man. The fact is, there are principles allowed to this bank which the consent of all honest men have branded with infamy whenever practised by individuals. And it is permitted to do that with impunity which a sound morality has universally condemned in the ordinary transactions of men.

But the most intolerable privilege is yet to be told. Not satisfied with being allowed to lend and shave their own notes, the Government actually puts into their possession the whole of its revenues, amounting to twenty-five millions of dollars, to speculate upon as they may think proper. There is scarcely any man who does not know that under our system of taxation the most of it is paid by the consumers of the country; and they are generally the farmers. Commerce forms the subject of revenue, which the merchant in the first place pays, but which he afterward compels the consumer to reimburse with an increase of profit. All this flows silently and imperceptibly into the custom-house; and the Government, not satisfied with having exacted it from the hard-earned labor of the consumer by reason of a most ruinous duty upon the articles of his consumption, but they must suffer it to pass into the hands of a few highly-favored stockholders to undergo an additional process of extortion. If the collector of the revenues, the officer of the Government, were to lend out the taxes, speculate upon them after they were collected, for his own private benefit, everybody would cry out shame upon such an officer, and he would be hurled from his post with just indignation. And yet the Government directs him to pay the taxes into the Bank of the United States; and, the moment it gets there, it is set afloat in all directions upon lending and speculating contracts, and these bank gentry realize not less than six and often as high as twelve per cent. upon the burdens of the country thus drawn into their coffers.

Let us illustrate, by a familiar but striking example, this process of extortion. The collector of Charleston receives from the merchants, and they from the consumers, of South Carolina, one million of dollars in revenue he dare not use himself in any mode of speculation, but is obliged to deposit it in the Branch Bank of the United States at that place. That bank then writes a short letter in true mercantile style to a sister-branch, say in New York, something like this:—“Have to advise you of *one million* to credit of government, [the hard earnings of the poor Carolinians,] value at sight, and expect due honor.” This is enough: a draft is drawn in favor of some cotton-buyer who wants funds in Charleston, at from one to two per cent., and the branch at New York makes *right off* from ten to twenty thousand dollars from the *American system* screwed hard down upon the honest Carolinians. At the same time, the same branch in New York informs her sister bank at Charleston that she too has ten millions taken in like manner, which can be drawn for in favor

of merchants of Charleston who want to purchase goods in New York. Accordingly, it is done, and the Charleston branch "pockets" from one to two hundred thousand dollars more by what would be called, on the turf, "cross-jockeying." And this operation is continually going on between the mother-bank and her branches, all over the United States, upon twenty-five millions of Government money. It is so mean and ridiculous a species of legalized swindling, that while it resembles, it is even worse than the knavery the two Dutch lawyers practised upon their unsuspecting clients when one of them wrote to the other, in true Dutch style,—

"I haf von fat goose, I saund you anoder:  
You pluck de one and I'll pluck de oder."

Most people know nothing of the oppression and grinding exactions that are secretly but constantly operating upon the community by means of the monopoly granted to the Bank of the United States. Should not Congress, then, hesitate and examine, and examine and hesitate, long, very long, before they perpetuate such a blight upon the rising prosperity of this vast and growing country?

Denouncing the bank and the Tariff conjointly, and scanning with rigor the operation of both, Judge Clayton thus proceeded:—

When the old Bank of the United States wound up its business and made a final division, each stockholder had returned to him not only the amount of his shares, with eight per cent. interest per annum for the whole period of its incorporation, but he had paid to him *one hundred dollars* to the share besides; that is, his money was doubled, exclusive of the interest. There is no manner of doubt that such would be the result at the expiration of the present charter. This double amount would soon be vested in other stock, and their means of support consequently increased one hundred per cent. And, Mr. Speaker, this would be no common support, either; for I find, upon examining the list of stockholders, there are upward of forty widows who own ten thousand dollars each, and several as high as *fifty thousand*. Concerning these last I hope the gentleman [Mr. McDuffie] will give himself no uneasiness; for they can assure him, in any event of the Bank question, they will remain pretty good game for the pursuit of ANY WIDOWER whatever. But, sir, while he is manifesting such sensibility for those destitute persons, let me shade his portrait a little by a sombre color which I can employ from another class of stockholders in this same bank. The real stockholders are not *American* widows and orphans, but *British* lords and ladies, *British* naval and military officers, *British* clergymen and country squires; and, sir, for your exquisite delight, permit me to read a few of their names:—

Baring, Brothers & Co., London.....	\$791,500
The Most Honorable the Marquis of Hertford.....	100,300
The Right Honorable Sarah, Countess-Dowager of Castle Stuart.....	10,000
Sir Colin Campbell and Sir Richard Hunter.....	37,100
Right Honorable Lord Henry Viscount Gage.....	12,000
Honorable Hudson Gurney, Member of Parliament.....	50,000
Sir Robert Harvey.....	19,500

Sir William Keppel, General in his British Majesty's forces, Knight of the Grand Cross of the Order of the Bath.....	\$72,200
Major-General Maister.....	9,000
Sir George Nugent, Baronet.....	20,000
J. Packwood, of the Royal Navy.....	8,000
Sir Marmaduke Warren Peacock, Lieutenant-General, &c.....	50,000
The Earl of Beauchamp.....	15,000
Sir Gilbert Sterling.....	10,000
Lady Sarah Stuart.....	31,300
Sir Grenville Temple.....	20,000
Augusta, Countess-Dowager Von Pollant.....	4,200
The Earl of Levin.....	50,000
Major-General MacDonald.....	64,900
Lieutenant-General Sir Thomas Bradford.....	4,000
Sir William Keith Ball, Baronet.....	30,000
Lord Eric Reery.....	60,000
Mrs. Ann Redfern.....	70,160
Abel Smith, Esq.....	100,000
Sir Edward Tucker.....	50,200
Jonathan Austin, Esq.....	120,000
Major William Davis.....	20,000
Reverend Arthur Dean.....	7,000
Reverend Phillip Fletcher.....	20,000
Reverend George Gordon.....	30,100
Mr. Benjamin Heywood.....	178,400
John Marshall, (London).....	123,600
James Drake.....	100,000
John Marshall.....	264,200
Lieutenant-Colonel John Maxwell.....	64,900
Sir Robert Wilson.....	15,000
Lady Rosabella Wilson.....	15,000

And last, though not least, Mrs. Candelaria Bell, \$63,700, whose fanciful and beautiful name I hope will be remembered by some gentleman of the turf when he comes to christen his next female racer. In all, upward of four hundred in number, and holding stock to the amount of eight and a half millions, besides what is in the hands of *trustees*.

After alleging great corruptions against the bank, and charging it with interference in elections, Judge Clayton closed his speech as follows:—

In conclusion, Mr. Speaker, I offer one more reflection. It is aptly said, by some writer, that the financial system of this country represents an inverted pyramid. Six thousand millions of property, and all the enterprises and interchanges of the country, resting upon sixty millions paper dollars, which are themselves depending upon about fifteen millions of specie. And all this under the *exclusive* control of one grand, regulating, central machine, whose whole operations, and all its immense profits, belong to a highly-favored few. I have done for the present; but the half has not been told which belongs to this important subject.

The resolution offered by Judge Clayton prevailed, to raise a select committee to examine the affairs of the bank; and he was

appointed chairman. In this capacity he performed a great deal of labor, and, after an inspection of the books and papers of the bank, he reported a mass of facts to Congress, with the evidence he had taken in the support of his charges against that institution. In the mean time, Congress had passed the bill to recharter the bank, which incurred the Presidential veto on the 10th of July, 1832.

In September, 1833, President Jackson issued his famous Cabinet order for the removal of the public deposits to the State banks which had been selected for that purpose. This measure met the warm approbation of Judge Clayton, who had been re-elected to the House of Representatives after his special term had expired. As it is generally known that, in his anonymous communications to the press, he was in the habit of using the signature of "Atticus," and as no other writer would likely usurp a name so exclusively the right of one who had given it celebrity by his genius, it is fair to presume that the following, which appeared in the *Georgia Journal* of May 14, 1834, was from the pen of Judge Clayton:—

" 'Tis strange, I vow, what difference be  
'Twixt tweedle-dum and tweedle-dec."

It is an old but true saying, that "give a dog a bad name and you might as well hang him." In December, 1832, President Jackson issued a proclamation, containing certain political principles highly obnoxious to the Republican party of the South. Since that time, he has been unable to do any thing which can meet the approbation of certain politicians who have dubbed themselves with the proud distinction and honorable appellation of State-Rights men. He has been denounced as a tyrant, cursed as a traitor, stigmatized as a usurper, and, in turn, borne every epithet which the vocabulary of Billingsgate could furnish. Recently the torrent of invective has been let loose with tenfold impetuosity. For the performance of an act which he conceived was imperative upon him by his oath of office, he has been held up to public odium, by men infinitely his inferiors in moral or political honesty, as the reckless invader of the people's rights, the vile murderer of their interests, and the petty, factious tyrant who would overwhelm his country in ruin to gratify private hatred or promote unhallowed ambition. And who are the chief men that have thus poured forth such a torrent of abuse? Henry Clay, John C. Calhoun, George McDuffie. And what is the act for which he has thus been abused? The removal of the public money from the vaults of the Bank of the United States to those of the State banks,—such an act as has oftentimes before been done without a word of complaint from any quarter; such an act as was absolutely necessary for the well-being of the Government and the people; such an act as every patriot approves; such an act as would have been commended by all and objected to by only the bank and a few of its bought-up presses, if the ambition of Clay and Calhoun had not made it a stepping-stone for their ascension to the Presidency. Upon their heads, and their heads *alone*, falls all the injury the country has sustained, or will sustain, from the act.

We have heard it proclaimed from the Senate and from the House of Representatives in Congress, and reiterated by the press throughout the country, that the President had seized upon the public money, appropriated it *without* law and *against* law, and that it was now under his control, to be disposed of as his ambition or avarice might dictate. Never was there a charge more utterly false. Not *one* cent has been appropriated against the laws of Congress, nor has the President any further or greater control over it now than he has always had: his only act has been to say to the collectors of the public revenue, When you shall receive any money of the Government, deposit it in some certain State bank for safe-keeping until the Government shall call for it, instead of placing it in some branch of the United States Bank. A brief statement of the facts is alone wanting to put down *effectually* the malicious charges which have been heaped upon the character of the President for this act. By law, the public money is required to be deposited in the United States Bank, or its branches, until the Secretary of the Treasury shall otherwise direct; and, when he shall so direct, it is made his duty to communicate his reasons for the act to Congress.

At the last session of that body, so apparent was the necessity of removing these deposits from the United States Bank and placing them in the State banks, that a very large minority of the House of Representatives voted instructions to the Secretary to do so,—though they had no right to say a word to him on the subject; and all the delegation from Georgia, (we speak from memory,) save Mr. Wilde, voted for those instructions.

The reasons which induced them to give this vote were:—

1. The bank had interfered in the Presidential election by increasing its loans from January, 1831, to May, 1832, from \$42,000,000 to \$70,000,000, and that immediately before the election,—thus making a large number of people dependent upon and indebted to it, threatening them with ruin if the bank was not rechartered, petitioning Congress at that time for a renewal of the charter, compelling the President to veto the bill and thereby make as enemies those who were indebted to the bank. For such an interference in elections, Mr. McDuffie *advised*, in his celebrated bank report in 1830, that the “public deposits should be removed.” He now *acts* differently.

2. The termination of the bank charter at a short day rendered it necessary that the Government should begin another system of finance, for the purpose of carrying on its transactions so as not to embarrass the people to any extent. This was the plan adopted in 1811, when the old bank charter expired; and so happily did it succeed, that not the slightest embarrassment was felt. The President was not *then* denounced as a usurper.

3. The bank had become so much embarrassed, on account of its heavy expenditure of money in the Presidential election, that it could not pay to the Government the money which had been deposited in its vaults for safe-keeping. The Government was owing—and the money would be due at a certain time—\$5,000,000. In order to meet the debt, the money was collected and deposited in the bank. The bank converted it to its own use: when the time arrived, it was unable to pay it, but petitioned for the use for six months, it paying the interest thereon. The indulgence was granted: when the time arrived, the money still could not be paid. The Government would wait no longer; but the bank, to get further indulgence, induced the creditors of the Government not to pre-

sent their demands, and paid the interest upon them for the indulgence. If one individual had treated another in this way, would the one thus treated have put his money in the hands of the other a second time?

4. It bought up printing-presses, and loaned large sums of money to editors who were insolvent, without any kind of security, for the purpose of getting their support.

5. The bank authorized its President to expend whatever amount of money he thought proper in having printed and circulated such newspapers and pamphlets as would help to obtain a renewal of its charter; and, in 1831 and 1832, he expended for that purpose the enormous sum of \$80,000.

6. The charter forbid the bank from doing business with less than seven directors: in violation of the law, it did business continually with only five directors.

7. The Government is a large stockholder; and, for the purpose of knowing what is going on, and protecting its interests, it was entitled to five directors. In order, however, to defeat the intention of the law, and to conceal its illegal acts, the bank excluded them from any knowledge whatever of its transactions.

After the adjournment of Congress, another act, more perfidious than any which had taken place before, was committed by the bank. According to its charter, in consideration of the monopoly which it enjoyed, the bank was bound to transfer the funds of the Government wherever they might be required to be placed. The Government of France, according to a treaty with our own, was called upon to pay \$900,000. The Secretary of the Treasury drew a bill of exchange upon the French Government for that amount: the bank discounted it; but every cent of the money was left with the bank and used by it. The bank sold the bill, for a profit, in London; the purchaser presented the bill for payment to the Government of France, which was refused, from the want of funds to meet it; the agent of the bank in Paris paid the money and took up the bill, and the President of the bank at Philadelphia then demanded from the Government of the United States \$158,000 as damages which it had sustained by the failure of France to meet the engagement punctually. The bank bought the bill without advancing one cent for it, made its profits on it, and then took up the bill with the same money it had sold it for. This stupendous fraud upon the people determined the President, among other reasons, to remove the deposits. But it may be said that the Secretary alone could remove them. This the Secretary has done, and communicated his reasons to Congress. But it may be regarded as the act of the President: he wishes it to be so regarded. He is sworn to see the laws faithfully executed: the Secretary refused to execute them faithfully; the President removed him from office, and placed another there who would do so.

It is contended that the President had not the power to remove Mr. Duane from office. He certainly had the power to appoint him; and it follows, as a matter of course, if he could appoint, and was responsible for his acts while in office, he could remove him. Such has been the practice since the establishment of the Government: every administration has removed such from office as even differed in *opinion* with them, and it has never before been complained of. Mr. Duane deserves less pity for his eviction from office than any other man. He accepted the appointment of Secretary under a full knowledge of the intention of the adminis-

tration in reference to the deposits, and stated to the President, should his own opinion not agree with the administration, he would either resign or remove them as an executive order or act. But when called upon, notwithstanding the bank had most insultingly outraged the laws, and he pledged to the President to do so, he both refused to remove the deposits or to resign. The President owed it to the country to have no such dishonorable man in his Cabinet. He was therefore removed. The only thing which remained to be complained of is that the act was unprecedented. Is this so? No less than five Secretaries have done similar acts. During the administration of Gen. Washington, Mr. Hamilton, Secretary of the Treasury, made his deposits not only in State banks, but even made the breeches-pocket of Mr. Habersham, of Georgia, the depository of the public money collected in this State.

In February, 1811, Mr. Gallatin, Secretary, removed the deposits from the old United States Bank to the State banks; and the only reason he assigned was, that, the charter being about to expire, such a course was necessary for the well-being of the Government. Congress sustained his reasons.

In December, 1815, Mr. Dallas, Secretary, makes his deposits in the State banks.

In December, 1819, Mr. Crawford withdrew the deposits, in part, from the United States Bank and placed them in the State banks.

In May, 1817, he refused to deposit in the United States Bank, because it would not receive the bills of certain local banks in Virginia. In the same year he made large deposits in the Bank of Vincennes, and in other Western banks. In 1819, he selected three State banks situated in places where there were branches of the United States Bank, and deposited in them. From March, 1817, to October, 1821, he transferred funds from the United States Bank and deposited them in forty-eight State and local banks.

In August, 1825, Mr. Rush, Secretary, under Mr. Adams, made his deposits in the Bank of Mobile, directly under the eye of the United States Bank.

In August, 1827, he drew money from the United States Branch Bank at Washington City, and deposited it in the Bank of Tennessee.

In November, 1828, he selected and deposited in sixteen different banks.

In February, 1830, Mr. Ingham, Secretary, made deposits in the Bank of New Haven.

In June, 1830, he drew \$10,000 from the bank at New Orleans, and deposited it in the Bank of Mississippi, at Natchez.

In October, 1832, Mr. McLane, Secretary, deposited both in the Bank of Alexandria and the Mechanics' Bank of Alexandria.

Now, if the Secretaries had the power to remove one dollar of the deposits, they had the right to remove all. The removals to which we have referred were never objected to, but always regarded as perfectly legal. Mr. Crawford, it is true, was assailed and basely slandered for the acts to which we have referred. Ninian Edwards was the instrument in the hands of Mr. Calhoun to attack him. The reason for that attack was obvious when Mr. Calhoun wished to put him out of his way to the Presidency. Congress and the people passed upon the act, and both acquitted him. It is a singular coincidence, that the only two persons who have ever been assailed for removing the deposits were Messrs. Craw-



ford and Jackson, their chief accuser Mr. Calhoun, and both these gentlemen formidable rivals and powerful opponents to his ascension to the Presidency. Just look on the history of this question, and tell me if

“ 'Tis not strange what difference be  
 'Twixt tweedle-dum and tweedle-dee ”?

ATTICUS.

It has been considered necessary to place these extracts before the public, to show the position maintained by Judge Clayton, on the two exciting measures in which he acted a prominent part in Congress,—the Tariff and Bank. In order that his opinions may also be understood relative to the Public Lands, another topic of profound national interest, the following document is sub-joined:—

HOUSE OF REPRESENTATIVES, April 17, 1834.

MR. CLAYTON, from the Committee on the Public Lands, made the following report:—

The Committee on the Public Lands, to which was referred the petition of the Trustees of Transylvania College, of Kentucky, and that of the Trustees of Pendleton Academy, of the State of Alabama, praying for a donation of lands for the encouragement of their respective institutions, report:—

That the disposition of the public lands for such an object, however laudable, cannot be justified either by the Constitution or the manner in which they are held by the Government. The only method by which Congress can “promote the progress of science and useful arts” is “by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries.” It cannot be denied that the donation of the public lands to seminaries of learning would be to promote the progress of science, and consequently in a way very different from that prescribed in the above clause of the Constitution. By the express specification of the manner and cases in which science and the useful arts shall be encouraged, it is entirely obvious that every other mode is excluded. And this would be very apparent, if, instead of an application for a donation of lands from a college, it should come from an inventor of some useful instrument calculated to advance the useful arts. It will be seen, by the clause of the Constitution referred to, that science and the useful arts are placed upon the same footing; and, if it is allowed to depart from the prescribed method of promoting the progress of the former, the latter may with equal right claim a similar indulgence, and the committee believe no one is prepared to admit that the public lands could be given away to inventors, however useful their discoveries might be. It may be said that the Constitution had reference to the authors of writings. This idea is refuted not only by the generality of the expression “the progress of science,” which comprehends the subject in its most unlimited sense, but by the well-known history of this particular clause of the Constitution as found in the journal of the convention. The proposition to clothe Congress with the power to charter a university was thrice presented and rejected by the convention; and, after referring

that subject, as well as the one relating to the encouragement of the useful arts, to a committee, all that could be obtained was the power as it now stands in the Constitution, and which the committee have before quoted; and this, in their opinion, is too plain to admit of a doubt that the Federal Government has any jurisdiction over the subject of science. Besides this view of the subject, the committee are of opinion the Government is further restrained from a disposition of the public lands in the manner required by the petitioners, from its solemn engagements made with the States from which it obtained its cessions of the public lands. In the conveyance made by the State of Virginia of her territory northwestward of the river Ohio, (and substantially in the cessions of lands made by North Carolina and Georgia,) there is to be found the following stipulation:—"That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered a *common fund* for the use and benefit of such of the United States as have become, or shall become, members of the confederation or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatever." In this stipulation the object and intention are so plainly expressed that it is scarcely necessary to call the attention of Congress to them. If the public lands form "*a common fund*" for the use and benefit of the States according to their usual respective proportions in the general charge and expenditure, and shall be disposed of for that and no other purpose, how can Congress make partial donations of a *common fund* for the benefit of seminaries of learning, intended, and so expressly stated, to be disposed of for the sole and exclusive purpose of benefiting the several States in the general charge and expenditure of the Government, and that, too, in unequal amounts to some States, and not to others? It appears to the committee that such a proposition cannot seriously be contended for. If the public lands were all sold and reduced to a common fund, *in money*, lying in the Treasury for the objects expressed in the above-quoted agreement, every one would see at once that Congress would not draw the money from that place for the purposes sought by the petitioners; and, if they would not *in money*, it is not perceived how it can be done while this common fund remains *in lands*. If a single acre can be used for that purpose, the whole can, and thus the fund would be diverted altogether from its palpably-expressed object. And this is not all: if any part of it can be given to one or two seminaries of learning, the whole can to the same, to the exclusion of all the other States. It is no good answer to this objection to say that Congress must take care to distribute the public lands equally among all the literary institutions throughout the United States: this would be most notoriously a departure from the contract of the ceding State; and, when once Congress shall substitute its discretion for the express terms of the agreement, it must be plain to every mind that there can be no limits to that discretion, save a sense of its own notions of propriety, most evidently forming no part of the inducements to the cessions of land made by the States to the Federal Government. It must be obvious, too, that, if they had the right to change the terms of the contract, it is wholly impracticable to make an equal and impartial

distribution of the lands among all the various institutions, high and low, intended to diffuse the benefits of education.

The committee are aware that something is claimed for these applications from the force of precedent, but they cannot for a moment believe, if they have presented a correct view of the subject, that it will be seriously contended that the plain and positive stipulations of a contract, and the still higher and more solemn obligations of the Constitution, shall be made to yield to a practice certainly founded in error, and perhaps without due consideration. Nor can any sanction be drawn from the example of a certain disposition of lands within the new States, where the public domain is situated, for the benefit of schools, inasmuch as such disposition was evidently predicated upon the provision in the Constitution which vested Congress with the "power to dispose of and make all needful rules and regulations respecting the territory belonging to the United States." Nothing could so much contribute to the population of the new States as the institution of schools. The means of education certainly furnished the strongest motive to the purchase of the public lands, and a donation for that object in different parts of the territory came properly within those needful "rules and regulations," well calculated to enhance the value of the residue, and was alike due to the condition of the new States that were entirely without the means of offering such an indispensable inducement to their early settlement. This is a regular system in reference to the new States organized from the Territories; and, though one of the applications is from a new State, it does not fall within that system,—a departure from which would entitle not only the other new States, but the old ones also, to similar donations. Under these opinions, the committee ask to be discharged from the further consideration of the said petitions, and all of a like nature since referred to them.

The author has no record to show on what different committees Judge Clayton served during the four sessions he was in Congress, nor what reports he made. It is not material, however, to parade these facts: his reputation is sufficiently established without them. He was ever diligent, ever animated, ever watchful of the public good; and he let no occasion pass unimproved to benefit his country to the best of his power.

Dismissing his judicial and legislative career, in both of which he displayed eminent ability, the author proceeds to the literary character of Judge Clayton, which is not less enviable. The author regrets that he is so inadequately supplied in this field; for, although it is known that Judge Clayton wrote a great deal for the public eye, in all of which he infused his pure diction and flowing spirit, yet, for the twenty-four years after he graduated at Franklin College, in 1804, until his address before the societies of the same institution in 1828, no production except the "Mysterious Picture" has come to the notice of the author which might be regarded as a proper test of his literary merits. His speeches at the bar, in the Legislature, and on other public occasions,—his

charges to the grand jury,—his communications to the press,—though all evincing ripe acquirements, did not, however, take on a form of literary preparation which might decide his claims to the favor of competent judges of style. It was reserved for the college commencement in August, 1828, at Athens,—when he and the Hon. John M. Berrien met in friendly, yet in high-toned, earnest competition,—for his happiest effort to be made. Both selected a similar theme. One exemplified “Eloquence,” as did the chaste and melodious Berrien, and the other asserted the power of “Oratory,” which he illustrated in his own person. Such a literary feast had never been spread before an audience in Georgia; and it may well be feared that its like will never be repeated. The brief extract from Judge Clayton’s address here given will afford some idea of the whole, which was equally brilliant and elaborate:—

Oratory is the great moral agent that guides and controls all human passions. Eloquence is the universal instrument by which all the wants of animated nature are supplied. It is to the moral what electricity is to the natural world. It is the great pervading, connecting, and upholding principle of all sensual inclination and of all intellectual influence.

It is the subtle, active, quickening impulse, restless as air and rapid as lightning, that runs through all sense, gives edge to its desires and effort to its designs. It assumes all shapes, tries all forms, and shines in all varieties. It sues in the cry of infancy, woos in the sigh of love, wails in the groan of pain, implores in the suffering of despair, supplicates in the wretchedness of sorrow, beseeches in the misery of want, persuades in truth, demands in justice, melts in pity, thunders in vengeance, and rages in distraction.

At one moment it fans like the zephyr, at another blasts like the simoom; now plays and refreshes like the breeze, then storms and destroys like the blast. The mind is never steady under its operation: reason dreads it, judgment shrinks from under its crushing energy, and neither in their dominion has the security of an hour under its ravaging march.

He who witnesses the calm serenity of a summer’s morn, or the mellow stillness of an autumnal eve, forgets that they can be disturbed by any cause. Let but the angry lightnings of heaven gather in the west, growl for a time as they thicken in the cloud, rise in swelling murmurs as they come over the fearful silence of nature, then quicken in flashes, streak through the vaulted skies, peal from pole to pole, from heaven to earth, and rend the lofty forest, in vain may he look for those tranquil seasons that so regaled his senses before this “war of elements.”

So with oratory. Reason and judgment sit secure amid its playful gambols; but let it once swell into a tempest, drive upon the feelings, strike at the sympathies, beat upon the affections, storm on the passions, dash on the sensibilities of the heart, and reason and judgment are gone,—fled from the sober helm of conscience: the mind surrenders at discretion; decisions are made and sent forth which no future composure can repair, and often become fate to an individual and destiny to a nation.

In 1825 there appeared in the book-stores a pamphlet of two hundred pages, bound in the style of the *Quarterly Review*, entitled "The Mysterious Picture, by Wrangham Fitz-ramble, Esq.," with the following lines on the title-page:—

Hence *Satire's* power: 'tis her corrective part  
 To calm the wild disorders of the heart.  
 She points the arduous height where glory lies,  
 And teaches mad Ambition to be wise.  
 In the dark bosom wakes the fair desire,  
 Draws good from ill, a brighter flame from fire.  
 Strips black Oppression of her gay disguise,  
 And bids the hag in native horror rise;  
 Strikes towering Pride and lawless Rapine dead,  
 And plants the wreath on Virtue's awful head.

As noted by the author of the pamphlet, its contents were—The Mysterious Picture; Human Depravity; Vanity; The Illusions of Pleasure; Pride and Love; The Disappointed Author; The Politician; The Widow and Widower; Education; The Negro's Dream.

The conception was singular, tinged with the supernatural. While restless on his pillow, Mr. Fitz-ramble was addressed as in a vision:—

"You have nothing to fear," said the genius, for so he called himself. "I have beheld your difficulties, and am ordered to furnish the relief. Arise; follow me, and, strange as it may appear, I will discover to you an *unknown world of thought*, where *mortal* research has never penetrated and which *human* ingenuity can never fathom."

I instantly arose, and seemed to possess a surprising activity of body and a subtle elasticity of mind,—in the first to move without exertion, and in the last to think without an effort.

The genius then conducted him into a church where the congregation were arrested by a spell, yet each individual retaining the images passing in his or her mind at the moment. Thrilling reflections are thus indulged:—

When I surveyed this immense crowd in a state of apparent torpor, possessing the same complexion, cast of countenance, and expression of eye as if alive, in the deathlike stillness and inflexibility of statues, the inward employment of whose minds was shortly to be in my power, I felt an impressive distrust of my own firmness and a repulsive dread of the scene. I seemed to think that I was meddling with what did not belong to me; that I was lurking around the privacy and prying into the secrets of heart which ought to be held sacred by reason of their undivulged nature and in virtue of their deep concealment in the very folds of life; that I was taking an ungenerous advantage of a sudden and unavoidable misfortune, which foreclosed the mind from all preparation for such a distressing examination. Indeed, I would have given any thing to have

silently withdrawn, and to have refused an insight into this serious and delicate development; and for this purpose I fondly asked myself, "Is it not all a dream? Exert yourself, and try to shake off the delusion, and by that means escape from this unsought dilemma and fly from what you so much dislike." But at this moment the genius approached me sternly saying, "You are not asleep; it is no phantom. You are compelled not only to witness, but to reveal, the whole; and why should you be afraid or ashamed to do so? There is *One* infinitely greater than you—the Source of all virtue and the Fountain of all purity, before whom you are a loathsome worm—obliged daily to behold these vain imaginations: there is not a secret spring or the lightest conceivable motion of the mind that is not instantly open to his view. And if these people are not ashamed to indulge before *Him* what you will soon discover, why should they be before you, even if they were sensible of it? Do you imagine they care more for you than *Him*? Besides, suppose that sudden death had seized them: would it not have taken them in those very thoughts? and will they not, as well as all others, in a coming day be exposed to the gaze of an assembled world? They wrong themselves; you do them no injury. Come, then, and I will show you how to get at the contents of each story, drama, novel, romance, or whatever else you may choose to call it, in this singular sleeping library."

The idea then proceeds: heads are unlocked by a touch, flying open to inspection, and all secret thoughts are revealed. Here is a cotton-planter fixing up his crop for market,—the best of his staple where it can be seen. By his side is a Yankee cotton-buyer, with gimlet and samples in his pocket, contriving how to mix up the qualities so as to obtain an advantage in the classification and sale. The details are quite minute in both characters,—both resorting to unworthy devices for profit.

"Merciful Heaven!" thought I; "are these the pranks that are played in the disposition of that great and valuable staple of the Southern States, that constitutes their wealth and strength? Is it possible," continued I, turning around toward the females and casting my eye upon one who was richly attired, "that the beautiful drapery that covers that more beautiful form has been made to pass through such a demoralizing process? Can it be that the gay apparel, which flows with so much grace and shines with such splendor on the glittering nymphs who so often adorn the mirthful hall, is stained with fraud, has been familiar with falsehood, and almost associated with felony?" I trembled at the idea, lest it might be imbued with a contagion that would impart treachery to the bosom it so modestly concealed, or faithlessness to the heart by which it was so unconsciously caressed.

On the subject of petty frauds, artful projects, cunning stratagems, cheating schemes, overreaching devices, and swindling contrivances, I shall never be able to disclose the half I saw on that occasion. In the mechanic arts there was a great inclination of the mind to imposition, to slight work, and to charge high, particularly in all the handicraft-work; and, if the nature of the labor was out of the common observation and ordinary experience of the customers, they were certainly exposed to a fraud. For instance, I noticed one watchmaker had determined that

every watch in his shop should have either a mainspring or a pivot-wheel broken; and the repair of these would, of course, just command the highest price.

In commercial business the tricks were innumerable. Vintners were adulterating wines; druggists were corrupting medicines, particularly the article of Peruvian bark; and merchants were altering invoices and furnishing themselves with the materials, to give it no worse name, for making round assertions about the "cost" of their goods. One old fellow had just concluded that his last supply of rum would bear "fully a fourth;" and, as to his molasses, it must take a "third," or he should absolutely lose "on the article," it was so villanously wasting.

Then a variety of characters are peeped into: the horse-jockey patching up eyes, smoothing over defects, and concealing bad qualities; debtors were framing excuses for a want of punctuality; tailors were *cabbing* remnants; millers heaping up toll; bank-directors contriving to serve themselves and friends liberally; clerks resorting to various stratagems—some had been knocked down and robbed—to account for the money intrusted to them; other officers of the bank were using false keys, some making false entries on the books, and other individuals were digging under ground to rob the vaults; some were counterfeiting bills, and others making a chemical preparation to change their amount. Mr. Fitz-ramble then lets off his animosity to banks in the following words:—

All kinds of plans and inventions were in train either to make, alter, forge, counterfeit, or steal bank-money; to break open merchants' shops, to rob desks and counter-drawers, pick pockets, and especially to filch pocket-books; so that I could not but believe—and such is my honest conviction—if the whole institution could be swallowed up as by an earthquake, leaving not a vestige behind, that with it would disappear one-half the crime and its demoralizing effects which at present so deeply corrupt the frame of society; and, as to the increase of private happiness and the diminution of individual suffering and anxiety, the consequences would be incalculable.

The genius next escorted his companion to a great elevation, and then showed him the entire world below, with all its transactions. The view is powerfully summed up:—

Such deeds the most lawless fancy cannot portray, heart cannot conceive, and to which, of course, utterance is denied. Imagination in the fullest sweep of voluptuous contemplation, whetted by the most luxuriant passion, and urged by the sharpest penetration, can never reach the thousandth part of the deep-dyed and ingrained hue of this hidden licentiousness. "And yet," thought I, "this is forever passing before the all-seeing eye of a pure and spotless Deity."

Under the head of "Vanity," the writer sketches to the life a flippant young man bent upon pleasing the ladies, dashing through

the streets with a fine switch-tailed horse and an elegant new silver-tipped gig, (no buggies then,) and managing to pass "all the houses that were inhabited by fair damsels." At length a tender heart is broken by this "inflated Adonis," and he is much exalted thereby in his own estimation. A group in the church is thus described:—

I came across several young gentlemen dressed in the highest *ton*, their bodies drawn to the shape of an inverted cone, well swaddled in a fresh and increased supply of cravats, standing upon brass-heeled stilts, behind a goodly bale of ruffles, just ready to leave the house; and they would have been off in a second but for their untimely arrest.

No apology will be made for the introduction here of the following admirable picture:—

I found one collegian—who had taken an honor upon graduating, had been much flattered in the progress of his education, created great hopes in his friends, and possessed greater notions of himself—absorbed in a most delightful trance of self-homage. He had just entered upon the profession of law, and delivered a Fourth-of-July oration, and was then enjoying the fruits of his resplendent *début*. All eyes, he conceived, were upon him: the men coveting his talents and genius, and the ladies courting an alliance with him through their fair daughters. He had gone to the head of his profession at a stride, made a fortune right off, and was somewhat perplexed in his mind whether he should go upon the bench or go into Congress. This last field opened to wider fame and higher glory; but he did not like to leave any distinction unworn if he could take them all in his march, and at that time he did not discover much difficulty in his way, only he noticed that most other great men had to leave one or the other. "Alas, poor fellow!" thought I, "what an *ignis futurus* you are dancing after! Professional success, as well as political fame, depends upon a thousand things you cannot now foresee, but especially upon the caprice of a huge and unthinking multitude, who are slow to discover merit and slow to reward it. The forum is not like a college-stage, nor Congress like a polemic society. From these great theatres, as many mournful adventures will reveal, the laurel of renown is not easily snatched. How often will day after day and court after court pass away and leave you rooted to the spot at which you commenced! Mountains of no description have ever been readily climbed; and your ascension up the long slopes of wealth or steepes of fame will be equally toilsome."

There was no subject, whether great or small, that did not employ this engrossing passion. One was sweeping every thing before him and outstripping all his associates in a perilous fox-hunt. Another was actually experiencing a flesh-crawling, hair-raising elevation of soul in the loud and repeated huzzas of the rabble, vented on no other occasion than that of a triumphant horse-race. In both these cases, as well as others that I noticed, the smiles and approbation of the fair constituted by far the greater part of the fancied glory of these bewitching day-dreams. A third, being the lady of a member of Congress, took great pleasure in *looking down* upon the plebeian rank that surrounded her, and a greater pride in their *looking up*, as she conceived, to her official dignity.



There was no end to the military men whom I found there. Such marching and countermarching; such martial music; such fine war-horses, so richly and gaily caparisoned; such splendid apparel; such glittering swords, sashes, sword-knots, and waving plumes; such rapid movements and mighty battles, in which the roar of cannon and the clash of arms, mingled with clouds of dust, volumes of smoke, and seas of blood, presented an awful picture; and then, when returned from "wild war's alarms," such ravishing applause from the people; such balls and dinners; such city-parading; such corporation-addresses and modest answers, manufactured for the occasion and by preconcerted arrangement; such transporting and soul-devouring gazes from the ladies on the public promenades, at the theatres and all kinds of public assemblies. Oh, it was delightful to see how well these great generals stood with themselves: every one of them had fought one duel, and some as many as three, merely for the purpose of lamenting the circumstance before some fine lady.

I found, too, a great many statesmen and orators who seemed to take a cruel pleasure in torturing their auditory,—first, by gently leading them, as by a hair, from one place to another, altogether charmed by the witchery of their persuasive elocution, and then all at once rending them to atoms by the lightning of eloquence and a sudden burst of its overwhelming thunder. The poor hearers were represented on the canvas of their fancy with distorted countenances, frightfully gazing at each other, their eyes "rolling in frenzy," their hands clenched, and their breathing almost suspended. I seemed to catch the terror-smitten feeling of these unfortunate victims of oratory, and I was glad to flee from their fate by dropping the curtain upon the subject.

After describing the thoughts of a widow lady whose sons and daughters had in her imagination experienced fortune in a variety of shapes, with sorrow greatly overbalancing the joys of life, the writer thus impressively moralizes:—

Our mortal existence is a fixed and positive state of suffering. We enter upon life with a pang and leave it in agony; our birth is in shrieks and our death amid sighs. Collectively taken, there is not a pulse of the heart that does not begin or end a life; there is not a human respiration which is not to some unfortunate being either his first or last. The world, to its successive generations, is nothing but a fading gewgaw; and we ourselves are only empty bubbles, sparkling as we glide down the tide of time, and bursting at every breath.

"Long o'er the wrecks of lovely life we weep;  
Then, pleased, reflect, 'to die is but to sleep.  
Organic forms with chymic changes strive,  
Live but to die, and die but to revive.  
Immortal matter braves the transient storm,  
Mounts from the wreck, unchanging but in form."

The "Disappointed Author" is a rich exhibition. He had written articles which he fondly concluded would at once establish his fame, and he was ever looking out for praise. But the poor fellow never had the satisfaction of hearing a word of eulogy bestowed on his "Letters" which he so highly prized. Once he

heard them alluded to in a public reading-room as containing the "most incorrigible nonsense and sleep-producing stupidity that had certainly ever found its way into print; that writers of such trash and printers of such trumpery ought to be sewed up in a bag and thrown into a ditch,"—whereupon he fell into a very earnest soliloquy, in which he discoursed himself into the opinion that

Literary intelligence is not collected and embodied as it should be. If any important ideas are suggested, they are not extended or improved; and hence they pass off unnoticed by ourselves, and, of course, by foreigners. But if it were some low wit or light humor, the account of a sea-serpent, a boat or a horse race, the arrival of distinguished foreigners, curious murders, extraordinary births, wonderful inventions that were never made, and amazing appearances that never occurred, all the prints from one end of the continent to the other, in compliment to the taste of their witch-believing readers, would be filled with those very dignified and important subjects, giving so much consequence to their papers and character to the nation.

Let but a petty ensign in the army happen to knock down an Indian chief with the butt of his musket, or a midshipman choke a pirate to death, in their official capacities, and, in the pedantry of the black gown, they become *eo instanti* and *ipso facto* entitled to attend the President's levees, liable to be suffocated in the fumes and steam of a smoking dinner, drowned in a pipe of old Madeira, and shot to pieces by cannon in every city through which they may pass *having good, fat aldermen*. Not so by literary achievements; not so by the essayist.

The "Mysterious Picture" should be read as a whole, to appreciate the satire which lurks in every paragraph. The quotations will close with a fashionable lady whose charms had so wrought on two rival admirers that the code of honor had to decide between them:—

This duel seemed to season all her other thoughts with such a smack of importance, which, besides giving her a great deal of self-complacency, served to regale her with a foretaste of her future consequence. She appeared to have, though not a sorrowful, yet not a very unreasonable, view of the affair. If people were such fools as to try to shoot out what little brains they had, (which, by-the-by, she thought would require some skill,) why should she grieve about it? Everybody likes to be talked of, and she did not pretend to suppress the satisfaction it would give her to learn that one was killed dead on the spot and the other mortally wounded, for the bloodier the battle the more noise it would make: it would even get into the papers, those kind propagators of all sorts of good news; and surely, she thought, it will be asked, What is the *melancholy cause* of such a pathetic catastrophe? This would at once float her name upon the waves of conversation, and she would be tossed mountains high on the surges of public admiration.

Sufficient has been said to show the vivid mind of Judge Clayton as a statesman, jurist, and miscellaneous writer. After his return

from Congress in 1835, he devoted himself to such matters as were most agreeable at his period of life, being easy in his fortune, and under no necessity to make those exertions which in the accomplishment of his manly ambition he had found requisite. Honored for his talents and virtues even beyond the limits of his own State, he was especially a favorite in the community where he resided. All classes found in him a wise counsellor and ready friend. But his active career was near its termination. He was stricken with paralysis, which for several months confined him to his house; and, on the 21st day of June, 1839, what was mortal of AUGUSTIN SMITH CLAYTON ceased to exist, in the fifty-sixth year of his age.

This memoir will be closed by the testimony of others. Several years ago, (1851,) the author applied to Philip Clayton, Esq., Second Auditor of the Treasury at Washington, for information respecting his father. An extract from the reply is here given to questions propounded:—

He married in Franklin county Miss Julia Carnes, the niece of Judge Carnes,—when, I have not the date,—and left when he died eight children, all still living, to wit:—George R. Clayton, William Wirt Clayton, Philip Clayton, Almira D. Cobb, Ed. P. Clayton, Julia Baldwin, Claudia C. Howze, and Augusta C. Clayton. I have placed them according to age.

Gen. Jephtha V. Harris, Asbury Hull, Judge Charles Dougherty, all of Athens, are the living men who were most familiar with him. Gen. Harris was his classmate at college. Judge Longstreet, Oliver H. Prince, and Judge Dooly were his intimate associates, and with him constituted a galaxy of wit that has never had its equal in any generation of lawyers that have graced the Georgia bar. I feel some delicacy in speaking of my revered father's character and position as *I think* it deserves, and I trust your good sense will appreciate any extravagance into which my partiality may lead me.

As a writer I conceive he had not his superior in Georgia. His political essays were numerous and have never all been collected. His "Atticus," during the contest between Troup and Clark, was considered as an efficient means in the decision to which the people came on that occasion. I have heard from men of that day that, as each number would appear, (having been originally published in a paper at Athens,) it would be sought with avidity.

His reports in the Legislature of Georgia were also important in fixing the legislation of the country. His career in Congress was distinguished by ability, and no one rose higher in so short a time. He was the author of the "Mysterious Picture,"—a literary work that received the commendation of the best reviewers of that day. His legal decisions were generally considered sound; and the one declaring the law of Georgia unconstitutional which prevented an Indian from digging gold on his own land (the case of Kanatoo) was approved by Marshall, Story, and Kent, whose written opinions he received after he was defeated by the

Georgia Legislature for making the decision. But the most finished production of his pen, in my opinion, was an oration delivered by him at Athens, Georgia, before the Demosthenian and Phi-Kappa Societies, in 1828.

He was a man of spotless character, devoted to truth and justice, gentle in his manners, and kind to all, unsurpassed in wit, and the admired of every circle. Even at this late day, I am often reminded by men who were his associates in Congress of the pleasant hours they have spent in his society in this city. As a father, he was untiring in his attention to his children, and especially in impressing upon them all those sentiments that ennoble the man; and to his early training they are indebted for their respectability and character. But the crowning virtue of his life was his devotion to his wife. As a husband he never had a superior, and seldom, if ever, an equal.

My time at present will not permit me to say more. Should you wish information upon any particular point of his character that I have omitted, I will cheerfully give it. He was the friend of education and the associate of Dr. Waddell, and rendered more service to Franklin College than any man that has ever lived,—of which Dr. Church could no doubt give you much information.

The legal profession has been long reproached with indifference, if not with direct hostility, to the Christian religion, and it is the desire of the author to remove the complaint whenever he has the opportunity. To this end he extracts freely from the discourse delivered by the Rev. Whiteford Smith on the occasion of Judge Clayton's funeral, June 23, 1839 :—

Our departed brother was permitted to attain to the age which commonly falls to the lot of man, and, like other men, he had experienced that this world was one of perpetual vicissitude. He was one of the earliest graduates of this institution, and one of its oldest trustees. Having realized the benefits of a liberal education himself, he was desirous of extending the same advantages to others. He was gifted with a high order of talent, which prepared him for the responsible duties which his position in society involved. The confidence of his fellow-citizens raised him to public office, and he received at their hands one of the highest distinctions which it was in their power to bestow. It rarely falls to the lot of the statesman to escape unjust censure from his political opponents, and frequently this is the meed awarded by his friends. The busy, restless, political world knows not how to appreciate the character of him who, with a consciousness of rectitude which is sufficient to sustain him, pursues that course which he honestly believes is right. Our brother found it so. In his last hours he appeared to have bestowed a few thoughts upon the review of his political life. Addressing one who was his old associate and bosom friend, he said, "His motives had often been misunderstood. He felt that he might have erred, but had faithfully devoted a portion of his life to the service of his country: though he claimed no reward, they had already rewarded him abundantly." Had he an enemy,—as what political man has not?—had the strife of party ever brought upon him the hatred or enmity of any? I come commissioned from his dying bed to say to such, if such there be, that he forgave them

freely, and sent up to heaven for them his ardent prayers. That mercy which he sought he generously shared.

In his domestic relations, as a husband, father, and master, none could have been more kind, affectionate, and gentle. Few families have been blessed with such a head, and very few have felt and manifested the same assiduous desire to minister to the happiness of one who was endeared to them by every tie. Peculiarly tender was the exhibition of paternal love which he made before he left them. Oh, could you have seen him, as he gathered his children around him, and, one by one, encircled them in his wasted arms, giving them a father's dying benediction, and commending them especially to the grace of God, and entreating and exhorting them to seek after the kingdom of heaven, that they might be united there, you would have been convinced that the flame of parental love that burned within that bosom was one which the cold waters of death could not extinguish,—that the affection which animated that heart sunk not with the decay of nature's strength.

Happy that the providence of God had enabled him to leave a competency for the maintenance of his family, he adverted with gratitude to that; but, while he rejoiced that they were thus provided for in this life, his chief concern and desire on their behalf related to the life to come. He pressed upon them with unusual strength and energy an exhortation upon this subject which overwhelmed us all. He adverted with regret to the lateness of the period at which he had embraced Christianity. "*I have lost oceans of happiness by not beginning earlier,*" was his own emphatic language. And then, alluding to the support which it afforded him in his afflictions, and the value which he then felt it to be, he told them, "If I could leave you all such legacies as I wish, and Christianity were set down at the price of a million, I would rather bequeath you Christianity than a million of dollars." He further urged upon them its excellence, by virtue of its power to fit them for the duties of life. "God first, and man afterward," said he, and then illustrated his conviction that a true Christian must be a philanthropist.

But there was one dearer to him than all others. She had been his guardian angel, his ministering spirit. She had been the wife of his youth: she had been the companion of his journey through all its scenes of change. When the world wronged him, he knew where to go for solace and comfort,—to one whose bosom was his ever-happy home. When affliction came, she was still by his side; and when his long-protracted sufferings required vigil upon vigil, she had an eye that asked no slumber, and a hand that owned no fatigue. And she it was who had sought for many a year to lead him, by her gentle and her winning way, from the turbid streams of earthly pleasure to the pure and the better spring at which she drank. Hard was the struggle of his soul to leave her. But he gave another and a brighter cast even to this heaviest ill. "'Tis only a journey," said he, "and I am going a little ahead of you, and you will all soon follow."

"Our dying friends are pioneers to smooth  
Our rugged pass to death,—to break those bars  
Of terror and abhorrence Nature throws  
'Cross our obstructed way, and thus to make  
Welcome, as safe, our port from every storm."

Nor were his servants forgotten. Fixing his eye on one who stood by his bedside, and who had been constant in his services throughout his

master's illness, he commended him for his fidelity, and warned him of the dangers to which he was exposed, and particularly of the evil of intemperance; and, unable to address them all, he closed his admonition by saying, "What I say *to you* applies to all the rest."

We have hitherto viewed the character of the deceased only in those points of light which are calculated to increase our sorrow for his loss, without affording us any consolation. And if the history of his life were here to be wound up, then should we sorrow "even as others which have no hope." But let us now consider the *religious* character of our brother.

For the greatest part of his life Judge CLAYTON had been skeptical of the truth of Christianity. Though always respectful to those who made a profession of religion, yet he had never submitted himself to the cross of Christ until within the last twelve months. During the month of August, 1838, he was attacked with paralysis, and, for a short time, lost the use of one hand, and his articulation became very indistinct. Upon the day of his attack I visited him. Knowing that the fears of his family and friends were awakened for his safety, and probably judging from my presence that we were particularly anxious about his spiritual state, he addressed me as well as he was able. "I think I may safely say I am prepared for the event." I replied that I had perceived in his conversation from time to time some familiarity with the Bible, and hoped he had made it a matter of study. His answer was,—“No: but in all my dealings with the world, and in all my acts, I have always had regard to the existence of a just God; and, if there is a man I have wronged, I do not know him.” Having endeavored to direct his mind to the Lord Jesus Christ as the sacrifice for sin, and to the necessity of the merit of his atonement, I inquired if it was his wish that we should pray, and, he desiring it, the family assembled, and we prayed. No opportunity offered (from the nature of his affliction) for some days after for religious conversation. Some short time subsequently, however, when he had so far recovered as to be able to go about, understanding that he desired to see me, I called, accompanied by one of the ministers who was in attendance at a protracted meeting then in progress. The subject of religion was now introduced, and never had I witnessed so great a change. He who, but a short time before, had been dwelling complacently upon his own virtuous deeds, and even meditating an entrance into eternity with no other preparation, now sat before me overwhelmed with grief and tears at the recollection of his ingratitude to God for all his mercies. He had been employed in reviewing the past; and, though he found that his conduct toward the world had been quite equitable and just, he had also been convinced that his duties toward his Maker had been neglected. Now he inquired what had kept him from being a Christian; and, having learned the true state of his own heart, this was his candid confession, and, at the same time, the avowal of his purposes:—“Sir, I am determined that *pride of opinion*, which has so long kept me from embracing Christianity, shall keep me away no longer.” Nor was he insensible to the difficulties which he met in turning to God with repentance and faith. “In pursuing this course,” said he, “at every step I am met by a committal. For all the acts of a man's life are so many committals, and every act contrary to religion is a committal to vice. But shall I permit these things to deter me when I see the extended arms of my God ready to receive me?”

Having abandoned that pride of opinion which he felt had so long prevented his becoming a Christian, he manifested the greatest meekness and docility in the reception of truth. Sensible that in trusting to the merit of his own good works he had rested upon a frail and weak foundation, he now desired to place himself upon another and a surer basis. And upon the eternal foundation of the prophets and apostles, Jesus Christ himself being the chief corner-stone, there was but one way of successfully building, and that was by the exercise of an humble and confiding faith. How simple and how sincere was his reception of the gospel may be best learned from his own words. "Sir," said he, "I view myself as though I had been a heathen, shut up in darkness and superstition, and you, as a missionary of the cross, (for all ministers are, or ought to be, missionaries,) were presenting me for the first time with the Bible; and, although I do not comprehend all that may be in it, yet I receive it all by faith. I throw away, as a heathen would his idols, all my old systems and views, and adopt this for my creed. I take it all."

The interviews which it was my privilege to enjoy with Judge CLAYTON subsequent to this were all of the most delightful character. He dwelt with much anxiety on the subject of his former opinions, and was especially fearful lest his influence over others might have led them into error, and most earnestly solicitous to erase any such impressions wherever they had been made. When, therefore, he communicated his desire of attaching himself to the Church and making a public profession of Christianity, knowing from his weakness that it would be with difficulty, if at all, that he could attend at the place of worship, I suggested that his wish might be made known without his personal attendance. To this, however, he immediately objected, desiring, feeble as he was, to perform this act in person, both as a public recantation of his former views, and in the hope that the influence of his example upon others might be salutary. And accordingly, on the 26th August, 1838, he presented himself in the presence of a large congregation, making an open profession of faith in his divine Redeemer, and united himself with the Methodist Episcopal Church. At this time he had not experienced that sense of joy and spiritual communion with God which he desired, but was earnestly seeking after the Lord if haply he might be found. Nor did he seek in vain. For but a short time had elapsed after he had taken this decisive step when he felt the springing up of inward comfort and rejoiced in the clear assurance of his sins forgiven. From this time, his whole soul seemed absorbed in the great subject of religion. The language of his heart appeared to be, "Oh, how I love thy law! it is my meditation all the day." It was his darling theme of conversation. His very weak state of bodily health allowed him to attend at church but very seldom; and now he sorrowed that, just as he had begun to appreciate those religious privileges, he was cut off from their enjoyment. Still, he patiently submitted to the will of his heavenly Father.

There was one point upon which our departed brother seemed particularly sensitive and anxious from the time of his conversion until his death. He knew full well that there would not be wanting those who would say that his mind had been enfeebled by his disease; that the apprehension of death had alarmed him, and occasioned his pursuing this course. To the last this thought seemed constantly before him. He adverted to it calmly, but firmly, expressing his conviction that, amid the decay of his physical energies, his powers of composition and reflection

were as strong as ever. And many who visited him during his illness, and even in his dying hours, were witnesses of this. Never had I beheld one less agitated in prospect of death. He spoke of it, not as of an event which must happen, and for which he had been preparing himself by the principles of a stoical philosophy,—not as of an unending sleep, where no consciousness of existence should be felt, and where the waters of oblivion should wash out all remembrance of the past,—but he viewed it rationally, as a winding up of the affairs of this life, which was to be followed by a rigid scrutiny into all his acts and principles and motives. Sensible, as every honest dying man must be, that, in the judgment of an all-wise and holy God, there would be found many delinquencies and errors which needed a satisfactory atonement, with faith in the record which God had given of his Son, he reposed in the merits of the sacrifice which he had offered for the sins of the whole world. Experiencing the peace and joy which attend upon a sense of sins forgiven, he spoke of death as though he were “*prepared*,” and not only prepared, but cheerfully willing and ready to go. He spoke of it as a “*pleasure*,” and, when asked upon one occasion what he wished, he answered, “*To die*.”

The warm and generous emotions of his heart were not checked by his physical weakness. He had a word of affectionate tenderness for all who visited him. Sitting upon his bed one afternoon, very shortly before his death, he prayed with great earnestness for his enemies, and then observed:—“I wish that the world could all be brought into one embrace, and that embrace were mine: I would throw my arms around them and bring them all to Christ.”

I called his attention to his expression of “having been prepared for the event” when attacked with paralysis last summer. “Ah, yes!” said he: “I was then trusting in my morality. But it would not do.”

Are there any here who look upon all this as the result of fear? Hear what he bade me tell you:—“*Say to those stout-hearted stoics—those men of learning—who say this is all fear, that they may call it so: but who would not fear a God?*”

Surely it can be called no want of reason or moral courage that man should stand in awe of his great Creator. In the pride of his ungrateful heart, surrounded by friends and all the pomp of power, he is often ready to suppose that the acknowledgment of his dependence upon and obligations to his Maker involves a weakness which he would not own. But there must come a time when the proudest and most stubborn feel their utter impotency in his hand. He who can paralyze in a moment the strongest arm and still the tongue of the bold blasphemer must be confessed to be the Almighty. Too long have men trampled with impious foot the sacred canon, and endeavored, by dethroning God, to exalt and deify what they have termed their reason. Vain and arrogant presumption! If to condemn unread the book of revelation,—if to impugn and vilify the whole system of Christianity because there are some of its truths so sublime and pure that we cannot fully comprehend and appreciate them,—if this be reason, then folly would be bliss.

“’Tis reason our great Master holds so dear;  
 ’Tis reason’s injured rights his wrath resents;  
 ’Tis reason’s voice obey’d his glorious crown:  
 To give lost reason life he pour’d his own.”

**That**



The chamber where the good man meets his fate  
Is privileged beyond the common walk  
Of virtuous life, quite in the verge of heaven—

was fully realized by those who were permitted to attend upon our lamented brother in his dying hours. On the Wednesday morning before he died, being attacked with violent spasms, his family supposed that he was about to be taken away from them. While, overwhelmed with grief at the anticipation of his loss, they wept around him, he ministered consolation to them all. Throughout the day these paroxysms continued, and in the afternoon were still more violent. It was in the close of one of those agonies that he distinctly, though slowly, uttered these words:—"Oh, what darkness! what dismal darkness! how profound!—*physically speaking. But all is bright beyond.*" He lingered until Friday night, slowly sinking; and, throughout all this time, never did he seem to lose sight of the great object of his faith and hope. Frequently and emphatically would he say, "Blessed be God!—blessed be God forever!"

And when at last his hour had come, it pleased God to give him a calm and easy passage. As we hung near him to catch his last accents, faintly and softly we could hear him murmur, "The way is bright"—"Here's room"—"Over Jordan"—"Enter in"—"Door is open"—"This is heaven"—"I'm so happy"—"It is ended"—"I am through"—"Bless God." These short sentences he would frequently repeat in soft and gentle whispers. But they were sufficient to indicate what were the exercises of his mind as he passed away. Doubtless, could we have seen as he beheld, we should have witnessed the ministering spirits, as they gathered around, beckoning him onward to the throne of God. Without a groan or a struggle, our brother sweetly breathed his spirit into the bosom of his Father and his God,—illustrating what one has so beautifully said of the Christian's death:—

"He sets as sets the morning star, which goes  
Not down behind the darken'd west, nor hides  
Obscured amidst the tempests of the sky,  
But melts away into the light of heaven."

From what has been said, and from the brief review which we have taken of our brother's history, we learn, first, the goodness and long-suffering of God. Had our friend been taken from us one year earlier, how different would have been our feelings! But it pleased God to spare him, and this long-suffering and forbearance led him to repentance. Is there one here to-day who has long lived in the neglect of these sacred and important things, and whose heart, now seriously impressed, is bordering on despair, thinking that it has been put off until it is too late? In the instance of mercy we have just been considering, let him learn that God is gracious and ready to forgive; yea, our God is merciful. And, if he will repent and believe, he may yet obtain that blessed hope which can support his spirit in the hour of heaviest trial. But let no one presume to defer this interest because our brother found pardon at so late a day. Let his own words proclaim to you the folly of such a course, and remember that, while he rejoiced in the pardoning mercy of God sought and obtained at so late a period, he felt that *he had lost oceans of happiness by not beginning earlier.* These oceans of happiness you may enjoy by devoting yourselves to God in early life.

But, as examples of this kind are comparatively rare, we learn, secondly, that such manifestations of divine grace are intended for the benefit of

all within the range of whose observation they come. So St. Paul contemplated his conversion:—"For this cause I obtained mercy, that in me first Christ Jesus might show forth all long-suffering, *for a pattern to them which should hereafter believe in him to life everlasting.*" Here was a miracle of the grace of God,—a brand plucked from the burning,—chosen as a vessel to bear this grace for the encouragement of all who may seek the Lord. This testimony comes not from one who was previously prejudiced in favor of Christianity, and from whom you might have expected it; not from one whose sincerity you might doubt; not from one terrified into a confession of sin; but from one whose early prepossessions were hostile to Christianity, but who, from being skeptical of its truth, became the subject of its power and cheerfully testified of its excellence; from one who had been accustomed frankly and fearlessly to avow his opinions; from one whose intellectual vigor we all respected, and who retained that mental power to the last. He now addresses you in those words which we have brought you from his dying bed, and calls upon you to turn unto the Lord and live.

Lastly, we learn how complete is the victory which Christianity enables us to achieve over the powers of death and the grave. For while we contemplate the closing scene of our brother's life, and mark the good man as he dies, we cannot but feel that the saying has been brought to pass, "Death is swallowed up in victory. O Death! where is thy sting? O Grave! where is thy victory? The sting of death is sin, and the strength of sin is the law. But thanks be to God, which giveth us the victory through our Lord Jesus Christ."

"Oh, may we triumph so  
When all our warfare's past;  
And, dying, find our latest foe  
Under our feet at last!"

The following announcement appeared in the newspapers soon after the death of Judge Clayton:—

DIED,—At his residence in Athens, on Friday night, the 21st June, (1839,) the Hon. AUGUSTIN S. CLAYTON.

Judge Clayton was born in the State of Virginia, on the 27th November, 1783. He completed his education at the University of Georgia in 1804.

Having pursued the study of the law under the late Judge Carnes, he entered in early life upon its practice, and was successful, and rose to distinction at the bar.

He was chosen a Representative of his fellow-citizens, first in the lower and subsequently in the higher branch of the State Legislature, where he imparted the impress of his mind to many of the laws under which we now live.

He was thence elected Judge of the Superior Court of the Western Circuit, which post he filled with honor and dignity.

In 1832 he was elected a Representative in Congress for the State of Georgia, of which body he became a distinguished member. At the close of the last term for which he was elected, in consequence of declining health, he retired from public life, except the trusteeship of the University of Georgia, which station he had filled from a very early period.

He was highly distinguished for his correct literary taste and chaste,

flowing wit, which his numerous political and other essays abundantly prove.

In private life and in his social relations the subject of this notice was characterized by the greatest affection and the most ardent desire to minister to the happiness of those who were dependent upon him. For many years Judge Clayton had been exceedingly skeptical upon the subject of the Christian religion. His mind was, however, turned to its more calm and deliberate investigation during his long and protracted illness. Then it was that he regarded his previous neglect as the greatest ingratitude, and, under a deep conviction of its truth and of his former errors, he made a public profession of faith in Christ, by uniting with the Methodist Episcopal Church, in August, 1838, which he steadfastly and consistently maintained till his death.

Sensible that his former opposition to Christianity might have infected the minds of many with whom he had associated, his most ardent desire appeared to be to undo the evils of his former life in this regard.

The closing scene of his life was one of extraordinary Christian triumph. He retained the exercise of his intellectual powers with surprising vigor to the last; and many of his dying expressions will long be remembered by his family and friends as precious memorials of the power of divine grace in cheering the spirit in its passage to the tomb.

Thus lived and died one among the most talented and distinguished citizens of the State of Georgia, whose foibles will be forgotten, but whose many virtues will be remembered and cherished long after this brief obituary shall have been laid away among the things that were.

DEMOSTHENIAN SOCIETY, June 22, 1839.

Whereas, It has pleased Almighty God to take from us another, and one of the most venerable and highly-esteemed, of our members, the Hon. AUGUSTIN S. CLAYTON, one of the earliest graduates, and for many years a trustee, of this institution; and whereas, we are duly sensible of the loss which we have sustained as a body in the death of one whose reputation as a philanthropist, a statesman, and a most valuable and worthy citizen, has always reflected honor and dignity on our Society:

*Be it unanimously Resolved,* That we entertain the highest esteem and veneration for the deceased, and adopt the following resolutions:—

*Resolved,* That the members of this Society wear crape on the left arm for the space of thirty days, and that the members of the Phi-Kappa Society be requested to unite with us in this testimony of regard.

*Resolved,* That the members of this Society attend at the residence of the deceased on to-morrow, to walk in procession to his place of burial, and that the members of the Phi-Kappa Society be likewise requested to join us.

*Resolved,* That these resolutions be published in the gazettes of the town, and that a copy of the same be transmitted by the committee to the bereaved and deeply-afflicted family of the deceased.

*Resolved,* That this Society transact no business on to-day, and adjourn until Saturday, as an additional mark of respect to the deceased.

E. W. HARRIS,  
A. S. ATKINSON,  
J. FELDER,

*Committee.*

## NOTE TO THE MEMOIR OF JUDGE CLAYTON.

Since writing the memoir of the Hon. A. S. Clayton, a communication has been received from one of his sons,\* giving an additional account of the early life and subsequent career of his father,—which is subjoined, and also the letter to which it refers. They were intended as a guide to the author in preparing the memoir in his own language; but he prefers to give them as they were written, though a few particulars may be repeated which appear elsewhere. He could not substitute his own words with any hope of improvement.

The letter answers certain questions propounded by the author.

1. My father, AUGUSTIN SMITH CLAYTON, was the son of Philip and Mildred Clayton. His mother's maiden-name was Dixon. He was born at Fredericksburg, Virginia, on the 27th of November, 1783. His parents removed to Georgia when he was about a year old, and settled in Richmond county, where they both died, I think, soon after the collegiate education of my father was completed. My grandmother died some time before. I have not the dates; nor do I suppose them at all necessary. Both were dead at the time of my father's marriage, if I recollect aright.

2. My mother has no certain information as to his early education, but thinks he was at one time under the tuition of the late William H. Crawford. We *do know*, however, that he was a student at the Richmond Academy when Gen. George Washington visited Georgia in the year 1791. In my father's library is a copy of Sallust, presented to him by Gen. Washington, in which the following appears:—

“Premium of the President of the U. S. to Smith Clayton, a student of Richmond Academy, as a memorial of his esteem, and a premium due to merit. Presented by his request

“(Signed,)

ROBERT FORSYTH,  
A. BALDWIN.”

And immediately, in my father's own handwriting, is this:—

“The speech which produced the above was spoken at the age of seven years and four mos.”

He was a graduate in the first class of the University of Georgia. I have no means by me to ascertain the year. You are perhaps correct in naming 1804.

3. He read law with Judge Thomas P. Carnes, and was admitted to the bar at Washington, Wilkes county.

4. He first located in Franklin county; but, after remaining one year, he removed to Athens, where he resided during the remainder of his life. He was married on the 20th December, 1807, at Augusta, to Julia Carnes.

5. He died at Athens on the 21st June, 1839. Eight children survived him, four sons and four daughters,—viz. : George R. Clayton, a prominent lawyer of Columbus, Mississippi; William W. Clayton; Philip Clayton, who was appointed Second Auditor of the Treasury Department of the

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\* William W. Clayton, Esq., of Kingston.

United States in the year 1849, and has held the position through both Gen. Taylor's and Gen. Pierce's administrations; and Edward P. Clayton, a commission-merchant of Augusta. My sisters are—Almira Dallas, who married Joseph B. Cobb, youngest son of the late Hon. Thomas W. Cobb; Julia Smith, who married Francis G. Baldwin; Claudia Caroline, who married John Howze; and Augusta, who married William King, Jr. Mr. Cobb lives very near, and Mr. Baldwin in Columbus, Mississippi, Mr. Howze at Marion, Perry county, Alabama, and Mr. King at Savannah. All the above-mentioned were alive at last accounts, (January, 1857.) My father never lost but one child,—his second son, named for himself, who gave the highest promise. He was an untiring student, was admitted to the bar before he was of age, and died the next week.

I have now replied to all your direct questions, and, I trust, with sufficient distinctness.

From the long letter of my eldest brother, George R. Clayton, who was in the practice of the law with my father some five or six years before he removed to the West, I at one time thought to cull such facts as were essential in the accomplishment of your design; but, upon more mature reflection, I have concluded to enclose it to you as it was received. It is full and explicit, though written, as must be observed, in great haste. Very nearly all the particulars enumerated by him have come under my own observation, and I fully corroborate them.

The letter referred to by my brother in relation to the bank transaction I withhold only because of the severe reflections upon the betrayer of his confidence. One expression from the letter will disclose to you the state of my father's feelings at the time. He says, "With the exception of the loss of your brother Augustin, it has inflicted the most unmitigated torture of mind that a life of now nearly fifty years has ever afforded." I can, however, give you an extract pertinent to the question. Let me premise by saying that the money taken on with him to Washington City was to pay the balance of his portion (one-fourth part) of the machinery for the Athens factory, to Messrs. Rogers, Ketchum & Grosvenor, of New York. "I have also informed Rogers & Co. of my misfortune. Besides, as soon as my mess here learned how I had been treated, they spontaneously, and perfectly unsolicited, offered their names to go into the bank for the amount I wanted, and suggested the step, stating that under my peculiar circumstances I ought not to let a matter of pride prevent me from removing my embarrassment, so far as it related to the payment which was expected by Rogers & Co. in New York. I yielded to their suggestions; and Gen. Robinson, Judge Mangum, Judge Bouldin, Col. King, and Capt. McIntyre, all endorsed a note immediately for three thousand dollars. Col. King went with me this afternoon to the President of the bank, and, after stating my situation, received for answer that he thought there would be no difficulty in getting the amount for at least four months. We had desired till the meeting of the next Congress. He said he would lay the matter before the board in the morning and give me an answer at 12 o'clock."

This letter was written on the 4th of March, 1833, and the day before his note was discounted. The transaction was one of a purely business character, and would never have been made but for the urgent solicitations of friends (some of whom at least were opponents of the United States Bank) and the peculiar circumstances under which he was placed.

The charge of being bought up by the bank was as *base* as it was *false*.

I know that with regard to the unconstitutionality of the United States Bank my father's opinion was never changed; for, in a conversation with him upon the subject about a year before his death, he stated distinctly that *Congress had no power to charter a bank under the Constitution*, but that it seemed, from the situation of affairs at that time, the great derangement of the currency, the exorbitant rates of exchange, (being as high in many instances as fifteen per cent.,) and the suspension of specie-payments by the State banks,—and all this happening so soon after the downfall of the United States Bank,—he was inclined to think it necessary to have a regulator of the currency, and that he would not object to see the Constitution so amended as to confer upon Congress the power to charter an institution of the kind, with all proper restrictions and safeguards.

It may not be amiss to relate an incident which occurred at the time my father connected himself with the Methodist Church in Athens, as it gave unquestionable evidence of the thorough work of the grace of God upon his heart.

For a long time he had the most supreme contempt for the editor of the —, and would not deign to speak to him. This was occasioned by an unfair, unjust, and violent opposition to him, which was continued even after he retired to private life. It was carried to such an extent that one of his sons, feeling that “forbearance had ceased to be a virtue,” called upon the editor. . . .

This circumstance is mentioned merely to show the bitterness of feeling which existed. Now for the incident.

On the Sabbath morning in question, the meeting having been quite crowded, upon the call of the minister for any who might desire to attach themselves to the Church, there appeared at the altar my father, accompanied by my mother, and soon after the editor before mentioned. They were received by the minister; and, immediately on seeing him, my father, still affected with paralysis, tottered up to the editor and extended his hand, thereby indicating to the world that as “his trespasses had been forgiven,” so he forgave those of others. It was received in like spirit; and upon the Christian's altar all animosities were forever buried. The scene was touching, and produced such a thrill throughout the whole audience as to cause many an eye to glisten with the sympathetic tear.

My brother, as you will see, suggests the propriety of a visit to Athens, to see if I could not collect something from among my father's papers that might be valuable to you. Having overlooked most of them before removing to this [Cass] county, I feel pretty well satisfied that nothing additional could be procured. I regret that my father did not keep a copy of his correspondence. He retained no copies, except of letters on special business. I am therefore denied the pleasure of offering you any thing of this style of his writings. Judge A. B. Longstreet and my father were intimate friends, and he may have some of his letters that might be interesting. I cannot think of any one else at this time to whom to refer you.

If you could obtain a copy of a work entitled “The Mysterious Picture, by Wrangham Fitz-ramble,” of which my father was the author, you there have a style differing from his political writings. I have no copy of my own, nor can I inform you where you would be likely to procure one. The edition is exhausted; all copies, therefore, are in second hands.\*

\* The author obtained a copy more than twenty years ago, and has it now, bound with other choice literary pamphlets, in his library.

He also wrote for Col. David Crockett, in his lifetime, a work entitled "The Life of David Crockett, written by Himself." This was, for the most part, of a political character. I had a copy, but it has been lost.

From the letter of George R. Clayton, Esq. referred to in the preceding, extracts are here given, further to illustrate the character of Judge Clayton:—

As a man, he possessed an unbounded benevolence and was sensitive to the sufferings of the poor. Frequently have I known him when, from the scarcity of corn and provisions, much distress among the poor prevailed, and when he had it for sale and the price *very high* on account of the scarcity, open his cribs to the poor and let them have it without charge. And I can safely say that no man was ever denied provisions, when he could possibly spare any, because they had not the means of payment. This was a trait in his character I have often thought of with pride and admiration. There were a good many poor families residing near his plantation; and during years of scarcity, (which was frequent in that section of the country, as the soil was very poor and unproductive,) provisions were supplied to these families without charge, or on the most liberal terms, instead of high prices from those who were able to pay the cash.

He was a man of nice, delicate feelings, and very strong attachment to those with whom he was familiar. But such was his fondness for wit and cutting satire, that he rarely let an opportunity escape him in exercising it upon his best friends; and, no doubt, he has often wounded feelings where no unkindness was intended. His *wit* was without *malice*, and was more the result of a lively humor than a desire to injure feelings. From his mind it wholly passed away with the moment and the occasion; yet I have no doubt it left behind many a secret enemy. He was always generous with his wit. It afforded him as much pleasure and amusement to be himself the subject of a good repartee as to exercise his wit on others.

In his domestic relations he was very free with his children, often making them the subjects of his wit, and allowing them full latitude in their replies and witticisms on him. He therefore became a common centre for the witticisms of his family; and, whenever one of his children made a successful hit, the child, instead of being reproved, was considered as having won a laurel. I recollect an instance which delighted him. He had told an anecdote which ran thus:—A gentleman, travelling through the Indian nation, stopped at a spring to take some refreshments; and, whilst there, an Indian came to the spring, with whom the gentleman entered into conversation. He asked the Indian what was his employment, who replied that he was a preacher. He was asked where he preached. The reply was, at the upper town and the lower town. He was further asked if they paid him any thing for preaching. "Yes," was his answer. "How much?" said the gentleman. "Upper town pay two dollar and lower town pay one dollar." "That is *d——n poor pay*," said the gentleman. "Yes, but *d——n poor preach, too*," replied the Indian. Soon after this anecdote was related in the family, my father was elected to some office, and I asked him what salary he was to receive. He informed me; and I replied that I thought it a poor salary. "Yes," said one of my *little sisters*, "*but it is d——n poor preach, too*." This so delighted him

that she was the toast of the family for a week afterward. She had bearded the lion in his den and come off victorious.

He always encouraged his children to exercise their wit upon him, and was pleased when any of us were successful. My wife, never having been accustomed to that kind of freedom in children toward parents, when first introduced into the family thought us the most disrespectful children to parents she had ever seen, and so expressed herself to me. But she soon found it was *freedom without disrespect*, and *pleasantry without rudeness*, and had resulted from the vivacity, wit, and humor on the part of my father whilst in social intercourse with his family. He was an impulsive man, erring and repenting almost at the same moment. He was quick-tempered,—would sometimes act under a state of passion, and repent of it afterward, although the act itself might have been correct. He rarely ever chastised a child or servant, and, if he ever did, it was in a passion; and, whenever his passion subsided, he would weep like an infant for having done it.

As a judge, he was peculiarly sensitive to a rigid maintenance of the independence of the bench as against popular clamor and opinion. He derived his ideas of the independence of the bench and the course for a judge to pursue in a great degree from the example of Lord Mansfield in the celebrated case of Mr. Wilkes. He was greatly impressed with the remarks of Lord Mansfield in that case. I have often heard him repeat them, particularly that portion commencing, "But here let me pause."

It is fit to take some notice of the various terrors being out, the numerous crowds which have attended and now attend in and about the hall, out of reach of hearing what passes in court, and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now and afterward upon the conviction. Reasons of policy are urged, from danger to the kingdom by commotions and general confusion. Give me leave to take the opportunity of this great and respectable audience to let the whole world know all such attempts are vain. Unless we have been able to find an error which bears us out to reverse the outlawry, it must be affirmed. The Constitution does not allow reasons of state to influence our judgments. God forbid it should! We must not regard political consequences, how formidable soever they might be. If rebellion was the certain consequence, we are bound to say, "*Fiat justitia ruat cælum.*" I wish popularity, but it is that popularity which follows, not that which is run after: it is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands or the daily praises of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw upon me the whole artillery of libels,—all that falsehood and malice can invent, or the credulity of a deluded populace can swallow.

See the remarks at large in the 4th volume of Burrows's Reports, p. 2561, *Rex vs. John Wilkes, Esq.* I have often heard my father repeat the above remarks of Lord Mansfield and speak of them as the true test of an upright judge. They had made a very deep impression on his mind; and, when he came upon the bench, he has often said to me that he took those sentiments as his guide of action. And, in examining his history as a judge, I think it will be found that he never looked to consequences to himself or faltered in the course pointed out by those sentiments. Upon several occasions he was compelled, in the discharge of official duties, to resist popular clamor and prejudice. In one case (I think it was in Habersham county: it was the case known as the Indian Reserve Case) I understood he was threatened with personal violence by



the mob for his decision in favor of the Indians, and his friends were on their guard to prevent it. Col. Samuel A. Wales may remember the circumstances.

The last judicial act of his life deprived him of his office, and which I have always looked upon as the proudest of his public career. I allude to the decision in favor of the Cherokee Indians, and which was noticed in Gov. Gilmer's Annual Message to the Legislature in rather a rude manner, asserting that the policy of the State in acquiring possession of the Indian territory had been frustrated by the decision of a judge, &c. This decision was made a short time before the meeting of the Legislature at which a judge in his circuit was to be elected for the constitutional term. He was a candidate for re-election without opposition from any person of his party, and they in power at the time. His re-election was considered certain; when some of his intimate friends ascertained what would be his decision in the case, and, knowing that it would raise a great clamor against him, as it was in direct opposition to the policy of the State and the prejudices and desires of the people in acquiring the possession of the Indian territory, and also in some degree affecting the stability of the party in power, as the acquisition of Indian lands was one of the party hobbies of the day, and not absolutely necessary that the decision should be made public before the election, the suggestion was made to him by friends who greatly desired his election that the decision should be postponed until after the election. This he declined, preferring the character of an upright and independent judge to the office. Some of his best friends—among them the lamented Judge Dougherty—differed from him in opinion. As to the correctness of the *opinion* I have nothing to say. That is a matter to be judged by the public. I only mention it to show a trait of character he possessed in an eminent degree as a judge,—to wit, *independence*; for every motive of a personal kind and every inducement of a selfish nature would have prompted to a different decision.

The decision was made just before the election, and, as expected by his friends, it created great opposition to the renewal of his term of office. Judge Dougherty had been elected a member of the Legislature from Clark county. He resigned his seat within a certain time, became a candidate for the judgeship, and was elected. Up to this time Judge Dougherty had been the warm personal and intimate friend of my father, and I have not the least doubt continued to be so to the day of his death, though my father was much hurt with him at the time. Judge Dougherty's position was simply this: I have no idea that he would ever have come in competition with him so long as my father desired the office and there was any probability of his election; but Judge Dougherty's friends looked to him as the successor of my father to the judgeship of the Western Circuit, and no doubt he desired it himself. After the *decision* had been made, Judge Dougherty and his friends (and who were also the friends of my father) became satisfied that his re-election was impossible; and, as they were unwilling that any other person should occupy the position which had been designed for him, Judge Dougherty was prevailed upon to become the candidate,—not so much to defeat my father as to prevent any other person from stepping in ahead of him.

I am satisfied, from the state of feeling at that time, that almost any one would have been elected over my father. Many of his friends, knowing the cordial relations that existed between them, as well as the con-

nection by marriage, were disposed to censure Judge Dougherty for the opposition; but I have ever been able to do justice to his purity of motive, and my father also became satisfied of his sincere friendship, as their continued intimacy proved. Notwithstanding his defeat for the judgeship by his own party, they still entertained for him the highest regard, and sought to make amends immediately by placing him in another position. The objection was not so much to the man as to the decision. It became necessary to sacrifice the judge in order to carry out the policy. This was a sore trial to his party, among whom he had many friends who were satisfied that he acted from the purest motives in the discharge of duty.

At the time of this election a vacancy had occurred in Congress by the resignation of one of the Representatives\* from Georgia, and the vacancy was soon to be filled. His political and personal friends, who had just aided in his defeat, insisted upon placing the name of my father before the people for the office. Members of Congress were then elected by general ticket, the district system having been since adopted. At first he unhesitatingly declined. I never saw him more *mortified* in my life than at his defeat for the bench,—not that he regarded the office as of any consequence to him, but his mortification arose from the defeat, *by his own party*, for (what he conceived) an *act of duty*, and the peculiar circumstances under which he was defeated. He stated to me that he would go home and retire from public life, and never again be a candidate for office. And such was his determination up to the night before he left Milledgeville. His friends were very much opposed to his leaving Milledgeville under such a feeling of mortification. On the night before he left, Dr. Henry Branham, an old personal and political friend, called to see him after he had retired to rest, and, seating himself by his bedside, remained with him until midnight,—in fact, never left him until he had in some degree reconciled him to his defeat and procured from him a promise to suffer his name to be announced as a candidate for Congress. I was not present at the interview, but know that it was long and earnest on the part of Dr. Branham, who, I believe, was a sincere friend of my father, though I am impressed he voted against him for the judgeship: yet of this I am not certain.

On next morning his name was announced as a candidate for Congress, which resulted in his election by the people. This trust was afterward renewed by his constituents until he voluntarily retired from the position. The documents and papers of the day afford something of his political history, which I have not within my reach to consult.

He was very poor when he commenced life. His father left two sons and an unmarried daughter, with small property. To his sons he gave a liberal education, and to his daughter all his property. I have often heard him say that when he commenced his profession he had but one object in view, and that was a support. But after he obtained a support his ambition for distinction was aroused. At first, fame never entered into his calculations. Poverty so stared him in the face that he looked upon it as the only foe with which he was called upon to contend. He amassed a good fortune, leaving his widow and eight children in independent circumstances.

With regard to his religious sentiments, he was, as stated in the funeral discourse of the Rev. Whiteford Smith, skeptical. My mother first

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\* Hon. Wilson Lumpkin, who was elected Governor in 1831.

united herself with the Methodist Episcopal Church before any church-building had been erected in Athens. I can just recollect it. There were but two or three Methodists in Athens at the time. The father of Methodism in Georgia—the Rev. Hope Hull, the ancestor of Mr. Asbury and Dr. Henry Hull—had a country church a few miles from Athens, in which he preached to a small congregation. Not a vestige of this building is left. My mother united herself to this church with the full and free consent and approbation of my father; and, in fact, he was pleased at the course she adopted, though skeptical himself at the time. She is now the oldest member of the *Athens Church*, and has through a long life exhibited the power and truth of Christianity.

My father was always delighted with the morality of the Bible, and has often said that it could only have originated from Divinity. The human mind could not have conceived it, as it was far above human thought. He practised the morality of the Bible in his intercourse with his fellow-men; but the doctrine of salvation by faith in and through Christ seemed to be his stumbling-block. This doctrine was a mystery to him. He believed that man would be judged by *his works*, and he was *working to that end*.

As I before stated, he was remarkably charitable, always paying annually his full proportion, to the extent of his means, for the support of the gospel, endeavoring at all times to “render unto Cæsar the things that were Cæsar’s;” but he failed to “render unto God the things that were God’s.” His error consisted in *too great* reliance on himself,—a fatal error, which many commit. I have often known him to quiet himself by comparing his own life and conduct with unfaithful members of the church, and would frequently ask my mother, who was very solicitous for his conversion to Christianity, whether she would have him exchange his prospects of salvation with these unfaithful members. He has often entered into conversation with my mother on his skeptical views of the doctrine of salvation through Christ; and, although she was not able to compete with him in argument, her pious life was a sufficient refutation. His confidence in her religion was never shaken. He was devotedly attached to her, and she had an unbounded influence over him; and I believe she never lost faith in his renouncing his error before his death. In this her faith was fully realized, for before his death he made a public recantation of all his errors on the subject of religion. Many years before his profession of religion I had removed to Columbus, Mississippi, and have a letter from him in which he first announced to me his change of opinion on that subject, an extract from which is here given:—

ATHENS, August 21, 1838.

MY DEAR GEORGE:—Under the late, and doubtless distressing, intelligence you have received of my health, (an attack of paralysis,) I have supposed that a few lines under my own hand would be peculiarly gratifying to you; and hence the present feeble attempt. I am very far from being restored even to my former condition; but I am certainly in a progress toward it, which I never at one time expected. I have nearly recovered the strength of my afflicted arm and hand, and, in a good degree, regained my speech. Indeed, as to the latter, I feel sensible that its greatest defect arises more from a weakness of the lungs than a muscular inability of the organs of speech.

I am flattered by medical men, and I flatter myself, that I may ultimately recover; that the rigid regimen under which I am now placed to remove the severity of my last attack will, if it succeed in that object, carry with it the old disease. I confess I am not sanguine, for my old complaint is almost too deep-seated to hope for an entire cure. And although I may be measurably relieved from my paralysis, at

least so as to linger out some few years, yet I dare not hope for a hearty restoration to health; and taking all my afflictions together, and the periodical and progressive character of their warnings, I have determined to appreciate them, as perhaps they may have been meant, as chastisements intended for my future peace. And it gives me great satisfaction to inform you that, though late, yet I trust not the less comforting, I have thrown myself unfalteringly upon that reliance which has so long been the hope and comfort of yourself and your dear mother.

I have most sincerely repented of my past follies, and do now embrace, with unfeigned sincerity, the truth of the Christian religion; not that I feel or have felt any secret communication of divine influence upon my heart, any further than as I am impressed with a sense of duty, and as a reasonable service which is due from the creature to his Creator, and that infinite obligation imposed by the ten thousand blessings we have enjoyed and do daily enjoy. There is fealty due somewhere for our existence and its numerous favors; and where does it so properly belong as to their great Author? This I feel, and this sentiment I cherish and cultivate. And, as there is no better code of duty than that furnished in the Bible, I do most cheerfully, from this time out, receive it as my guide and director, throwing myself upon its promises in and through the strong assurance of faith. I receive it without further cavil or dispute, and hope finally to realize, by a constant observance of its commands, that I have not made myself the dupe of a blind faith. I hold that a blameless life and conversation, and a perfect conformity to the will of God as known and understood, is the best evidence of a changed heart, and shall try to square my future life by this most reasonable test.

His religious views and feelings from the date of this letter to the time of his death may in a great degree be found in the funeral discourse of Dr. Smith.

In relation to the loan made by the United States Bank, I think my father made a public exposé of the whole matter in some of the Georgia papers. The facts were simply these:—

He had borrowed a large sum of money to pay for his shares of stock in the Georgia factory, and carried it with him to Washington City, when he went on to Congress, to settle for the machinery, or his portion of it. When he arrived there, he found the Georgia money which he took with him at considerable discount, and was advised by a friend to send the money to Augusta and procure a check on New York, which could be purchased at a small premium. He sent the money to A. McKenzie, his commission-merchant in Augusta, with the request that he would purchase a check and forward the same immediately. McKenzie used the money and he lost it, or the greater portion, which placed him in a very peculiar and distressing situation. His *mess* (and among them the late Vice-President, Col. King, of Alabama) insisted upon his obtaining the money from one of the banks in Washington City, and endorsed his note for him, and thereby enabled him to perform his contract with the party from whom the machinery had been purchased. The note was discounted by the branch of the United States Bank in Washington City, in the due course of business, on short time, and was paid at maturity. Out of this transaction arose the charge, made in a heated political contest, that he had been bought up by the bank, &c. If he ever changed his views and opinions relative to the unconstitutionality of the United States Bank, I am not aware of it; and, even if he did, this purely business-transaction could have furnished no inducement for such a change.

I omitted to mention in the proper place that my father was emphatically a *peace-maker*, and did much good in quieting difficulties between his neighbors. When any difficulty arose between the students and the faculty of Franklin College, (which was frequent,) the delinquent student always came to him for advice and his influence in adjusting the affair; and he rarely ever failed in restoring the students to their place in col-

lege and in the respect and regards of the faculty, as many a graduate of the Georgia University can fully attest.

Since the foregoing was arranged for the press, the author has obtained from a file of the *Georgia Journal* of November 14, 1831, a copy of Chancellor Kent's letter to Judge Clayton, which is subjoined, together with the note of Judge C. introducing it:—

MILLEDGEVILLE, November 12, 1831.

MESSRS. EDITORS:—You will confer a favor by publishing the following letter of Chancellor Kent. In making this request, I have only to remark that the sole consideration for making it is to submit the testimony of one, in favor of my legal reputation, whose character as a jurist will entitle his evidence to great weight. He is justly considered the Blackstone of America, and his character as a lawyer stands as high in Europe as it does in his own country. He has never been engaged in either party or political strifes, and his whole life has been devoted to legal research. This publication is asked under not the slightest temper of complaint for my late removal from office; for I hope I shall have it in my power, at a more convenient season, to lay before my fellow-citizens such a statement of the whole matter as will show there is no necessity, on my part, for either ill-will or reproach.

Respectfully, yours,

A. S. CLAYTON.

NEW YORK, Oct. 13, 1831.

DEAR SIR:—I was favored yesterday with your letter of the 3d inst., together with the *Southern Recorder* of September 29, containing your opinion in the case of the *State of Georgia vs. Canatoo*.

That opinion has been read by me with great care and attention; and, agreeably to your request, I subjoin the conclusions to which my own mind has arrived in regard to the two material points in the case:—

1. It appears to me that upon the whole the statute applies to the case. I can only judge from the extracts from it contained in your opinion. The statute asserts that the mines alluded to are *of right the property of Georgia, and it authorizes the Governor to take possession of those mines, and to employ force to protect them from all further trespass*. I presume such forcible possession has been taken, and that the offence alleged against the Cherokee Indian arose subsequently. But the statute is so exceptionable in reference to the rights of the Cherokees to their lands (and which include the mines therein, as well as the trees and herbage and stones thereon) under the existing treaties with them, and in reference to the Constitution and constitutional authority of the United States, that I agree with you that such a statute should receive an interpretation, *if possible*, favorable to constitutional and treaty rights. If such a statute does not apply *in very terms* to the very case of a Cherokee Indian digging in the mines, the benign intendment would be that the Legislature did not intend it, because such an intention would contravene the clear rights of the Cherokees to the undisturbed use and enjoyment of the lands within their territory, secured to them by treaty.

2. But the better way is not to rest upon any such construction, but to go at once, as you have done, to the great and grave question which assumes the statute to have intended to deprive the Cherokees, without

their consent and without purchase, of the use and enjoyment, in part at least, of their lands secured to them by national treaties, and which calls into discussion the constitutional validity of the statute.

On this point I am entirely with you, and in my opinion your argument is sound and conclusive, and you have examined the subject with candor and accuracy, and with the freedom of judgment which your station and character dictate.

I am almost entirely persuaded that the Cherokee title to the sole use and undisturbed enjoyment of their mines is as entire and perfect as to any part of their lands, or as to any use of them whatever. The *occupancy* in perpetuity to them and their posterity belongs to them of right, and the State of Georgia has no other right in respect to the Indian *property* in their lands than the *right of pre-emption by fair purchase*: no other interest in the lands, as property, belongs to the State; and to take possession of the mines by force is substituting violence for law and the obligations of treaty-contract. It appears to be altogether without any foundation to apply the common-law doctrine of *waste* to the case; and I cannot but think that the Legislature of Georgia would not have passed the statute if they had duly considered that the Indian lands have never been claimed, or the occupancy of them, in the most free and absolute manner by the Indians, questioned, either by the Royal Governments before the American Revolution, or by the Union, or by any State since, except in open wars, or except the claim was founded upon fair purchase from the Indians themselves.

The proceeding of Georgia in this case is an anomaly, and I think it hurts the credit of free and popular governments and the moral character of our country, and is in direct violation of the constitutional authority of the United States as manifested by treaties and by statutes. I cannot think that the high-spirited, free, and noble race of men who compose the citizens of Georgia would be willing, on reconsideration, to do any such thing.

Yours, respectfully,

JAMES KENT.

Hon. A. S. CLAYTON.