DISCOURSE

IN MEMORY OF THE

LIFE AND CHARACTER

OF THE

HON. GEO. E. BADGER,

DELIVERED BY

WILLIAM A. GRAHAM, of Orange,

(BY REQUEST OF THE BAR OF WAKE COUNTY,)

AT RALEIGH, JULY 19th, 1866.

RALEIGH:
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At a meeting of the Bar of Wake County, held in the Court House, in the City of Raleigh, on the 22nd day of May, 1866, the Hon. Charles Manly being Chairman, and W. K. Barham, Esq., Secretary, the following resolution, offered by Kemp P. Battle, Esq., was unanimously adopted:

RESOLVED, BY THE MEMBERS OF THE BAR OF WAKE COUNTY, That a Committee of five be raised to request in their behalf the Hon. William A. Graham to deliver in this City, at such time as may be to him agreeable, a Memorial Address on the life and character of the late Hon. GEORGE E. BADGER.

Under the resolution, the following were designated as the Committee, viz: Kemp P. Battle, Esq., Hon. John H. Bryan, Hon. Thos. Bragg, H. W. Husted, Esq., and Hon. Sion H. Rogers, and, on motion, the Chairman was added to the Committee.

A copy of the resolution having been communicated to Mr. Graham, he consented to comply with the request therein contained, and, by subsequent arrangement, the 19th of July, 1866, was designated as the time, and the Commons Hall in the City of Raleigh the place, for the delivery of the Address. The following correspondence will show the occasion of its publication:

RALEIGH, July 19th, 1866.

HON. W. A. GRAHAM,

Dear Sir:—The members of the Wake County Bar instruct us to express to you their thanks for the very able and eloquent address delivered by you at their instance in memory of their late distinguished fellow member, Hon. GEOREG E. BADGER.

They feel that a discourse so full of instructive lessons should be put in an enduring form, and they therefore earnestly request that you will furnish them a copy of the same for publication.

Very truly yours,

KEMP P. BATTLE,
CHARLES MANLY,
JOHN H. BRYAN,
H. W. HUSTED,
THOMAS BRAGG,
SION H. ROGERS,
} Committee.

HILLSBORO', July 31st, 1866.

GENTLEMEN: Your note of the 19th instant has been received, and agreeably to your request I place at your disposal, the copy of my discourse delivered under your appointment on the 19th inst.

With sincere regard and respect, yours, &c.

W. A. GRAHAM.

MESSRS. K. P. BATTLE, and others, Committee.

ADDRESS.

MY acquaintance with Mr. BADGER commenced in the latter part of the summer of eighteen hundred and twenty-five. He had already completed his service as a Judge, which office he resigned at the close of the spring circuit of that year; had contested the palm of forensic eloquence and professional learning with Seawell and Gaston, with a wide increase of reputation, at the recent term of the Supreme Court, and was returned to the practice in Orange, where he had once resided, in generous competition with Murphey and Nash, Yancey and Mangum, Hawks, Haywood and others, Mr. Ruffin, hitherto the leader at this bar, having been appointed his successor on the bench of the Superior Court.

He was then a little turned of thirty years of age. One half of the time since his majority had been passed upon the bench, yet his fame as a lawyer was fully established; and though he doubtless afterwards added vastly to his stores of erudition, in quickness of perception, readiness of comprehension, clear and forcible reasoning, elegant and imposing diction, in all that constitutes an orator and advocate, he had attained an eminence hardly surpassed at any period of his life. From that time, and before it I know not how long, till the day he was stricken by the disease which terminated his life, in North Carolina, at least, his name was on every tongue. He was not only a marked, and distinguished, but an eminent man. So bright and shining a character could not but attract general observation; and though

> "Hard is his fate on whom the public gaze
> Is fixed forever, to detract or praise;"

and while, with a gay and hilarious nature, frank, but somewhat eccentrical manners, and unequal powers of conversation,

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united with some infirmity of temper, his expressions and conduct in the earlier half of his life were often the subject of severe criticism; yet, in the long period of from forty to fifty years, in which he moved "in the high places of the world," no one denied him the gifts of most extraordinary talents and unswerving integrity and truthfulness. Even in the particulars in which complaint had been made, an imputed hauteur and exclusiveness, his dispositions were either mellowed by time, or, what is more probable, his character came to be better appreciated from being better understood; and for years before his sad eclipse from useful life, no man enjoyed more of the general confidence and favor of the people, as none had possessed in a higher degree their admiration.

Transferred to the more extended field of jurisprudence administered in the Courts of the United States, and afterwards to the Senate of the nation, he took rank with the first advocates, jurisprudents and debaters of the Union; and the purity of his morals, the elevation of his character, his readiness and accomplishments as a conversationist, the gayety and vivacity of his manners, rendered him a general favorite with old and young, the grave and gay in the brilliant society of the metropolis in his day, and will cause him to be remembered among the most renowned and gifted Americans of the age in which we live.

An individual so admired, so deserving of admiration when living, may well claim the tribute of a suitable memorial when dead. Hence the resolutions of the gentlemen of the bar in Wake, the county of his residence, and the imperfect attempt to execute them by the ceremonies which have brought us together.

George Edmund Badger was born in Newbern, North Carolina, on the 17th of April, 1795. His father, Thomas Badger, Esq., the son of Edmund and Lucretia Badger, was a native of Connecticut, and his birth is recorded to have taken place at Windham, in that State, on the 27th of June, 1766. Having received a good education, he came in early manhood to Newbern and thence to Spring Hill, in the county of Lenoir,

where for some time he taught a school, but was then probably a student of the Law, and was in due time admitted to the practice of the profession in this State. Fixing his residence in Newbern, he early rose to distinction as a practitioner, and appears in the published reports as one of the leading counsellors in the Courts of that riding, and in the Supreme Court of that State, from 1792 till his death, which occurred from yellow fever while in attendance on a Court at Washington, in Beaufort county, on the 10th of October, 1799.

The traditions of the profession, and other intelligent persons of his acquaintance, represent him as a man of determined character, and great intellectual and professional ability, and leave the question in doubt whether, at the same period of life he was more than equalled by his son. The late Peter Browne, himself one of the first lawyers and men of letters of his time in North Carolina, a cotemporary at the bar of the senior Badger, spoke of him, before the entrance of hisson into public life, as one of the ablest men he had ever known, and especially as possessing a power to fascinate and control masses of men in the most remarkable degree—a power, he added, which the son might exert with similar effect, if he would.

The correctness of this opinion of Mr. Browne was fully verified by the addresses to popular assemblies of the subject of our notice, twenty years and more after it was expressed.

His mother, by name Lydia Cogdell, was the daughter of Colonel Richard Cogdell, of Newbern, a gentleman of much consideration under the Provincial rule in North Carolina, and an active and bold leader in the movement of the Revolution. As early as August 1775, his name appears second on the list of the committee of safety for Newbern district, appointed by the first Congress of the Province, (that of Alexander Gaston being at the head,) and the perforation made by a musket ball fired at his person by a British or loyalist soldier, during the occupation of that town by the royal forces under Major Craig, in 1781, is still visible in the door of his mansion in Newbern. This lady was a person of sin-

gular vigor of mind and character, well fitted to encounter the cares and trials of her early widowhood. Her husband had experienced that which has been said to be the common lot of the profession in this country, "to work hard, live well and die poor," and left her with but little fortune to rear three children, of whom George was the eldest, and the only son.

According to her narrative, he manifested no fondness for books, and made little progress in learning till about seven years of age. At that period she placed in his hands Goldsmith's Animated Nature. He was delighted with its perusal, and she never found it necessary to stimulate his thirst for knowledge afterwards. His preparatory course was taken in his native town of Newbern, and at the age of fifteen he entered Yale College. There he passed through the studies of the Freshman and the Sophomore classes, when his education, so far as depended on schools, was brought to a close. A relative, a man of fortune at the North, who had hitherto furnished the means for his college expenses, (his own patrimony being wholly insufficient,) and from whose bounty he had hoped to pass on to graduation, suddenly withdrew his support and left him to his own exertions. Of the motives of this unexpected arrest in his college career, on which so much might have depended, it is useless, now at least, to speculate or inquire. But it will be a source of gratification to his friends to be assured that it was attributable to no demerit in our student. True, his cotemporaries at Yale differ widely in their estimation of his capacities while there. The Northern students, who belonged to a different society, regarded him as a frolicsome youth, averse to mathematics, and fond of novel reading, who gave no indications of superior endowments.

On the other hand, a college classmate* and member of the same society, who knew him intimately throughout life, and was five and twenty years associated with him at the bar, affirms that "he was, beyond dispute, the first boy of his class

*Thomas P. Devereux, Esq., of Halifax.

composed of seventy individuals, many of them afterwards distinguished men. He was not," says this friend, "a hard student of the prescribed course. Perhaps I ought to add, that he was remiss in his college duties, but he was eager for to information a most wonderful degree, and among his fellow students he exhibited the same intellectual superiority, we have seen him so steadily maintain among men." To the same source I am indebted for the following observations concerning his elocution, which I repeat for the advantage and encouragement of the young. "I think," he remarks: "that the thousands who listened to the fluency with which Mr. Badger spoke, the clearness of his enunciation, the exact accuracy of his sentences and the carefulness of their formation—the right words always in the right places—will be surprised to learn that in his youthful attempts in debate he was almost a stammerer. I have heard him say he owed exemption from downright stuttering to his father, whom he remembered with affection, though under five years of age at the period of his decease, who would not permit him to speak while he hesitated in the least, but required him to stand by his side perfectly silent, until he had collected himself and arranged his thoughts. He, himself, often asserted that any one could speak fluently who thought clearly and did not lose his presence of mind."

He made known to President Dwight the reception of the letter announcing the withdrawal of the patronage by which he had been thus far supported, and the *res angustæ domi* which caused him to bid adieu to Yale, when reaching the portion of her *curriculum* by which his expanding mind would have most profited, and left with the regrets and kind wishes of that venerable divine and instructor. In after years when he had established a character, his *alma mater* honored herself by volunteering a degree to her barely risen Junior, and enrolling his name among her sons with whom he should have graduated in 1813, as, at a later period, she acknowledged his still higher advancement in liberal learning, by conferring upon him the grade of Doctor of Laws.

He appears to have indulged in no unavailing grief at the freak of fortune which blasted his hopes of a collegiate education, but returning home, though but little over seventeen years of age, betook himself at once to the study of the Law. His legal preceptor was his maternal cousin, the Hon. John Stanly, of Newbern, who as an advocate, a statesman, a parliamentarian, a wit and adept in conversation, is one of the historical orators of North Carolina; and who, viewing him as I did, from the gallery of the House of Commons in my boyhood, impressed me as an orator of more graceful and elegant manner and action, according to my conception of the Ciceronian standard, than any public speaker it has ever been my fortune to hear.

Mr. Badger was granted a license to practice the Law in the County Courts in the summer of 1814, and, according to the usual probation, in the Superior Courts in 1815; the Judges of the Supreme Court consenting to relax the ordinary rule and overlook his non-age, by reason of the narrowness of his fortune and the dependence of his mother and sisters upon his exertions for their support. The war with England raging in the former year, and an invasion of the State being threatened by the British forces under Admiral Cockburne, then hovering on our coasts, Governor Hawkins called out the militia, and, himself, took the field in an expedition for the defence of Newbern and Beaufort. In this expedition, Mr. Badger served as aid-de-camp to General Calvin Jones, of Wake, with the rank of Major, but the alarm soon ceasing with the retirement of the enemy, the soldier was again resolved into the youthful barrister. A vacancy occurring in the office of Solicitor to prosecute the Pleas of the State in that riding, about this time, he was introduced to public notice by the temporary appointment from the Judge, and made one circuit in that capacity.

In 1816, the year of his majority, he was returned a member of the House of Commons, from the town of Newbern; and whatever advantages he may have lost by his retirement from College, (and they were doubtless many and important,)

it may well be questioned whether any of the more fortunate youths he had left behind in the classic shades of Yale, were, by this time, better fitted to play a distinguished part in a deliberative assembly or a court of justice. What, with the instruction of Mr. Stanly, the conversation, intercourse and example of that accomplished gentleman, and his compeers, Gaston, Edward Graham, Moses Mordecai, and others, whom he met at the bar, or in society, but above all by his own profound study (which the vivacity of his nature, and the brilliancy of his parts, were calculated to keep out of view,) he had not only made great attainments in the Law, but, what is now I fear becoming rare, a familiar acquaintance with the classic authors of English literature, and with the arts of rhetoric and composition; and wrote and spoke our language with a readiness, force, precision, and propriety, the more remarkable because equally conspicuous in jocose and trifling conversation, (in which he freely indulged), as in public address. As a critic, whether under the inspiration of a "good or bad natured muse," he has had few peers among the judges of "English undefiled." His appearance in the Legislature was the advent of a new star above the horizon; somewhat erratic and peculiar in its orbit, but effulgent even in its irregularities, and, when the subject or the occasion required mature thought and was within the range of his studies and information, shining with a splendor not unworthy of the oldest and greatest lights of the firmament.

Tradition furnishes anecdotes of many encounters, during the session, of gladiatorial skill, in which his love of pleasantry and the *gaudia certaminis* involved him with the late Attorney General Drew, a son of genius and of Erin, and others, with various success: but it assures us, that this, his first and last session in the General Assembly, closed with a profound impression and universal acknowledgment of his genius, culture and high promise for the future.

The Hon. Thomas Ruffin, the Speaker of the House of Commons, who had been first appointed a Judge of the Superior Courts during this session, discovering in Mr. Badger a con-

genial spirit, alike emulous with himself of liberal culture and professional distinction, invited him to take his briefs and pursue the practice in Orange. The acceptance of this proposition carried him to Hillsborough as his place of residence, for the ensuing two or three years, during which, having married the daughter of the Honorable James Turner, of Warren, he transferred his home to Warrenton and thence to Louisburg, where he continued to reside until his retirement from the bench in 1825, when he removed to Raleigh, and there abided during the residue of his life.

How well he had maintained his professional character in the new field of his practice is observed in the fact, that with but little of what is known as personal popularity, he was appointed a Judge of the Superior Courts of Law and Equity by the Legislature in its session of 1820, at the age of twenty-five. In this office he rode the circuits four years with admitted ability, candor and impartiality, as a magistrate, evading no question and no duty, but, on the contrary, thought sometimes to err from quickness of temper and too great readiness to assume responsibility; with a courtesy to the profession which won general esteem, and with the admiration of the public; which, though sometimes murmuring at the severity of a sentence or a supposed arbitrary or whimsical order, regarded, with equal wonder, the promptness and force with which he discussed questions of law with the veterans of the bar on the various ridings, and the intelligent, amusing and instructive conversation, with which he habitually entertained his acquaintances and associates, and which made him a marked personage in every circle that he entered. I mention a single case in his administration of the law as illustrative both of the firm and impartial hand with which he dealt out justice, and the jealous care with which the Judiciary of North Carolina has ever maintained the protection and rights of the weak against the strong and influential. A citizen of great fortune and advanced age, who had represented his county in earlier years in either House of the Legislature, and of numerous and influential connections, charging a free negro with larceny upon his property, had brought him by warrant before a Justice of the Peace, and prevailed on the Justice to try and convict him of the allegation, and sentence him to punishment by stripes, which were inflicted—a proceeding allowable by law, provided the offender had been a slave. But here the culprit was a free man; and by the constitution entitled to public trial in open court before a Jury of the country. The Prosecutor, with the Justice and Constable, was arraigned before the Superior Court for this violation of law, and their guilt being established, Judge Badger, who happened to preside at this term, was strongly inclined to imprisonment of the principal defendant, and was only deterred from its imposition by reason of his age and state of health; but, announcing that this was omitted from that cause only, sentenced him to a fine of twelve hundred dollars, the Justice to fifty and the Constable to ten dollars, the differences being made on account of their several grades of intelligence, and consequent criminality, as well as of ability to pay.

From the time of his return to the bar and location at the seat of government, until the access of disease which suddenly, and, as it proved, finally, arrested his course, he was devoted to the practice of his profession; with a suspension for a few months occasioned by his call to the head of the Navy Department as a Cabinet counsellor of President Harrison, which was continued under the succession of Mr. Tyler until his separation from the party by which he was elected; and such further interruption as was produced by his occupation of a seat in the Senate of the United States from 1846 to 1855. During this forensic career of almost unexampled renown and undisputed ability, he was at different times proposed by Executive nomination for the bench of the Supreme Court, both of his own State and of the United States; but the spirit of party exacted a denial of his confirmation by the assenting authorities, though of his eminent qualifications no man doubted. He appeared in all the great causes argued in the Supreme Court of the State and the Circuit Court of the United States

for the District of North Carolina, during this period; and in the latter portion of it, in many of those in the Supreme Court of the United States.

If it be true, as remarked by Pinckney, in one of his familiar letters published by Wheaton, that "the bar is not a place to acquire or preserve a false or fraudulent reputation for talents," it was eminently so in his case. He had an intrepid and self-reliant mind which, disdaining artifice, timidity or caution, struck out into the open field of controversy with the daring of conscious power, and shunned no adversary not clad in the panoply of truth; was as ready to challenge the authority of Mansfield or Denman, Roslyn or Eldon, if found deflecting from the paths of principle or precedent, as that of meaner names. If, from want of opportunity or inclination, he had failed to master the mathematics of numbers, he made himself a proficient in the mathematics of life, (as our law, from the exactness of rule at which it aims has been not inaptly denominated,) and by a rigorous logic was prompt to expose whatever could not bear the test of reason. Yet, it was a logic free from the pedantry of the schools, apparently not derived from books, and accompanied by a rapidity of mental action, giving to it the appearance of intuition. Whether in analysis or synthetical reasoning, in dealing with facts before juries or the most intricate question of law before courts, these faculties were equally conspicuous, and attended, when occasion called for their use, with powers of humor, sarcasm and ridicule hardly inferior to those of ratiocination. Added to all which, there was a lucidness of arrangement, an exact grammatical accuracy in every sentence, a forcible and graceful style, which, independently of a clear and distinct enunciation, a melodious voice and engaging manner, imparted even to his extemporaneous arguments the charms of polished composition.

He was never ostensibly a severe student, but his learning in his profession was profound and necessarily the fruit of much study; acquired probably not by regular reading of elementary books, but whenever in his practice, which was ex-

tensive, or by other means, his curiosity became excited on any topic, he pursued it until he had mastered it in all its ramifications,—a habit of mind, which he was accustomed to apply to other subjects, historical, literary, or scientific, to which his attention might be attracted, and especially to that exalted science to which further allusion may be made in the sequel. His familiar acquaintances, however, I think, must be satisfied, that he was greatly favored in the ease and rapidity with which he acquired knowledge, and will concur in the remark made by one of the most distinguished members of the profession, soon after my first introduction to him, that "he could learn more in the same time than any man he had ever known."

He attained a high degree of knowledge in every branch of the law; whether in the doctrine of real estate transmitted by Coke, and cotemporaries from the days of the Tudors, and before; the modifications introduced by commerce and the higher civilization of more recent times; the supplemental code of equity jurisprudence, invented to eke out the scanty justice of rude Barons and ignorant feudatories, and to apply rules of morality to the affairs of men; or in the criminal law, and the subjects of jurisdiction peculiar to the courts of the United States. And in the altercations of parties through their counsel in writing, which we style pleadings, (designed, by a severe logic, to present their points of disagreement for the decision of courts and juries,) in all these departments; his productions were models, which might be safely transferred to books of precedents for the instruction of his juniors; an adeptness, ascribable, not more to the acuteness of his understanding, than to his accomplishments as an English linguist and critic, causing a false inference, or ungrammatical phrase, to elicit his disapprobation like a false note on the ear of a musician.

These resources were ever at the command of his brethren, and of the court; before which some of his highest efforts were made, in causes in which arguments had been invited, or in which the subject of contest attracted his thoughts from

its connexion with his favorite studies, and were delivered to no other auditors save those whose presence was required by duty. On an occasion of this kind, in a case of indictment for blasphemy, the question had been raised whether the Christian religion was a part of the common law, with a suggestion that, if it was, it might be altered by statute, Mr. Badger volunteered an argument for the cause of religion and sound morality. It so happened, that as he opened his case, a venerable citizen of the State, of great intelligence, entered the court room to speak a word to the reporter, expecting immediately to retire. He was, however, so fascinated with the manner of the speaker, the splendor of his diction, the copiousness of his theological and legal learning, the force and clearness of his arguments and the precision with which they were stated, that he sat down and heard him to the close, observing, as he withdrew, "what folly ever to have made him a Judge; he ought to have been a Bishop,"

Literature, whose office it is to preserve the results of learning, knowledge and fancy, has made so little progress among us that there has not been much effort to save from oblivion the discussions at the bar or in the deliberative assemblies of the State, the chief theatres of public intellectual exertion besides the pulpit, and none at all as to those forensic displays at *nisi prius*, which, dealing with the facts and incidents of life, the dispositions, passions and souls of men, afford the noblest field for exhibitions of eloquence. Had Mr. Badger been studious of posthumous fame, and bestowed half the time in reporting his speeches in the more important of his causes on the circuit, which Cicero recommends and practiced in the preparation of his orations, the result would have been a most interesting contribution to American rhetorical literature. There are occasions enough within the recollection of many who were present, in Wake, Orange, Granville, Halifax and elsewhere, when his utterances, even if printed as delivered, would have formed a volume of no less interest than the speeches of Wirt or Emmet, Erskine or Curran; as well as afforded an insight into events, crimes, transaction of

business and the state of society of our times, such as the muse of history derives from the records of courts of justice.

Two causes in the Circuit Court of the United States, in the days of Chief Justice Marshall, are especially remembered, which were among the themes of his most admired arguments, and in which he overcame the preconceived opinions of the great Judge, though impressed and supported by the acknowledged abilities, learning and persuasiveness of Gaston. These were the cases of Whitaker *vs.* Freeman, an action for libel in twenty-five different counts, and Latimer *vs.* Poteat, one of a series of cases in ejectment, to recover immense bodies of land in the western counties, claimed by citizens of northern States under purchases from speculators, who, it was alleged, had made their entries and procured grants before the extinction of the title of the Cherokee Indians, in violation of law; the defendants claiming, under grants from the State, after the admitted cession of the Indian title, and Mr. Badger being retained by the State to defend their interests. This latter case, involving the relations of North Carolina while a separate sovereignty, and afterwards of the United States with the Cherokee Indians, as regulated by sundry treaties, the location of several lines of partition between them and the whites agreed upon, but removed further and further west as the population of the superior race increased and emigration advanced, surveys partially or wholly made to establish these lines through a mountainous, and in many parts, an impervious country, imputed frauds in transgressing those lines, making entries without actual survey, and planting trees, the indigines of fertile soil, as corners on barren wastes, with affidavits that they were the native growth of the country, with divers other topics of dispute, was of exceeding volume and complication in its facts, and occupied a week in the trial. The argument, running through four days, was said to be the most elaborate on both sides ever made in the State, in a jury trial. It resulted in a verdict and judgment for the defendant, which was afterwards affirmed on error in the Supreme court of the United States. After

the trial, Judge Marshall, in the simplicity and candor of his great character, observed to the then Governor of the State, "at the close of Mr. Gaston's opening argument I thought he had as good a case as I ever saw put to a jury, but Mr. BADGER had not spoken two hours until he satisfied me that no one of his positions could be maintained."

To this instance of *laudatus a laudato viro*, I esteem it not improper to add a few others from sources only less eminent: Chief Justice Henderson declared in my presence that "to take up a string of cases, run through them, extract the principle contained in each, and discriminate the points in which they differed from each other, or from the case in hand, I have never seen a man equal to GEORGE BADGER."

Judge Seawell remarked of him, "BADGER is an elementary man," and, continuing in his peculiar and racy style, "he goes to first principles; he finds the corners of his survey, and then runs out the boundaries, while others hunt along the lines. The difference between him and myself is, that when I take up a book I read slowly, pausing at the end of each sentence, and when I have reached the bottom of a page I must stop and go back to see whether I fully comprehend the author's meaning—while he reads it off like a novel, and by the time he gets to the bottom of a page or the end of the treatise, he has in his mind not only all that the author has taught, but a great deal that the author never knew."

Chief Justice Ruffin, yet surviving in honorable retirement from the labors of the profession, whose early appreciation of the faculties of Mr. BADGER we have already noticed and before whom, as a Judge of the Supreme Court, he was in full practice for twenty-three years, affirmed to me, since the death of Mr. BADGER, that in dialectic skill and argument he excelled any individual with whom he had ever been acquainted, not even excepting Chief Justice Marshall himself, for that he possessed the faculty of imagination and capacities for illustration which Judge Marshall had not.

Another friend, to whom I am indebted for much that has been already stated of the early life of the subject of our memoir, asserts that "in an intimate association with him in the practice of the law for more than twenty-five years, I never knew him to mistake the testimony of a witness or the argument of his adversary, and I think I may add that he uniformly argued with entire logical integrity upon the premises his duty required him to assume." Of his arguments in the Supreme Court of the United States, probably the most important were in the controversy as to their boundary between the States of Georgia and Florida, and in the case involving the title to the quick-silver mines of California.

His noble bearing as an advocate and elevation above all artifice, chicanery, or unfair advantage, will be amply attested by his brethren of the profession, who in the circuits, at least of his regular practice, trusted with entire confidence to the fidelity as well as accuracy of his reports of causes for the revision of Courts of appeal; and instances are remembered where the decision has been for his client and a statement of the cause made by the presiding judge happened to be less favorable to his adversary, than the facts justified, that it has been substituted by a case stated by him, and entered by consent as a more exact portraiture of the trial below.

To his hospitality and kind intercourse with the gentlemen of the profession, his liberality, and assistance to its junior members whom his gracious demeanor and familiar manners won, no less than his spirited and intelligent conversation entertained and improved them; to his unselfish and genial nature and an integrity on which no temptation ever brought a stain, the occasion permits time only to allude, before closing our review of his professional life. Had he been called to the office of Attorney General of the United States, by General Jackson, at the period of his first election, of which Mr. BADGER had been an ardent and efficient advocate, as many of his friends entertained expectation, and continued from that time his practice in the Supreme Court of the United States, it is hazarding but little to say that his fame would have equaled that of any advocate in the history of American Jurisprudence.

Of Mr. Badger's brief service at the head of the Navy Department, excepting his recommendation of the establishment of a Home Squadron to patrol the Gulf of Mexico, and West Indian seas, as a protection against piracy, and to be prepared for any sudden hostile demonstration on our coasts, in addition to those maintained on foreign stations, (a measure since adopted,) there is no circumstance demanding especial notice. He had accepted the appointment, at the request of President Harrison, with reluctance, retained it by the expressed desire of his successor, and resigned it as soon as the breach between Mr. Tyler and the party that elected him was found to be irreparable.

Equally unsought and unexpected was his election to the Senate of the United States, when absent from the seat of government on a professional errand beyond the sphere of his usual practice. He entered the Senate in the first year of the war with Mexico—held his seat throughout the conflict—during the struggle which ensued as to the introduction of slavery into the Territories acquired by the treaty of peace, threatening then a dissolution of the Union; the compromise measures of 1850, under the leadership of Clay; the election of Gen. Taylor; the succession of Fillmore; the election of Pierce and the first half of his term, including the organization of Territorial Governments in Kansas and Nebraska; a period of more fierce, convulsive and (as the sequel has proved) fatal party agitation than any in American history, except the years that have succeeded it. Even now, after the dreadful chastening that all have received from recent calamity, it is difficult to recur to it without reviving passions inconsistent with the solemnities of the hour, and the charities inspired by common suffering.

On the one hand, it was maintained that inasmuch as these acquisitions of territory had been made by the common contribution of men and means from all the States, the citizens of any State were at liberty to emigrate and settle upon them, and to carry any property they might possess, including slaves; that this was the case by virtue of the operation of

the Constitution over the new territory *proprio vigore*. It was further declared that Congress had no authority to legislate in contravention of this right; and in the progress of the dispute this latter position was extended into the assumption, that it was the duty of Congress to enact laws to ensure it, and that a failure in this was a breach of Constitutional duty so gross as to justify the injured States in withdrawing from the Union; a power which, it was declared, that every State held in reservation and might exercise at pleasure, the Constitution being but a compact having no sanctions for its perpetuation.

On the other hand, there had been for years at the North a party organization, not numerous at first, but which at this period had swollen into a formidable power, whose avowed object was the extinction of slavery; who had denounced the constitution, so far as it upheld or tolerated it, as a covenant with the infernal powers; had absolved themselves from its maintenance in this particular, and avowed their preference for a disruption of the Union unless slavery should be abolished, in the territories and States as well. More moderate men in that section, while not agreeing with these extremists, denied emphatically either that the Constitution gave to slavery a footing in the territories or bound Congress to maintain, or not interfere with, its existence there; and that in the exercise of a legislative discretion they might encourage, tolerate or forbid it; the great majority favoring its prohibition in the territories while they held themselves bound to non-interference in the States.

In this conflict a third party arose which affirmed that Congress had no power over the question in the territories: that the people who settled in those distant regions were entitled, (not only when applying for admission into the Union as a State, but whenever organized into a territory or at any time thereafter,) to determine on the establishment or rejection of slavery as well as all other questions of domestic policy; and by consequence, that the whole history of the

Government in the regulation of its territories had been an error.

Either of the contending parties was accustomed to tolerate very considerable aberrations and even heresies against its creed, to acquire or preserve party ascendancy, or to achieve success in a Presidential election; to which latter object no concessions and no sacrifices were deemed excessive. And the flame on the main topic was probably fanned by many, on both sides, with a view to the marshalling of forces for this quadrennial contest for power and patronage.

Be this as it may, never were themes presented for sectional parties so well adapted to deepen and widen the opened breach between them, or pressed with more intensity or zeal. In the ardor of the contest old landmarks were discarded, and old friends repudiated, if not found in accordance with new positions assumed in its progress. William Pinckney, the great champion of Southern interests, at the period of the Missouri question, was pronounced an abolitionist on the floor of the Senate by the highest Southern authority, and the doors of Faneuil Hall were closed against Daniel Webster, whose eloquence had illustrated it more than that of any man ever had before or ever will again, by the authorities of Boston, for words of truth, soberness and conciliation, spoken in the Senate; and this while Clay (once so much deferred to by them as a party leader) sat by, admiring and encouraging at every sentence Webster had uttered.

Between these excited parties, Mr. Badger stood approved by neither. As far back as the Mexican war, perceiving, as he thought, the dangers to flow from the adjustment of the interests of slavery, provided conquests should be made and new territories acquired, he had repeatedly endeavored to bring the war to a close and to bar out those dangers to the Union, by abstaining from the acquisition of new domains, while the fierce contestants were both eager for extensive conquests: the one with the flattering, but delusive hope of expanding the area of slavery, the other with the settled pur-

pose to apply to all such conquests the Wilmot proviso and to exclude slavery.

When peace came with those splendid acquisitions of territory so gratifying to the national pride, he was not disappointed in discovering in them an apple of discord which was to prove fatal to tranquility at home. In the contention which was thus inaugurated, he steadily supported the rights of his own section, maintaining the justice and expediency of opening the territories to all emigrants without restriction as to any species of property. In an argument, replete with scriptural learning, he defended the servitude existing in the South, under the name of slavery, as not inconsistent with the divine law, more than justified by Jewish precedents, and not forbidden by the benignant teachings of the Savior of the world, who found in the Roman Empire, at His coming, and left without condemnation, a system of far greater severity. He reminded northern senators of the responsibility of their ancestors for the introduction and establishment of slavery in this country:—ours being but purchasers from them, at second hand, for a consideration vastly greater than they had paid; the profits being the foundation of much of their wealth which their consciences did not forbid them to retain. He brought home to their sense of duty and of honor the obligation to maintain the constitution, so long as it remained the constitution, in all its parts; as well those which as individuals they disapproved, as those to which they assented. If any representative of the south urged any or all of these considerations in favor of the rights of his section, in the subject of dispute, with more earnestness and ability than Mr. Badger, it is some one whose argument has not fallen under my observation. But he refused to go further. He refused to argue that Congress had no constitutional power to legislate on the subject of slavery in the territories. He discussed the question with boldness and adduced a decision of the Supreme Court, announced in an opinion of Judge Marshall, to the effect, that the power did exist; and therefore he addressed his appeals to the legislative discretion of Congress. For this

he incurred the disapprobation of the extreme advocates of southern interests. But his opinion on the question had been deliberately formed, and though he maintained that the exclusion of the southern emigrant with his peculiar property from these territories would be an unjust exercise and abuse of power, he declined to make what he believed to be a false issue, in pronouncing it unconstitutional. He dealt with the whole subject in the interest of peace, in subordination to the constitution, in the hope of allaying excitement and with an earnest desire for continued Union. He therefore gladly co-operated with his old political associates Clay, Webster, Pearce of Maryland, Bell, Mangum, Berrien, Dawson, as well as his democratic opponents Cass, Douglass, Dickinson, Foote and other compatriots of both parties, in the well remembered measures of compromise of 1850, which calmed the waves of agitation, and promised a lasting repose from this disturbing element;—an effect which was fully realized, with an occasional exception of resistance to the law in the surrender of fugitive slaves, until the unfortunate revival of the quarrel by the repeal, in 1854, in the law for the organization of the territories of Kansas and Nebraska, of the provision of the Missouri compromise, as it was called, by which slavery was restricted from extending north of thirty-six degrees, thirty minutes, the northern boundary of that State. His participation in this measure of repeal Mr. Badger regarded as the most serious error of his public life. He lived to see consequences flow from it which he had not contemplated, and publicly expressed his regret that he had not given it his support. Not on the ground of any breach of faith, for, as he amply demonstrated in his speech on the passage of the measure, the representatives of the north in Congress had, in the Oregon territorial bill, as well as in other instances, demonstrated that they attached to it no sanctity. Yet many good men among their constituents did:—and politicians who had, since the settlement of 1850, found "their occupation gone," eagerly welcomed this new theme for agitation. The experience of climate, labor and production had shown that

African slavery could not be attended with profit north of this parallel, and the repeal was regarded as a flout, defiance and aggression which provoked the resentment of thousands who had never before co-operated with that extreme faction which conspired the destruction of slavery in despite of the constitution. Followed up as this measure was by the impotent attempt to enforce protection to the institution in Kansas, where it neither did nor could exist, without unreasonable aid, which was brought forward after Mr. Badger left the Senate, and in which there is no reason to believe he would have concurred, it aroused an opposition, which, when embodied in the organization of party, was irresistible. He was no propagandist of slavery, though all the affections of his home and heart seconded the efforts of his great mind in defending it as an institution of the country recognized and guaranteed by the constitution of the United States. He was too sagacious to believe it could be benefitted in any way, by provoking the shock of civil war, and too truthful and patriotic to trifle with it, as a means of rallying parties or to subserve any of the interests of faction. In voting for the repeal of the Missouri restriction, he looked upon it as having been over-valued in its practical importance at first, abandoned by the north as effete, if not disregarded from the beginning, and its removal out of the way as but conforming the system of territorial law to that part of the compromise of 1850, pertaining to the territories, which left the adoption or rejection of slavery to be decided by the inhabitants when framing a constitution, preparatory to their admission as a State of the Union; not anticipating the recoil in public sentiment, which was the first step in the overthrow of slavery itself.

I have been thus tedious in review of the history of this period, because it was upon topics arising out of this great subject of controversy, ever uppermost in the public mind, that Mr. Badger made his most frequent and probably most elaborate efforts in the Senate, and for the further reason that in the heated atmosphere of the time his opinions as expressed and the moderation of his course were, by some, supposed to

imply indifference to the interests of his section. Time and disaster are not unfrequently necessary to vindicate true wisdom.

His public career was but an episode in his life, which not having aspired to, there were branches of political science, to which he had devoted no study. He was as averse to the details of revenue and finance as Charles James Fox, and could probably have united with that statesman in the declaration that he had never read a treatise on political economy. But on all subjects pertaining to general policy, or to the history, jurisprudence, or constitution of the country, he commanded a deference yielded to scarcely any other individual, after the withdrawal of Mr. Webster; and as a speaker and writer of English, according to the testimony of Judge Butler, of South Carolina, had no peer in the Senate, save Webster when there.

He delighted in repeating the rule for the construction of the Constitution, which he had heard enunciated by Judge Marshall in the Circuit Court for North Carolina. "The Constitution of the United States" (said he) "is to be construed not *strictly*, not *loosely*, but *honestly*. The powers granted should be freely exercised to effect the objects of the grant, while there should be a careful abstinence from the assumption of any not granted, but reserved." With this simple rule for his guide, with an innate love of truth and wonderful perspicacity in its discernment, with an ethics which permitted no paltering in deference to the authority or suggestion of faction, his arguments on Constitutional questions were models of moral demonstration. Such was the confidence reposed in his accuracy and candor on questions of this nature, that his opinions were sought for practical guidance, alike by friends and opponents. And such was the personal favor and kindness entertained towards him by all his associates that, at the expiration of his term, the rare compliment was paid, of the adoption, by an unanimous vote of the Senate, of an expression of regret at his departure.

After ceasing to be a Senator, he held, until the commencement of the late calamitous war, the place of one of the Regents of the Smithsonian Institution. In his professional visits to Washington, until the interruption of intercourse by that dire event, and in all his correspondence with public men, he never departed from that course of moderation and peace on the exciting subject of the times, which had characterized him as Senator: joined heartily in the movement of his old Whig friends for the organization of a Constitutional Union party to abate the violence of faction which was too surely tending to disunion, and to make an appeal to the people to rescue the country from the impending peril. The result of this movement was the nomination for the first offices of the Government of Bell and Everett; and Mr. Badger accepted the candidacy as one of the Electors on this ticket, and visited various parts of North Carolina addressing the people in its support. In these addresses, with the frankness which belonged to his nature, he freely admitted that there was a strong probability of the election of Mr. Lincoln, not merely from a division of votes among three other candidates, but from the strength of his party in the Northern States, founded on the principle of opposition to slavery; and charged, that in that event, it was the design of a large portion of the supporters of Mr. Breckenridge to attempt to destroy the Union by the secession of the Southern States: and that there was reason to believe his defeat and the election of Mr. Lincoln was desired by this latter class, because of the opportunity it would afford for a dissolution of the Union, a purpose which they had long cherished. While, therefore, he advocated the election of Mr. Bell, he conjured the people, no matter who might be elected, to acquiesce in the decision and give no countenance to secession. Although, with the exception of a small fraction, the people were averse to disunion, the majority were persuaded, that this was an overstatement of the case, and cast their votes for Mr. Breckenridge as for an usual party nominee.

When the election was past, and the proceedings which immediately followed in other States verified Mr. Badger's anticipations, the people began to turn to him, and those of like opinions, for guidance in the future. And to persons in distant parts of the Union it is, no doubt, a matter of mystery how he, with all his antecedents in favor of Union, became involved in war against the government of the United States. The case of Mr. Badger, in this particular, is the case of at least three-fourths of the people of the State, who relied upon his counsels for their action, quite as much as upon those of any other individual, and requires a word of explanation. Notwithstanding the long and acrimonious disputations which had been carried on in Congress, and at the hustings, and the sentiments declared in opposition to slavery by Mr. Lincoln and his supporters, Mr. Badger maintained, that his election afforded no sufficient cause for a resort to revolution; (as to the right claimed, of a State to secede, he had never for a moment believed in it or given it the least countenance;) that the accession of such a party to power would require increased vigilance over the rights and interests of the South, but the majority in Congress was not lost to us, if the members from all the Southern States would remain and be faithful, and that the judiciary was open to any just complaint, even if the Executive should attempt aggression. And after every State south of North Carolina, to the confines of Mexico, had adopted ordinances of secession, the people of the State rejected a proposition to call a Convention to consider the question.

But when Virginia, our neighbor on the Northern frontier, also withdrew, and Tennessee on the West had taken measures for the same object, when war had been actually begun, no matter by whose rashness or folly, and the only alternatives presented were in the choice of the side we should espouse; considerations of national or State interest, safety and necessity, such as are not unfrequently forced upon the decision of neutrals by the conduct of belligerents not connected under the same government, at once occurred and were

obliged to be weighed with the obligations of Constitutional duty. Our borders were surrounded on all sides, except that washed by the ocean, by seceded States. Our youth must go forth to battle with or against these States. The Union, we had so long and so sincerely cherished, was a Union in its integrity; and next to that, and as a part of it, a Union with neighboring States, in which were our kindred, and most intimate friends, and identical institutions. Slavery, whatever may be thought of it elsewhere or now, constituted more than one half of all our individual and public wealth. It had paid our taxes, built our Railroads, reared our seminaries of education and charity, and was intimately connected with the order and repose of our society. Withal, in the acrimony of a long quarrel its maintenance had become a point of honor. In the actual posture of affairs which promised to continue while the war lasted, instead of fifteen States in which slavery existed, whose representatives were to maintain a common interest in the halls of Congress, there were to be but three, or at most four, and all these, except our own, with a minor interest in the system. A civil war which threatened to be sanguinary and protracted, kindled avowedly for the protection of slavery, was not likely to end in defeat of the insurgent States, without the destruction of the institution in them; and after no long time, in the adhering States also. Though far from approving the course of the recusant States, victory on the side of those who held the reigns of Government could not inure in benefit, nor without serious disaster, to us.

These ties of blood, vicinity, institutions and interests, the desire to avoid internecine strife among our own people, which must have been immediately precipitated by a zealous minority with the local Government, Legislative and Executive, in their hands, impelled Mr. Badger and those who acted with him, to decline to take arms against their own section, in favor of the distant authority of the National Government, and as a consequence to unite with those whose action they had deprecated and endeavored to prevent, and with whom

they had had little sympathy or co-operation in the politics of the past. The support of the undertaking, if concurred in by all the slaveholding States, which was confidently represented to be certain, appeared to afford hope of a safer and better future than its suppression by force. The determination of the question, as I know, occasioned him pain and embarrassment. But when made, it was firmly maintained. He accepted a seat in the Convention which passed the ordinance declaring the separation of the State from the Federal Union, and gave to this ordinance his sanction: not however, without a distinct declaration of his disbelief in the doctrine of secession, as a Constitutional right. He also sustained measures for the prosecution of vigorous war, as in his conception the surest and shortest road to peace: but was ever vigilant of the dignity and just rights of the State, the encroachments of the military authority, the jurisdiction of the civil tribunals and the protection and liberty of the citizen. He sought no patronage or favor for himself or his. His sons served in the ranks of the army and bore their part in the perils and adventures of war.

While it yet raged he was stricken by the hand of disease which partially obscured his faculties and withdrew him from public view.

He survived, however, until after the return of peace, and in the twilight of mind, with which he was yet favored, rejoiced in the deliverance of the Country from the calamities of war, and very sincerely acquiesced in a return to his allegiance to the Government of the United States.

These observations on the professional and public life of the subject of our discourse have been so prolonged, that the occasion will permit but a few further remarks upon his general attainments, his intellectual and moral character, and usefulness as a citizen.

It was the remark of Lord Bacon that "reading makes a full man, conversation a ready man, and writing an accurate man." Mr. Badger's reading was confined, with the exception of that knowledge of the dead languages, which he had

acquired in his youthful studies, to the literature of our own language. With the most approved authors in this he had a familiar acquaintance, and, as already remarked, excelled in his accomplishments as a critic. The field of learning, which next to jurisprudence, he most affected, and perhaps even preferred to that, was moral science. Upon the sublime truths of this science in the conversations of his friends, his remarks and illustrations were often not unworthy of Alexander or Wayland, Butler or Whately. "In it" (says one of the most intimate of his friends and cotemporaries) "the rapidity of his perceptions and the accuracy of his deductions were marvelous. Place before his mind any proposition of moral science, and instantly he carried it out, either to exact truth most beautifully enunciated, or reduced it to an absurdity." To his acquisitions in the kindred topic of didactic divinity, or theology as a science, only a professional theologian can do justice. An earnest member of the Protestant Episcopal Church, though but a layman, he ventured on more than one occasion to discuss matters of discipline and doctrine in the character of a Pamphleteer, in opposition to clergymen of note; and in a memorable instance with the head of the diocese himself: with such signal success, that although the Bishop ultimately united himself with the Romish church, whither Mr. Badger charged that he was tending, not another member of his denomination left its communion.

He was averse to the labor of writing, and beyond an address before the literary societies of the University, the reports, by his own hand, of some of his speeches in Congress, and other pamphlets, or subjects political or religious, has left few written performances. But he had the accuracy, in thought and speech, of a practised writer.

In conversation, he realized, in the fullest extent, Bacon's idea of "readiness," and shone with a lustre rarely equalled. The activity and playfulness of his thoughts, and the gayety of his disposition, inclined him to paradox and repartee to such a degree that his conversation was oftentimes but

amusing levity. But in a moment it rose to the profoundest reflection and most fascinating eloquence. His knowledge was ever at instantaneous command, as it was far more the result of his own meditations than of acquisitions from others, and fancy lent her aid in giving a grandeur to his conceptions on all the subjects of his grave discourse. After all the public displays in which he enchained the attention of judges, jurors, senators, or promiscuous assemblies with equal admiration and delight, it is a matter for doubt, among those who knew him well, whether his brightest thoughts and most felicitous utterances, the versatility of his genius, and the vast range of his contemplations, were not oftener witnessed in his boon and social hours, in the converse of friends, around his own hospitable board, or at a village inn, or on a public highway, all without pedantry or apparent effort, "as if he stooped to touch the loftiest thought," than in these elaborate and studied exhibitions.

He affected no mystery, and wore no mask, and stood ready, in familiar colloquy, to make good, by new and apt illustrations, any sentiment advanced in formal argument, or to abandon it as untenable if satisfied of error.

His reverence for truth, to which allusion has been already made in the course of these observations, was, even above his intellectual powers, his most striking characteristic. He was accustomed to speak of it "as the most distinguished attribute of God himself, and the love of it, as giving to one moral being an eminence above another." To its discovery he delighted to apply the powers of his remarkable intellect; to its influence he was ready to surrender his most cherished convictions whenever found to be erroneous.

The fruits of this were seen in the crowning virtues of his character; a christian of humble and intelligent piety, without intolerance towards others, a lawyer without chicanery or artifice, a statesman without being a factionist, a party man above the low arts of the demagogue, a gentleman and citizen enlightened, social, charitable, liberal, impressing his character upon the manners and morals of his times; ready to

render aid in every good and noble work, and prompt to resist and repel any evil influence, no matter by what array of numbers, power or vitiated public opinion supported. I have known no man to whose moral courage may be more fitly applied the ideal of the Latin poet, as rendered in free transation:

"The man whose mind on virtue bent,
Pursues some greatly good intent
With undiverted aim,
Serene beholds the angry crowd,
Nor can their clamors fierce and loud
His stubborn honor tame.
Not the proud tyrant's fiercest threat,
Nor storms, that from their dark retreat
The rolling surges wake;
Not Jove's dread bolt that shakes the pole,
The firmer purpose of his soul
With all its power can shake."

In the latter years of his life, actuated by a desire to be useful in his day and generation, wherever opportunity and his ability might allow, he accepted the office of Justice of the Peace, an office which, to the honor of those who have filled it in North-Carolina from the first organization of civil government until now, has ever been performed without pecuniary reward; and took considerable interest in administering justice in the County Courts of Wake, giving to this inferior tribunal the dignity and value of a Superior Court, to the great satisfaction of the bar and the public.

As a part of his public service it is proper also to add, that for many years Mr. Badger was one of the most active Trustees of the University of the State, and especially as a member of the Committee on lands then held in Tennessee, from his professional abilities, without fee or reward, rendered signal assistance to the Institution.

He was thrice married: first, as before mentioned, to the daughter of Governer Turner: second, to the daughter of Col. Wm. Polk, and third to Mrs. Delia B. Williams, daughter of Sherwood Haywood, Esq.: in each instance forming an alliance with an old family of the State, distinguished by public service and great personal worth from an early period. The last named lady, the worthy companion of his life for thirty years, who survives him as his widow, receives in her be-

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reavement the condolence and sympathy, not merely of this community and State, but there are those in distant lands and in other States of the Union whom, not the lapse of years nor the excitements of intervening events, nor the fiery gulf of civil war, shall separate from a friendship accorded to her, and her departed husband, as representatives of the personal character, the society and domestic virtues of their native State in better days of the Republic.

By the two latter marriages he left numerous descendants.

Taking his accustomed walk at an early hour in the morning of January 5th, 1863, he was prostrated by a paralytic stroke near the mineral spring in the environs of the city of Raleigh. And although retaining his self-possession and abilty to converse until assistance was kindly furnished, on the way home his mind wandered, and before reaching his residence, his faculty of continuous speech deserted him, never again to return. His mental powers after a brief interval rallied; insomuch, that he took pleasure in reading, and in listening to the conversations of friends, whose visits afforded him much satisfaction; and with assistance could walk for exercise in the open air, but was never afterwards able to command language, except for brief sentences, failing often in these to convey his full meaning.

In this condition he lingered until the 11th of May, 1866, when, after a few days illness from renewed attacks of the same nature, he expired, having recently completed the 71st year of his age.

My Brethren of the Wake Bar:—My task is done. I have endeavored but "to hold the mirror up to nature." If the image reflected appears, in any of its features, magnified, it was not so intended. Yet the memory of a friendship, dating back to kind offices and notice in my student life, and extending through all my active manhood, may not have been without its influence in giving color to the picture. But the character in our contemplation was of no ordinary proportions. At the bar of the State he wore the mantle of Gaston and Archibald Henderson, for a much longer period than

either, worthily and well, with no diminution of its honors. In the highest court of the Union, he was the acknowledged compeer of Webster, Crittenden, Ewing, Johnson, Berrien, Walker, Cushing and their colleagues. That he did not sit in the highest seat of justice of the State and nation, as proposed successively by the Executive of each, is imputable to no deficiency or unworthiness for the station, his adversaries being judges. In the Senate, when Clay, Webster and Calhoun still remained there, not to name others of scarcely inferior repute, he was among the foremost men in that august assembly upholding the rights of his own State and section, with manliness and ability, but with candor, moderation and true wisdom, which sought to harmonize conflicting elements, and avert the calamities of civil strife. In morals inflexible, without stain or suspicion of vice. In manners and social intercourse, genial, frank, hospitable, with colloquial powers to instruct, amuse and fascinate, alike, and "with a heart open as day to melting charity." The fame of such a man is a source of natural and just pride to the people of the State. This sentiment is that which the poet describes in the Englishman, when he sings

> "It is enough to satisfy the ambition of a private man,
> That Chatham's language was his mother tongue,
> And Wolf's great name compatriot with his own."

How he was appreciated in this city where he so long resided, and the State which he so ardently loved and so faithfully served, is proved by the evidenees of this day,—the suspension of business and the concourse of this most respectable assembly, many from distant portions of the State, who have come up to unite with us in these "last sad rites of tenderness" to one so much admired, esteemed and loved; as well as by the general, and in many instances, public expressions of regret throughout North Carolina upon the announcement of his sad affliction and subsequent death. How much he will be missed as a member of the community, as the friend of order and law, religion and unquestionable morality, as a professional man, counsellor and advocate of unrivalled ability and reputation, as an intellectual and cultivated man,

with armor bright and powers ever at his command, presenting a model for the emulation of our ingenuous youth, as a public character, an adviser and true friend, but no flatterer of the people, and an unflinching supporter of their rights wherever truth and duty might lead, time and experience may demonstrate. There is no public aspect, however, in which his loss is so much to be deplored, as in the relation he bore to the past, and his probable efficiency in solving the problem of the day. Who so capable of interpreting the constitution which forms our government, and the alleged laws of war by which it is claimed to be suspended or superseded, as that gifted mind and sincere nature, so trusted on these topics in former years, and so thoroughly imbued with the spirit and teachings of Marshall? Who so deserving to be heard on the pacification and re-establishment of order and right among thirty-five millions of freemen, as he who by his temperance, calmness and intelligent constitutional opinions, in the commencement of our national difficulties, incurred the censure of many in our own section of country, without receiving the approbation of their adversaries; who, in a period of most unusual party acrimony, never violated the courtesies of debate, and whose personal associations and friendships were found alike on either side of the great line of sectional division? Who so fitted for the explosion and correction of error, of allaying the ignoble passions of hatred and revenge, and recalling the national affections inspired by a common and honorable history:—to remove the scales from eyes that will not see, and to rebuke the rage of faction, threatening to realize the assertion of Mr. Fox, in his history of James, the second, that "the most dangerous of all revolutions is a restoration?"

To that good Being in whose hands are the destinies of nations and individuals, by whose divine agency crooked paths are often made straight, and issued granted out of all troubles, in ways not visible to human eyes, let us unite in commending every interest of our beloved country.