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"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her."

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JAMES IREDELL, 1751-1799 [1]

By H. G. CONNOR.
Judge United States Court, Eastern District North Carolina.

"The character of this excellent man has been too little known. Similar has been the fate of many other valuable characters in America. They are too little known to those around them; their modest merits have been too familiar, perhaps too uniform, to attract particular and distinguished attention."

James Iredell was born in Lewes, Sussex County, England, October 5, 1751. His father, Francis Iredell, a merchant of Bristol, married Margaret McCulloch. The family were allied by blood to Sir George Macartney, the Earl of Wigton, the Fergusons, McCullochs, and, by marriage, to Governor Lyttleton. Henry McCulloch was connected with the Government of the Province of North Carolina, where he owned large landed estates. Through the influence of relatives, James Iredell was appointed Comptroller of the Customs at Port Roanoke (Edenton) N. C. It was said at the time, "The office is genteel requiring little or no duty, so that he will have time to apply himself to business; it is worth upwards of one hundred pounds sterling a year." Iredell appropriated a large portion of his salary to the support of his father and mother, thus "illustrating in a forcible manner his filial piety and generous nature." He sailed for his new home, bringing with him his commission, and letters

[1] The writer has, for his information relied largely upon McRee's "Life and Correspondence of James Iredell." Except as otherwise indicated herein, quotations given are taken from it.

of introduction from friends in England, to several gentlemen in Edenton, arriving at the latter place "near the close of the year 1768." His biographer says of him: "He was then just seventeen years old, at the age when pleasures are enjoyed with the keenest relish. Frank, ingenuous, of pleasing appearance, winning manners, and educated in the best schools of England, he was kindly received and warmly welcomed."

The ancient borough of Edenton is situated on the northern shore of Albemarle Sound. It was founded in 1716, and named in honor of Eden, the Royal Governor. Mr. McRee says of the people to whom the young Comptroller came and among whom he resided during the remainder of his life: "If there was little of the parade and pomp of older communities, if many of the appliances of luxury were wanting, ease and abundance were the reward of but a slight degree of frugality and industry; the homes of the planters were comfortable and ample for all the purposes of hospitality; while their tables groaned beneath dainties beyond the reach of wealth on the other side of the Atlantic. * * * He who supposes the inhabitants were untutored people is grossly deceived. They were not refugees from the justice of the old world; nor were they of desperate fortunes or undisciplined minds—they were equal in cultivation, ability and patriotism to any of their contemporaries. The men were bold, frank, generous and intelligent; the females tender, kind and polite." The town contained about five hundred inhabitants. Of the residents of the town were Samuel Johnston, among the earliest, most enthusiastic and active Whigs, President of the Provincial Congress, Governor, and, upon the adoption of the Federal Constitution, the first United States Senator elected from the State, a lawyer of learning, a man of deep and extensive reading and singular purity of life spent in patriotic service to the State; Joseph Hewes, signer of the

Declaration; Thomas Barker, Thomas Jones, Jasper Charlton, Stephen Cabarrus, Robert Smith, Charles Johnston, John Johnston, and Sir Nathaniel Duckenfield. In the adjoining counties were Colonel Richard Buncombe, who, being mortally wounded at Germantown died in Philadelphia; John Harvey, Speaker of the Assembly, and later Moderator of the First and Second Provincial Congresses called in the Province (August, 1774, and April, 1775); and others of less note, but of liberal education and of honorable service and position. The society of the town furnished to Iredell a social circle of cultured and refined hospitality into which he at once entered. It is with Iredell's preparation for, and work as, a lawyer, statesman and judge that we are specially concerned, which precludes an entrance into the interesting and charming story of his personal and social life further than it illustrates his public career.

Very soon after his arrival he began the study of law with Samuel Johnston. "Every moment of leisure was devoted to his legal studies and to such intercourse with intelligent gentlemen and cultivated ladies as was calculated to refine and improve. He was a diligent student; he copied Mr. Johnston's arguments and pleas in important cases. He read carefully and attentively the text-books, referring to the authorities quoted, and collecting and digesting kindred passages from all writers within his reach; he attended the courts, returned to his chamber and wrote out arguments of his own, applicable to the cases he had stated." A few extracts from his "Journal" give us a fair view of the young Comptroller, preparing himself for the career which, all unthought of, awaited him. On August 22, 1770, he writes: "Indolence in any is shameful, but in a young man quite inexcusable. Let me consider for a moment whether it will be worth my while to attempt making a figure in life, or whether I will be content with mediocrity of fame and circumstances.

* * * But nothing is to be acquired without industry; and indolence is an effectual bar to improvement. * * * I have not done as much as I ought to have done; read a little in Lyttleton's Tenures and stopped in the middle of his Chapter on Rents; whereas I ought to have gone through it. It would have been better than losing three or four games at billiards. N. B.—If you do play billiards make it a rule not to lengthen."

We learn from his journal that, while studying Lyttleton, he did not neglect polite literature. He says: "I have been reading a volume of the Spectator, which is ever new, ever instructive, ever interesting. I hope they will be transmitted, with honor, to the latest ages. * * * Strength of reason, elegance of style, delicacy of sentiment, fertility of imagination, poignancy of wit, politeness of manners, and the most amiable pattern of human life, appears through the whole, in so conspicuous a manner as at once to improve and delight. * * * Resumed my Spectator; read a great many entertaining and improving things, particularly Mr. Addison's Discourses on Fame, in the fourth volume, which are incomparably elegant and sublime. Surely the writings of such great, learned and good men are more than a counterpoise to the libertine writings of professed Deists, whose immoral lives made them dread an encounter hereafter." He continues this train of reflection regarding the infidelity so prevalent at that time, concluding with words, which are of special interest, giving expression to a principle which controlled his private and public conduct throughout his life: "At a time when licentiousness is at an amazing and dangerous height we shall be careful to guard against popular prejudice, though we must not blindly oppose the public voice because it may appear too tumultuous. Let us do things impartially and not oppose or condemn any conduct on the whole, on account of a few improper circumstances attending it."

His journal shows that he was a diligent student of the "Tenures." On July 31, 1771, he writes his father, "I am too often troubling you, but I will hope for your excuse of this last request, as it will be of particular, perhaps necessary, service for me. It is that you will be so obliging as to procure Dr. Blackstone's Commentaries on the Laws of England and send them by the first opportunity. I have, indeed, read them by the favor of Mr. Johnston, who lent them to me, but it is proper that I should read them frequently and with great attention. They are books admirably suited for a young student, and, indeed, may interest the most learned. The law there is not merely considered as a profession but a science. The principles are deduced from their source and we are not only taught, in the clearest manner, the general rules of law, but the reasons upon which they are founded. * * * Pleasure and instruction go hand in hand, and we apply to a science, difficult, indeed, at best, with less reluctance, when by a well-directed application we may hope to understand it with method and satisfaction. I would take leave to add one more desire, that you would be pleased to send me the Tatlers and Guardians—the Spectators I have, and these, with the others, will afford me agreeable desultory reading."

Mr. Johnston was a faithful and competent instructor. "As a lawyer he was ever highly honored and esteemed; his patience, his industry, his logic were signal. * * * As early as 1776 he was one of a committee to revise the statutes of the State." He was later one of the State Judges. Mr. Iredell received from Governor Tryon a license to practice law in all the Inferior Courts of the Province on December 14, 1770. He was licensed by Governor Martin to practice in the Superior Courts November 26th, 1771, and duly qualified at the April Term, 1772. During the intervening year, "with healthy but vehement ambition," he prosecuted

his studies and regularly attended the courts. "Books he had not, save a volume or two stuffed into his saddle-bag with a scanty supply of apparel. * * * Iredell early fixed his eyes upon the glittering heights of his profession, and so self-assured was he of his capacity and industry that he never faltered in his purpose—he was resolute to win; and with such men to resolve is to compel success. If unemployed in the courthouse, he peopled his chambers with judge, jury and spectators; he argued his cases before his imaginary court and reported his own arguments." McRee gives an illustration of his habit of writing out arguments in cases tried in the courts, although not employed in them. It is interesting, both because of the careful and orderly statement of the facts and the logical arrangements of argument which marked his opinions when called into judicial service. The journal shows that, while preparing for his Superior Court license, Iredell was diligent in the study of Blackstone's Commentaries. The work had been published but a few years before and was widely read in America. Burke, in his speech on "Conciliation," stated that the booksellers informed him that as large a number of copies had been sold in America as in England. Iredell writes in his journal, "Came home and read an hour or two in Blackstone." "Employed myself all the rest of the evening reading Blackstone." "I immediately came home and finished the second volume of Blackstone."

The journal, during this year, leaves the reader in doubt whether he was most assiduous in his devotions to Miss Hannah Johnston or the great commentator. That he woeed both successfully is evidenced by the fact that on January 18, 1773, he was united in marriage to this estimable lady, who "supplemented what he needed. * * * She was his constant monitor, adviser, banker and trusted friend. * * * Their lives, united in one stream, flowed onward

softly and gently." She was the sister of Governor Samuel Johnston. Their correspondence, when separated by his riding the circuit in the practice of his profession and, later, in the discharge of his high official duties, is both interesting and instructive. Iredell's grandfather was a clergyman of the Church of England. His early religious training and his associations impressed their influence upon his mind and character. He was given to religious contemplation and often wrote "reflections" upon religious subjects quite remarkable for so young a man. Within a year after coming to Edenton he writes his Sunday "thoughts," concluding: "I am not ashamed to think seriously of religion, and hope no example will induce me to treat it with indifference. Youth is as much concerned to practice and revere it as any in the more advanced stages of life, and I have drawn up the foregoing plain, but useful, remarks as thinking it the best way of employing my time when I have had no opportunity of attending public worship." Writing his brother, he says: "Let me desire you to let no flashes of wit, or impertinent raillery of religion, shock your principles or stagger your belief. Men of this cast laugh at religion, either because they know nothing of it or care nothing for it. Men of shallow understandings or bad hearts are those who generally rank themselves in the list of free thinkers."

The controversies between the Royal Governors and the people in North Carolina began at an early day. They continued to grow in number and intensity. "Though a King's officer, Iredell soon became imbued with the views of the American leaders; felt that his future was identified with their future, and determined to participate in their defeat or success, to share in their disgrace or glory. He soon formed intimacies with the leading men of the Province, men whose thoughts were to irradiate subsequent darkness, and whose voices were destined to cheer and sustain the peo-

ple in the hour of disaster. Ere long he began with them an active correspondence, and his part was so well supported that a learned gentleman and most competent judge writes. 'He was the letter writer of the war. He had no equal amongst his contemporaries.' "

As early as September, 1773, he published his first political essay, saying, among other things: "I have always been taught, and till I am better informed must continue to believe, that the Constitution of this country is founded on the Provincial Charter, which may well be considered the original contract between the King and the inhabitants." "In 1774 the Revolution was fairly inaugurated in North Carolina. Nowhere were the points in dispute between the colonies and Great Britain more clearly stated or more ably argued. The people were generally agreed. * * * It is true that none meditated independence as an object of desire; but it was foreseen as a possible consequence. The contest, that was soon to be developed into flagrant war, was eminently, in North Carolina, based upon principle. The Whig leaders, ready with the pen and the columns of the newspapers and the pamphlets, discussed the tax on tea and the vindictive measures that followed the prompt opposition of Boston, with a degree of learning and logic that was not surpassed by any of their contemporaries in other provinces. * * * There was no array of class against class. The foremost in talent were foremost in all measures; they had the confidence of the people. The followers of such men as Harvey, Johnston, Ashe, Harnett, Hooper, and Caswell could not be otherwise than well informed. * * * In the quiet retreat of his study, with naught to stimulate but the promptings of his own honest heart and, perchance, the smile of his noble wife, with patient toil Iredell forged and polished the weapons of debate; if others fixed his mark he recked not who claimed the honor of the cast."

Mr. Iredell, at this time, began a correspondence with William Hooper, in which they discussed the questions engaging the attention of thoughtful men. On April 26, 1774, Hooper writes him: "Every man who thinks with candor is indebted to you for the share you have taken in this interesting controversy. * * * You have discussed dry truths with the most pleasing language, and have not parted with the most refined delicacy of manners in the warmth of the contest. * * * I am happy, dear sir, that my conduct in public life has met your approbation. It is a suffrage from a man who has wisdom to distinguish and too much virtue to flatter. * * * Whilst I was active in contest you forged the weapons which were to give success to the cause which I supported. * * * With you I anticipate the important share which the colonies must soon have in regulating the political balance. They are striding fast to independence, and ere long will build an empire upon the ruin of Great Britain; will adopt its Constitution, purged of its impurities, and, from an experience of its defects, will guard against those evils which have wasted its vigor and brought it to an untimely end."

The first Provincial Congress "called by the people themselves"—defying the threats of the Royal Governor—met in New Bern August 25, 1774. Iredell's friends, Johnston, Hewes, Thomas Jones, and Hooper, were conspicuous members. John Harvey was "Moderator." The first of Iredell's political efforts, which have been preserved, was addressed to "The Inhabitants of Great Britain." The address is set out in full in McRee's "Life and Correspondence," and contains an able and exhaustive statement and defense of the cause of the Americans. He gives the history of their coming and settling the province, the provisions of their charters and the violations of them by the King and his Parliament.

Iredell soon thereafter settled his accounts and closed his

career as Collector, to which position he had been promoted. After the 4th of July, 1776, he became deeply interested in the proposed form of government to be adopted by the new State. He had attended the courts, when open, and had given diligent attention to the practice of his profession. After the adoption of the Constitution (November, 1776) and the inauguration of a State Government a judicial system was established—"Iredell drawing the first Court Law." At the session of the Assembly, November, 1777, the State was laid off into three judicial districts; Samuel Ashe, Samuel Spencer, and James Iredell were appointed judges. His appointment was brought about by William Hooper, who writes December 23, 1777: "Before this reaches you you will have received the information of being promoted to the first honors the State can bestow. * * * You will be at a loss to conjecture how I could have been accessory to this step after you had been so explicit to me on the subject. Be assured that I was not inattentive to your objections, nor did I fail to mention them and urge them with sincerity to every person who mentioned you for the office to which you are now designated. * * * I expostulated with them upon the impropriety of electing one who in all probability might decline, and leave one of the seats of justice vacant. * * * Their reasoning prevailed and you have now the satisfaction of an unrestricted choice. The appointment has been imposed upon you, and therefore you are at perfect liberty to act or not." Archibald Maclaine wrote: "I can only say that if it would answer your purposes as fully as it would please your friends and the public, it would give me real satisfaction." When it is remembered that at this time Iredell was but twenty-seven years old; that only ten years prior thereto he had come to the State a youth of seventeen, unknown, without wealth or other influences, his election, unsought and against his inclination, to the highest judicial

position in the State, it is manifest that by his personal conduct and character, as well as his learning and ability, he had strongly and favorably impressed himself upon the people and their representative men. William Hooper was a lawyer of learning and experience, as were other members of the Assembly. Maclaine, also an eminent lawyer and member of the Assembly, thus expressed the opinion of his associates: "However arduous the task you have undertaken, we have the most hopes from your judgment and integrity, and these hopes are strengthened by your diffidence. * * * The members of the Assembly, in appointing you, thought, with great reason, that they effectually served themselves and their constituents. As to myself, I confess I was actuated by duty to the public, having been taught that your promotion would more effectually serve them than you." Iredell accepted the judgeship at much personal sacrifice. The salary was totally inadequate for the support of his family.

Replying to a letter from Governor Burke calling upon him to hold Courts of Oyer and Terminer, he says: "In regard to the courts your Excellency proposed immediately to establish, I am always ready to attend them as my duty requires, but I take the liberty to represent to your Excellency that I fear that I shall not be able to defray the expenses they will involve me in unless I receive a sum of money from the public. * * * I am not ashamed of confessing my poverty, as it has not arisen from any dishonorable cause. My circumstances have suffered deeply, but if I can bear myself above water I am content to suffer still. * * * I shall not fail to do my utmost then and at all times in discharge of my duty."[2]

He rode one circuit, during which his letters to his wife give an interesting account of the country through which he traveled, the people with whom he was associated and the

[2]State Records of N. C., XXII, 552.

experiences of a judge "on circuit" at that early period in our history. He went as far west as Salisbury. At the Edenton term, June 6, 1778, the grand jury requested that he furnish his charge for publication, saying: "This charge vindicates the American States, in the establishment of independency, by arguments drawn from undeniable rights and from real necessity, and grounded on incontestable facts. * * * It breathes a spirit of pure disinterested patriotism, and holds forth the most powerful incentive to persist in the opposition which America has so successfully begun. It points out persuasively the importance of a faithful observation of the various political and relative duties of security upon which the happiness of individuals and of the whole depends, and which will tend to give stability to our present Constitution."

The language of the charge is spirited, the sentiment patriotic, with considerable warmth of expression towards the King and his ministers. A few extracts will give an idea of its general tone. Referring to the fact that no courts had been held for a long time, he says: "This court of justice opens at a most interesting period of the policy of this country. We have been long deprived of such, from a variety of causes, in some of which we have shared with our brethren on the Continent; others were peculiar to ourselves. The event, however, has been unhappy and distressing, and every wellwisher to his country must view with pleasure a scene of anarchy changed to that of law and order, and powers of government established capable of restraining dishonesty and vice. Such powers have been established under circumstances which should induce to them peculiar reverence and regard. They have not been the effect of usurpation; they have not proceeded from a wanton desire of change; they have not been imposed upon you by the successful arms of a tyrant; they have been peaceably established by the public at large,

for the general happiness of the people, when they were reduced to the cruel necessity of renouncing a government which ceased to protect, and endeavored to enslave them, for one which enabled them, with a proper share of courage and virtue, to protect and defend themselves. * * * We desired only the privileges of a free people, such as our ancestors had been and such as they expected we should be. We knew it was absurd to pretend we should be free when laws might, at pleasure, be imposed upon us by another people. * * * Our ancestors came here to enjoy the blessings of liberty. They purchased it at an immense price. Their greatest glory was that they had obtained it for themselves and transmitted it to their posterity. God forbid that their posterity should be base or weak enough to resign it, or let it appear that the true British spirit, which has done such wonders in England, has been lost or weakened by being transplanted to America. * * * You will, I hope, excuse, gentlemen, the particular, perhaps too great particularity, with which I have gone into this subject. Yet I thought it my duty to point out to you some of the principles upon which the revolution in our government has taken place and which, in my opinion, prove not only the propriety of its being effected, but the indispensable obligation we are under to maintain and support it. * * * The struggles of a great people have almost always ended in the establishment of liberty. The enjoyment of it is an object worthy of the most vigilant application and the most painful sacrifices. Is there anything we read with more pleasure than the sufferings and contentions of a brave people who resist oppression with firmness, are faithful to the interests of their country and disdain every advantage that is incompatible with them? Such a people are spoken of with admiration by all future ages. * * * These are the glorious effects of patriotism and virtue. They are the rewards annexed to the faith-

ful discharge of that great and honorable duty, fidelity to our country."

Referring to the burdens laid upon the colonists and their right to resist them, he says: "We knew of no right they could have to such a power. Our charters did not recognize it. It certainly was not in our ancestors' contemplation, who left that very country because freedom could not be enjoyed in it. Custom had given it no sanction. * * * It was reconcilable to no principles of justice. * * * We despised the miserable application of a few political maxims * * * which to this hour is the basis upon which all the fraud, iniquity, injustice, cruelty and oppression that America has experienced from Great Britain have been defended. * * * The divine right of kings was exploded with indignation in the last century. Men came at length to be persuaded that they were created for a nobler purpose than to be slaves of a single tyrant. They did not confine this idea to speculation; they put to death one King and expelled another. This was done in England, the seat of our haughty enemies, who seem to think the right of resistance is confined alone to their kingdom." When it is remembered that this charge was delivered at a time when the American cause was far from hopeful, the courage exhibited was of no low order. Iredell, too, was a conservative—but withal a man and a patriot.

Soon thereafter he sent his resignation to the Governor, who accepted it with much reluctance, saying, "as you can well conceive, well knowing your place can not be supplied by a gentleman of equal ability and inclination to serve the State." He continued the practice of the law until, on July 8, 1779, he was tendered and accepted the position of Attorney General. Hooper writes, expressing pleasure that he has consented to accept, saying: "I have the happiness to assure you that the leading characters in this part of the

country [Cape Fear] speak of you as a capital acquisition to our courts, and exult that there is a prospect of offenders being brought to due punishment without the passions of party or the prejudice of individuals swaying the prosecution." Iredell traveled the circuit, attending the courts in the discharge of his duties and receiving a large share of civil business. His letters to Mrs. Iredell give an interesting and often amusing account of his experiences. From New Bern he writes: "Expenses are enormous. My last jaunt has cost me $600 on the road and the depreciation will certainly proceed most rapidly, for they are giving away the money at the printing office in so public and careless a manner as to make it quite contemptible." Again he writes: "There has not been much business, but I have been applied to in almost everything. I have already received in civil suits 1,240 pounds in paper besides nineteen silver dollars. I expect to receive tomorrow 500 pounds and my salary for this and Edenton Court, which will be 1,000 pounds. * * * My fear is that, as usual, the money will be much depreciated before I lay it out. I shall carefully preserve the hard money to the last." From New Bern, at the following term, he writes Mrs. Iredell that he has received 4,540 pounds "of this currency," 1,350 pounds of Continental, and $9 in hard money; that he will receive 1,500 pounds for his salary at these courts, "but my expenses here are monstrous—160 pounds a day for my board and lodging only." At Wilmington he was employed in the first admiralty case tried in the State of which the record is extant. The Assembly at Halifax, 1781, voted the judges 20,000 pounds each and the Attorney General 10,000 pounds "for making up the depreciation of their allowance." Iredell resigned his office (1781), of which, writing to his brother, Rev. Arthur Iredell, July, 1783, he says: "Since then I have been only a private law-

yer, but with a show of business very near equal to any lawyers in the country."

After the ratification of the Treaty of Peace and the withdrawal of troops from the State, the people began the work of restoring their fortunes and enacting laws suited to their new political situation. Differences, more or less fundamental, which had manifested themselves during the war, became more marked—dividing the leaders and people into parties. Iredell was in agreement with the conservatives, Johnston, Hooper, Maclaine, Davie, Spaight, and others, in opposition to Willie Jones, Thomas Person, Samuel Spencer, and others. The former insisted that the State should carry out in good faith the terms of the treaty, and adopt such measures as were necessary for that purpose; enforce contracts and maintain a strong and stable government. While Iredell neither held nor sought any public position, he was "in touch," through correspondence and otherwise, with the leaders of the party known as Conservatives. He prosecuted the practice of his profession with industry and success, ranking easily with the leaders of the bar. The more radical sentiment in the State was disposed to magnify the power of the Legislature and oppose any restriction upon it by the enforcement of Constitutional limitations, especially by the courts. In an address to the public, Iredell set forth his views regarding the enforcement of Constitutional limitations upon the Legislature. Referring to the Convention (November, 1776), which formed the Constitution, he says: "It was of course to be considered how to impose restrictions on the Legislature that might still leave it free to all useful purposes, but at the same time guard against the abuse of unlimited power, which was not to be trusted, without the most imminent danger, to any men or body of men on earth. We had not only been sickened and disgusted for years with

the high and almost impious language from Great Britain, of the omnipotent power of the British Parliament, but had severely smarted under the effects. We felt, in all its rigor, the mischiefs of an absolute and unbounded authority, claimed by so weak a creature as man, and should have been guilty of the basest breach of trust as well as the grossest folly if in the same moment, when we spurned at the insolent despotism of Great Britain, we had established a despotic power among ourselves. * * * I have no doubt but that the power of the Assembly is limited and defined by the Constitution. It is a creature of the Constitution. * * * These are consequences that seem so natural, and indeed so irresistible, that I do not observe that they have been much contested. The great argument is, that although the Assembly have not a right to violate the Constitution, yet if they in fact do so, the only remedy is either by a humble petition that the law may be repealed or a universal resistance of the people. But, in the meantime, their act, whatever it is, is to be obeyed as a law; for the judicial power is not to presume to question the power of an act of Assembly." He proceeds, with remarkable clearness and force, to set forth his opinion upon this question, expressing the view which has since been pursued by the courts, both State and Federal. He concludes: "These are a few observations that have occurred to me on this subject. They are given by a plain man, unambitious of power, but sincerely and warmly interested in the prosperity of his country; feeling every respect for the Constitutional authority of the Legislature which, in his opinion, is great enough to satisfy an ambitious as well as support the efforts of a public-spirited mind, but a determined enemy on all occasions of arbitrary power in every shape whatever, and reverencing beyond expression that Constitution by which he holds all that is dear to him in life." It must be remembered that these views were ex-

pressed before any court had held that it was within the power and therefore the duty of the judiciary to refuse to enforce statutes passed without Constitutional warrant. The question had been mooted, and in one case passed upon, prior to the date of Iredell's address (1786), but the opinion of the Court had not been published beyond the jurisdiction in which it was decided. Richard Dobbs Spaight, while a member of the Convention at Philadelphia (August 12, 1877), in a letter to Iredell, refers to the action of the judges in holding an act depriving litigants of trial by jury (*Bayard v. Singleton,* 1 Martin, 42) unconstitutional. He laments "that the Assembly have passed laws unjust in themselves and militating in their principles against the Constitution in more instances than one." He says: "I do not pretend to vindicate the law, which has been the subject of controversy; it is immaterial what law they have declared void; it is their usurpation of the authority to do it that I complain of, as I do most positively deny that they have any such power; nor can they find anything in the Constitution, either directly or impliedly, that will support them or give them any color of right to exercise that authority. * * * It must be acknowledged that our Constitution unfortunatcly has not provided a sufficient check to prevent the intemperate and unjust proceedings of our Legislature, though such a check would be very beneficial, and I think absolutely necessary to our well being; the only one that I know of is the annual election which, by leaving out such members, will in some degree remedy, though it can not prevent, such evils as may arise." On August 26, 1787, Iredell answered Mr. Spaight's letter at length, saying: "In regard to the late decision at New Bern, I confess that it has ever been my opinion that an act inconsistent with the Constitution was void, and that the judges, consistently with their duties, could not carry it into effect. The Constitution appears to me to be a funda-

mental law, limiting the powers of the Legislature, and with which every exercise of those powers must be compared." In regard to his apprehension that the power will be abused, Iredell says: "If you had seen, as I did, with what infinite reluctance the judges came to this decision, what pains they took by proposing expedients to obviate its necessity, you would have seen in a strong light how little probable it is a judge would ever give such a judgment when he thought he could possibly avoid it. But whatever may be the consequences, formed as our Constitution is, I can not help thinking they are not at liberty to choose, but must in all questionable instances decide upon it. It is a subject indeed of great magnitude, and I heartily lament the occasion for its discussion. In all doubtful cases, to be sure the act ought to be supported, it should be unconstitutional beyond dispute before it is pronounced such."

The Convention at Philadelphia having submitted the new Federal Constitution to the Legislatures of the States, Iredell at once entered upon the task of securing its adoption by the people of North Carolina. In no State was the opposition more pronounced or determined. The popular leaders of the dominant party were active in their opposition, one of the most prominent of them declaring that "Washington was a d—n rascal and traitor to his country for putting his hand to such an infamous paper as the new Constitution." Another, said to have been the most popular leader in the State, seriously insisted in the Convention upon rejecting it without discussion, saying that he had made up his mind and was sure that others had done so. "Of all those who were most active in pressing upon the people the adoption of the Constitution Mr. Iredell was undoubtedly the most able and energetic."

At the session of the Legislature November, 1787, Mr. Johnston was elected Governor and Mr. Iredell a member

of the Council; he was also appointed a commissioner to revise and collect the Acts of the General Assembly, then in force. A convention of the people was called to meet at Hillsboro, composed of delegates from the several counties and the borough towns. Iredell was elected, unanimously, from Edenton. On January 8, 1788, he published a pamphlet entitled "Answer to Mr. Mason's Objections to the New Constitution Recommended by the late Convention at Philadelphia," by "Marcus." He stated each of Mr. Mason's "objections" in their order, and in the same order answers them. It is not within the scope of this sketch to undertake a review of Mr. Iredell's "answer" to the celebrated paper of Mr. George Mason. The pamphlet made a favorable impression on the public mind and strongly influenced Iredell's future career. The correspondence between Iredell and William Hooper, William R. Davie and Maclaine gives an interesting view of the condition of public sentiment in the State in regard to the new Constitution. Says one, writing of the leaders in the Convention: "The most prominent Federalists were Iredell, Davie, Governor Johnston, Spaight, Maclain [sic] and Steele. Foremost in their number and the leading spirit of the whole body was Judge Iredell, conspicuous for his graceful elocution, for the apt application of his varied learning, his intimate knowledge of the schemes of government, and his manly and generous temper.

"Davie, with spotless plume, towering in intellect, as in stature, above the majority of the members, stood like a knight of the olden time, lance in hand, the luster of his military services played about him and was reflected in flashing light from hauberk, morion and polished steel.

"Governor Johnston, the President of the Convention, calm, lucid and convincing, seldom participated in the debate; when he did, his blows were always delivered with stunning effect.

"Maclaine, sensible, pointed and vigorous, was the Hotspur of his party.

"Steele was laborious, clear-sighted and serviceable by his knowledge of men.

"Willie Jones, although democratic in theory, was aristocratic in habits, tastes, pursuits and prejudices; he lived sumptuously and wore fine linen; he raced, hunted and played cards. A patriot in the Revolution, he was now the head of a great party. * * * He was a loving and cherished disciple of Jefferson, and was often taunted with his subserviency to Virginia 'abstractions.' He seldom shared in the discussions.

"Judge Spencer, candid and temperate, was in debate far superior to his associates.

"David Caldwell, a Presbyterian divine, was learned and intelligent. He had for years discharged the triple functions of preacher, physician and teacher.

"McDowell, the rival of Davie in military renown, was a man of action rather than words.

"Bloodworth, by no means the least among them, was one of the most remarkable men of the era, distinguished for the versatility of his talents and his practical knowledge of men, trades, arts, and sciences. The child of poverty, diligence and ambition had supplied the place of patronage and wealth; he was resolute almost to fierceness, and almost radical in his democracy."

William Hooper, General Allen Jones, William Blount, and Judge Ashe were defeated at the polls.

The debates were conducted with ability and dignity, and at times with much asperity. While Davie, Spaight, Maclaine and Johnston bore their share, Iredell was the acknowledged leader for adoption. The proceedings of the Convention are published in Elliott's Debates. The opposition could not be overcome and, on the final vote, the Constitution was

rejected by a vote of 184 to 84.[3] While Iredell was defeated he made many friends and advanced his reputation in the State. One of the new western counties was given his name. The requisite number of States having ratified the Constitution, the new government was organized April 30, 1789, North Carolina taking no part but remaining a free, sovereign, independent State.

It appears from the letters of the Honorable Pierce Butler, Senator from South Carolina, written from New York, August 11, 1789, that Iredells' reputation had extended beyond the borders of the State. He says: "The Southern interest calls aloud for some such men as Mr. Iredell to represent it—to do it justice." Dr. Williamson writes, at the same time: "The North Carolina Debates are considerably read in this State, especially by Congress members, some of whom, formerly had little knowledge of the citizens of North Carolina, have lately been very minute in their inquiries concerning Mr. Iredell. By the way, I have lately been asked by a Senator whether I thought you would accept a judge's place under the new government if it required your moving out of the State, as we are not in the Union." A second Convention met at Fayetteville November 2, 1789. Iredell was not a candidate for election as a delegate. With but little debate the Constitution was ratified and amendments proposed. A bill was passed establishing a university, the names of Samuel Johnston and James Iredell being placed at the head of the list of trustees.[4]

Maclaine writes Iredell December 9, 1789: "What would you think of being the District Judge?" He was soon called to a larger field and higher judicial service. On February 10, 1790, without solicitation on his part, Mr. Iredell was nominated by President Washington, and unanimously con-

[3]Convention of 1788.—N. C. Booklet, Vol. IV.
[4]Battle's History of the University of North Carolina, 821.

firmed by the Senate, one of the Associate Justices of the Supreme Court of the United States. He was just thirty-nine years old. The President enclosed his commission with the following letter: "One of the seats on the bench of the Supreme Court of the United States having become vacant by the resignation of the gentleman appointed to fill the same, I have thought fit, by and with the advice and consent of the Senate, to appoint you to that office, and have now the pleasure to enclose you a commission to be one of the Associate Judges of the Supreme Court of the United States. You have, sir, undoubtedly considered the high importance of a judicial system in every civil government. It may therefore be unnecessary for me to say anything that would impress you with this idea in respect to ours. * * * I must, however, observe that, viewing as I do the Judicial System of the United States as one of the main pillars on which our National Government must rest, it has been my great object to introduce into the high offices of that department such characters as, from my own knowledge or the best information, I conceived would give dignity and stability to the government * * * at the same time that they added luster to our national character." It is said that "Washington derived his conviction of Iredell's merits from a perusal of the Debates in the North Carolina Convention and the famous reply to George Mason's objections." [5] Butler wrote Iredell February 10th: "I should have been happy to have had you in Congress. The Union will no longer be deprived of your aid and the benefit of your abilities. * * * I congratulate the States on the appointment and you on this mark of their well-merited opinion of you." Acknowledging the letter from the President, Iredell writes: "In accepting this dignified trust I do it with all the diffidence becoming the humble abilities I possess; but, at the same time, with

[5]Carson's History of the Supreme Court, 155.

the most earnest resolution to endeavor by unremitting application a faithful discharge of all of its duties, in the best manner in my power." Judge Iredell was assigned to the Southern Circuit and entered upon the work immediately. He reached Charleston May 23, 1790, and there met Mr. Rutledge before whom he took the oath of office. He writes Mrs. Iredell: "I have received the greatest and kindest civilities from Mr. Rutledge, at whose house I have the pleasure of staying." He proceeded to Savannah. There was but little business in the new Court other than organizing the Circuit Courts and putting the new judicial system in working order. Supposing that the judges would "rotate" in the Circuit Court work, he removed his family to New York. The Court having, to his surprise, adopted the rule which confined judges to one circuit—Iredell's being the Southern—he found himself very much embarrassed. The long distance to be traveled (1,900 miles) twice each year was a severe tax upon his health and strength. He justly complained of the arrangement to the Chief Justice, who conceded that "your share of the task has hitherto been more than in due proportion." Although the judges refused to make a more equitable rule, by exchanges, they sometimes rode different circuits. Justice Iredell took his seat with the Chief Justice and his associates at the August Term, 1790. No business was transacted, the Court adjourning *sine die*. Iredell again rode the Southern Circuit, but it does not appear that there was much business to engage his attention.

William Hooper, to whom Iredell was strongly attached, and for whose character and talents he had the highest regard, died October 14, 1790. Writing a letter of condolence to Mrs. Hooper, Iredell said: "An attachment founded on the most perfect esteem and upon a gratitude excited by repeated and most flattering obligations, ought not, and, in me, I trust is not capable of being weakened by any change of place, time or circumstance."

A suit was instituted at this time in the State Court against Iredell and his co-executor upon a bond given by their testator to a British subject. His co-executor pleaded the "Confiscation Act," in which Iredell refused to join. By direction of Justices Wilson, Blair and Rutledge a writ of *certiorari* was issued to the State Court, which the judges refused to obey. As an indication of the jealousy of the new government in the State, the General Assembly adopted a resolution declaring that "The General Assembly do commend and approve of the conduct of the judges of the Courts of Law and Courts of Equity in this particular."[6] At the same session the House of Commons, by a vote of twenty-five to fifty-five, refused to adopt a resolution requiring the Governor and other State officials to take an oath "to support the Constitution of the United States."

On the Southern Circuit at Savannah (1791) a question arose, stated by Judge Iredell, as follows: "There were depending some suits for the recovery of debts, to which pleas were put in by the defendants, not denying the existence of the debts, but showing (as they conceived) a right in the State of Georgia to recover them under certain Acts of Assembly of the State passed prior to the Treaty of Peace. The Attorney and Solicitor General of the State were directed to interfere in the defense, but the counsel for the defendants refused to permit them. The Attorney and Solicitor General, being dissatisfied with the pleas, applied to the Court for leave to interfere in behalf of the State." Judge Iredell was of the opinion that the State could appear only in the Supreme Court, and for this reason denied the motion. He suggested that the State had a remedy by an appeal to the Equity jurisdiction of the Supreme Court. Deeply impressed with the gravity as well as the novelty of the question he writes: "I have been thus particular in stating this inter-

[6]State Records, XXI, 441, 865, 1080, 1082.

esting subject, because it appears to me of the highest moment, although I believe it would be difficult to devise an unexceptionable remedy. But the discussion of questions wherein are involved the most sacred and awful principles of public justice, under a system without precedent in the history of mankind, necessarily must occasion many embarrassments which can be more readily suggested than removed." Out of these suits arose the celebrated case of *Georgia v. Brailsford,* 2 Dallas, 402; 3 Dallas, 1.

At the April Term, 1792, of the Circuit Court at Savannah Judge Iredell delivered a charge to the grand jury which so impressed the members that they unanimously requested its publication. A number of his "charges" in other circuits were published at the request of the grand juries. At the June Term, 1792, at the Circuit Court at Raleigh, N. C., Judge Iredell, with District Judge Sitgreaves, was confronted with a delicate question. Congress had enacted a statute directing that the invalid pension claims of widows and orphans should be exhibited to the Circuit Courts; that those to whom the Court granted certificates should be placed on the Pension list, subject to the review of the Secretary of War. Conceiving that the duties thus imposed were not judicial in their character, and therefore not authorized by the Constitution, which carefully separated the powers and duties of each department of the Government, Judge Iredell prepared a remonstrance, addressed to the President, in which he said:

"We beg leave to premise that it is as much our inclination as it is our duty to receive with all possible respect every act of the Legislature, and that we never can find ourselves in a more painful situation than to be obliged to object to the execution of any, more especially to the execution of one founded on the purest principles of humanity and justice, which the actual question undoubtedly is. But however

lamentable a difference really may be * * * we are under the indispensable necessity of acting according to the best dictates of our judgment." He set forth at length the reasoning by which he had been brought to the conclusion that he could not, with proper regard to the Constitutional distribution of powers, execute this statute, concluding: "The high respect we entertain for the Legislature, our feelings as men for persons whose situation requires the earliest as well as the most effectual relief, and our sincere desire to promote, whether officially or otherwise, the just and benevolent views of Congress, so conspicuous on this as well as on many other occasions, have induced us to reflect whether we could be justified in acting under this act personally in the character of commissioners during the session of a court; and could we be satisfied that we had authority to do so we would cheerfully devote such part of our time as might be necessary for the performance of the service." The other Justices addressed similar letters to the President. The question was brought before the Court by a motion made by Attorney General Randolph, *ex officio* for a *mandamus* directed to the Circuit Court for the District of Pennsylvania, commanding the Court to proceed to hear the petition of William Hayburn, etc. The Court being divided in opinion whether he could make the motion *ex officio,* he was permitted to do so on behalf of Hayburn. No decision was made at the time and Congress soon thereafter "made other provisions for the relief of pensioners." Judge Iredell, until the act was repealed, heard a large number of petitions as commissioner. He writes Mrs. Iredell from Hartford, Connecticut, September 30, 1792: "We have a great deal of business to do here, particularly, as I have reconciled myself to the propriety of doing the invalid business out of court." In *United States v. Ferreria,* 13 Howard, 51, Chief Justice Taney says of the action of the Court: "The repeal of the act clearly

shows that the President and Congress acquiesced in the correctness of the decision, that it was not a judicial power."

Following the refusal to permit Georgia to intervene in the Brailsford case, in the Circuit Court, the State filed a bill in equity in the Supreme Court, alleging that the title to the bond, upon which the action in the Circuit Court was brought, was, by virtue of an act passed during the war, confiscating and sequestrating the property and debts of British subjects in the State. The Court was asked to enjoin the plaintiffs from proceeding, etc. Each of the Judges wrote opinions. Iredell observed that he had sat in the Circuit Court and refused the motion of the State to intervene. He said that the Court could not, with propriety, sustain the application of Georgia because whenever a State is a party the Supreme Court has exclusive jurisdiction of the suit. The State, therefore, did not have a complete and adequate remedy at law. "Every principle of law, justice and honor, however, seem to require that the claim of the State of Georgia should not be indirectly decided or defeated by a judgment pronounced between parties over whom she had no control, and upon a trial in which she was not allowed to be heard." He was of the opinion that an injunction should be awarded to stay the money in the hands of the Marshal until the Court made further orders, etc. The Court was divided in opinion, the majority holding that an injunction should issue until the hearing. At the February Term, 1793, a motion was made by Randolph to dissolve the injunction. Iredell was of the opinion that the motion should be denied. He held that, for several reasons, the State could not sue on the bond at law, asking: "How is she to obtain possession of the instrument without the aid of a Court of Equity?" pointing out the practical difficulties which she would encounter in securing the bond. To the suggestions that the State could bring an action of assumpsit for money had and received

against Brailsford, which he termed "the legal panacea of modern times," he conclusively answers that while the action "may be beneficially applied to a great variety of cases, it can not be pretended that this form of action will lie before the defendant has actually received the money," and this Brailsford has not done. He suggests that the injunction be continued, and an issue be tried at the bar to ascertain whether the State of Georgia or Brailsford was the true owner. Although a majority of the Judges were of the opinion that the State had an adequate remedy at law, the course suggested by Iredell was substantially pursued. At the February Term, 1794, an amicable issue was submitted to a special jury. The argument continued for four days, when the Chief Justice instructed the jury: "The facts comprehended in the case are agreed; the only point that remains is to settle what is the law of the land arising upon those facts; and on that point it is proper that the opinion of the Court should be given." He says that the opinion of the Court is unanimous, that the debt was subjected, not to confiscation, but only to sequestration, and that therefore the right of the creditor to recover it was revived at the coming of peace, both by the law of nations and the Treaty of Peace. It is not very clear what question of fact was submitted to the decision of the jury. He further instructed the jury that while it was the "good old rule" that the Court should decide questions of law and the jury questions of fact, the jury have a right, nevertheless, to take upon themselves to judge of both and to determine the law as well as the facts. The learned Chief Justice suggests that the Court "has no doubt that you will pay that respect which is due to the opinion of the Court; for, as on the one hand, it is presumed that juries are the best judges of facts, it is, on the other hand, presumable that the courts are the best judges of law. But still both objects are lawfully within your power of decision."

Notwithstanding the facts were agreed upon and the Court was unanimous in opinion in regard to the law, the jury, "after being absent some time," returned to the bar and proposed certain questions of law, which being answered, "without going away from the bar," they returned a verdict for the defendant. The case has the distinction of being the only one in which a jury was empaneled in the Supreme Court. Flanders says: "The charge of the Chief Justice to the jury is curious, from the opinions he expressed as to the extent of their powers. His statement of the law on that point is clearly erroneous."[7] Mr. James Scott Brown says: "The judgment was clearly right, but the statement of the Chief Justice that the jury was judge of the law, as well as the facts, is open to serious doubt."[8]

In *Chisholm v. Georgia,* 2 Dallas, 419, standing alone, Iredell enunciated and, with a wealth of learning and "arsenal of argument," maintained the position that a State could not be "haled into court" by a citizen of another State. The question arose in an action of assumpsit instituted in the Supreme Court against the State of Georgia, process being served upon the Governor and the Attorney General. The State refused to enter an appearance, but filed a remonstrance and protest against the jurisdiction. The Attorney General, Randolph, representing the plaintiff, lodged a motion that unless the State entered an appearance and showed cause to the contrary, by a day named, judgment by default and inquiry be entered, etc. This motion was argued by Randolph, the State not being represented. Each of the justices filed opinions. Iredell first analyzed the provisions of the Constitution conferring jurisdiction upon the Court in controversies wherein a State was a party. He quotes the language of the Judiciary Act distributing the jurisdiction in such cases.

[7]Lives of the Chief Justices, 393.
[8]Great American Lawyers, Vol. I, 285.

He dwells somewhat on the meaning which should be given to the word "controversies" in the Constitution, with the suggestion that the use of this word indicated a purpose to so restrict the causes in which jurisdiction was conferred as to exclude actions at law for the recovery of money. He proceeds to consider the question whether it is necessary for Congress to prescribe a method of procedure in controversies wherein the State is a party. He argues that while the judicial department of the government is established by the Constitution, the Congress must legislate in respect to the number of the Judges, the organization of the Supreme and such inferior courts as may be established, etc. He quotes the fourteenth section of the Judiciary Act, in which power is conferred upon the courts to issue writs of *scire facias, habeas corpus,* and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions and "agreeable to the principles and usages of law," noting the fact that "neither in the State now in question, nor in any other in the Union, any particular legislation authorizing a compulsory suit for the recovery of money against a State was in being, either when the Constitution was adopted or at the time when the Judicial Act was passed," and concludes that only principles of the common law, a law which is the ground work of the laws in every State in the Union and which, so far as it is applicable to the peculiar circumstances of the country, and when no special act of legislation controls it, is in force in such State, as it existed in England at the time of the first settlement of this country; that no other part of the common law of England can have any reference to the subject but that which prescribes remedies against the Crown. Thus he is brought to the decision of the real question in the case. It is manifest that if, until Congress has prescribed some mode of procedure by which, in controversies wherein the State is a

party, the Court must proceed by a mode "agreeable to the principles and usages of law," and, to find such principles and usages, resort must be had to the common law, the question necessarily arises whether the States of the Union, when sued, are to be proceeded against in the same manner as, by the common law, is prescribed for proceeding against the Sovereign. It is just at this point that the line of thought between Iredell and Wilson divides. The former says: "Every State in the Union, in every instance where its sovereignty has not been delegated to the United States, I consider to be as completely sovereign as the United States in respect to the powers surrenderd; each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them; of course the powers not surrendered must remain as they did before. * * * So far as the States, under the Constitution, can be made legally liable to this authority, so far, to be sure, they are subordinate to the authority of the United States, and their individual sovereignty is, in this respect, limited. But it is limited no further than the necessary execution of such authority requires." It will be observed that Iredell is not, at this point in the argument, discussing the question whether it is within the power of Congress to prescribe a mode of procedure for bringing a State into the Federal Court to answer for a money demand by a citizen of another State. The argument is that, until it has done so, the only method of proceeding against a State is that prescribed by the common law for proceeding against the Sovereign. It therefore becomes necessary to follow the argument and establish the proposition that prior to the formation and ratification of the Constitution each State was a sovereign, and that in ratifying the Constitution it did not part, in respect to the *mode* of proceeding against it in a controversy in

the Federal Courts, with its sovereignty. He proceeds to give an exhaustive and interesting history of the method of procedure for the recovery of money at the common law against the King. The history of the law in England in this respect, although very interesting, has no permanent interest to the student of American Constitutional law. He thus concludes this branch of the discussion: "I have now, I think, established the following propositions: First, that the Court's action, so far as it affects the judicial authority, can only be carried into effect by acts of the Legislature, appointing courts and prescribing their method of procedure; second, that Congress has provided no new law, but expressly referred us to the old; third, that there are no principles of the old law to which we must have recourse that, in any measure, authorizes the present suit, either by precedent or analogy."

This conclusion was sufficient, from Iredell's point of view, to dispose of the case before the Court, but Judge Wilson, who wrote the principal opinion for the majority, threw down the gauntlet and challenged the basic proposition upon which Iredell's argument was founded. Here we find the line of cleavage between the two schools of thought upon the fundamental conception of the relations which the States bore to the Federal Government. Iredell was a Federalist, Wilson a Nationalist. Wilson opened his opinion with these words: "This is a case of uncommon magnitude. One of the parties to it is a State, certainly respectable, claiming to be sovereign. The question to be determined is whether this State, so respectable and whose claim soars so high, is amenable to the jurisdiction of the Supreme Court of the United States? This question, important in itself, will depend on others, more important still; may, and perhaps will be, ultimately resolved into one no less radical than this—do the people of the United States form a nation?" Iredell was

not a man to conceal his opinions when either propriety or duty demanded their expression. Meeting his associate upon the "main question," "So far as this great question affects the Constitution itself, if the present afforded, consistently with the particular grounds of my opinion, a proper occasion for a decision upon it, I should not shrink from its discussion. But it is of extreme moment that no Judge should rashly commit himself upon important questions, which it is unnecessary for him to decide. My opinion being that even if the Constitution would admit of the exercise of such a power, a new law is necessary for the purpose, since no part of the existing law applies, this alone is sufficient to justify my determination in the present case. So much, however, has been said on the Constitution that it may not be improper to intimate that my present opinion is strongly against any construction of it which will admit, under any circumstances, a compulsive suit against the State for the recovery of money. I think every word in the Constitution may have its full effect without involving this consequence, and nothing but express words or an insurmountable implication (neither of which I consider can be found in this case) would authorize the deduction of so high a power. * * * A State does not owe its origin to the government of the United States, in the highest or any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself, the salutary and deliberate choice of the people." He thus lays down a canon of Constitutional construction: "If, upon a fair construction of the Constitution of the United States, the power contended for really exists, it undoubtedly may be exercised, though it is a power of first impression. If it does not exist upon that authority, ten thousand examples of similar powers would not warrant its assumption." That Iredell was in harmony with Hamilton is manifest from the following language used by

him in the Federalist: "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent.* This is the general sense and the general practice of mankind, and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the Convention, it will remain with the States, and the danger intimated must be merely ideal. * * * There is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every restraint but that which flows from the obligation of good faith."[9] So Madison declared in the Virginia Convention. "It is not within the power of individuals to call a State into court."[10] Marshall, meeting the same objection to the Constitution, said: "I hope that no gentleman will think that a State will be called to the bar of the Federal Court. * * * It is not natural to suppose that the sovereign power should be dragged before a court."

Mr. Carson, writing of the opinion of the Court in Chisholm's case, says: "From these views Iredell alone dissented in an able opinion, of which it has been said that it enunciated, either directly or by implication, all the leading principles which have since become known as State Rights' Doctrine and which as a legal argument was far superior in clearness of reasoning to Wilson or Jay. He confined himself strictly to the question before the Court, whether an action of *assumpsit* would lie against a State."[11]

In his "Lives of the Chief Justices" Van Santvord says: "These views [of the majority] were not concurred in by Judge Iredell, who delivered a dissenting opinion. . That

[9]No. 81 (J. C. Hamilton, Ed. 602).
[10]Elliott's Debates, 2d Ed., 533.
[11]Hist. Sup. Court, 174.

able jurist considered the question also in a Constitutional point of view, and as a question of strict construction. With great force of reasoning, and admirable precision and clearness of illustration, he analyzed the argument of the Attorney General, and arrived at exactly the opposite conclusion. His opinion was that no part of the existing law applied to this case; and even if the Constitution would admit of the exercise of such a power, a new law was necessary to carry the power into effect, and that *assumpsit* at the suit of a citizen would not lie against a State. One can scarcely arise from a careful perusal of this able opinion without being sensibly impressed with the force of the reasoning of the learned Judge, and the accuracy of his deductions. Lucid, logical, compact, comprehensive, it certainly compares very favorably with that of the Chief Justice in every respect, and as a mere legal argument must be admitted to be far superior.[12] * * * As a constitutional lawyer Judge Iredell had no superior upon the bench. His judicial opinions are marked by great vigor of thought, clearness of argument, and force of expression. He did not always concur with the majority of his brethren in their constitutional constructions, and on such occasion rarely failed to sustain his positions by the strictest legal as well as logical deductions. In the interesting case of *Ware v. Hylton,* 3 Dallas, 199, his dissenting opinion exhibits uncommon research, learning, and ability. As a legal argument it may be regarded as one of the best specimens that have been preserved of the old Supreme Court."[13]

"The rough substance of my argument in the suit against the State of Georgia," bearing date "February 18, 1793," as penned by the author, is before me. The writing is neat, the "headings" carefully arranged, a few erasures—interline-

[12] Page 60.
[13] *Ib.*, p. 61.

ations—showing care and caution in the form of expression. The argument covers twenty-three pages; the paper is well preserved and the writing distinct. Of this opinion Mr. Justice Bradley, in *Hans v. Louisiana,* 134 U. S., 14 (1889), said: "The highest authority of this country was in accord rather with the minority than with the majority of the Court. * * * And this fact lends additional interest to the able opinion of Mr. Justice Iredell on that occasion. The other justices were more swayed by a close observance of the letter of the Constitution, without regard to former experience and usages; and because the letter said that the judicial power shall extend to controversies between a State and citizens of another State, etc., they felt constrained to see in this language a power to enable the individual citizen of one State, or of a foreign State, to sue another State of the Union in the Federal Courts. Justice Iredell, on the contrary, contended that it was not the intention to create new and unheard of remedies by subjecting sovereign States to action at the suit of individuals (which he showed conclusively was never done before), but only by proper legislation to invest the Federal Courts with jurisdiction to hear and determine controversies and cases between the parties designated that were properly susceptible to litigation in courts. Adhering to the mere letter, it might be so; and so in fact the Supreme Court held in *Chisholm v. Georgia;* but looking at the subject as Hamilton and Mr. Justice Iredell did, in the light of history and experience, and the established order of things, the views of the latter were clearly right, as the people of the United States subsequently decided. * * * In view of the manner in which that decision was received by the country, the adoption of the Eleventh Amendment, the light of history and the reason of the thing, we think we are at liberty to prefer Justice Iredell's views in this regard." This language was approved by Fuller, C. J.; Miller, Field, Gray, Blatch-

ford, and Lamar, Associate Harlan, J., alone dissenting. It is not within the purpose or scope of this sketch to enter into a discussion of the merits of the great question involved in this battle of the giants or of the manner in which they sustained their conclusions. It is, however, a part of the history of the controversy and of the times, that two days after the opinion was filed sustaining the jurisdiction, by a majority of the Court, the Eleventh Amendment was introduced into Congress. "It was proposed by Mr. Sedgwick, a Representative from Massachusetts, but was passed in the Senate as amended by Mr. Gallatin."[14] Mr. Guthrie says that Mr. Caleb Strong was its author. The words are: "The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or proceeded against one of the United States by citizens of another State or by citizens or subjects of foreign States." It is significant that the language of the Amendment is declaratory of what, in the opinion of Congress, was the correct construction of the Constitution. It was essentially a reversal of the decision of the Court and writing into the Constitution the dissenting opinion of Justice Iredell. This is evidenced by the fact that notwithstanding that, in accordance with the decision in Chisholm's case, judgment was rendered for the plaintiff at February Term, 1794, and a writ of inquiry awarded, the Court, at February Term, 1798, in *Hollingsworth v. Virginia,* 3 Dallas, 378, upon being informed that the Eleventh Amendment had been adopted, "delivered an unanimous opinion that there could not be exercised any jurisdiction in any case, past or future, in which a State was sued by the citizens of another State, or by citizens or subjects of any foreign State." Mr. William D. Guthrie says: "The unusual and peculiar wording of the Amendment first attracts attention. Instead of declaring how the Constitution shall

[14]Watson's Const., 1535.

read in the future it declares how it shall 'not be construed.' * * * The Amendment, therefore, does not purport to amend or alter the Constitution, but to maintain it unchanged while controlling its scope and effect and thereby authoritatively declaring how it shall not be construed."[15] Mr. Justice Bradley says: "The Supreme Court had construed the judicial power as extending to such a suit, and the decision was overruled. The Court so understood the effect of the amendment."[16]

With that remarkable prevision which marks him as one of, if not the first, prophetic statesman which the world has produced, Hamilton points out the danger and difficulty which lurked in the construction given to the Constitution by the majority in Chisholm's case. He says: "To what purpose would it be to authorize suits against States for the debts they owed? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State; and to ascribe to the Federal Courts, by mere implication and in destruction of a preëxisting right of the State Governments a power which would involve such a consequence, would be altogether forced and unwarrantable." This language becomes of present interest in the light of the concluding words of the opinion of Mr. Justice Holmes in *Virginia v. West Virginia*. "As this is no ordinary commercial suit but, as we have said, a quasi-international difference referred to this Court in reliance upon the honor and constitutional obligation of the States concerned rather than ordinary remedies, we think it best, at this stage, to go no further but to await the effect of a conference between the parties which, whatever the outcome, must take place. * * * But this case is one that calls for forbearance upon both sides; great States have a temper superior to that

[15]"The Eleventh Amendment."—Columbia Law Review, March, 1908.
[16]Hans v. Louisiana, 134 U. S. 11.

of private litigants and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union and mutual consideration to bring it to an end."[17] Certainly the history of attempts to enforce money demands against States, through Federal Courts, thoroughly vindicates the wisdom of Iredell's view and the apprehension expressed in his concluding words: "This opinion I hold, however, with all the reserve proper for one which, according to my sentiments in the case, may be deemed, in some measure, extra-judicial. With regard to the policy of maintaining such suits, is not for this Court to consider, unless the point in all other respects was very doubtful. Policy then might be argued from with a view to preponderate the judgment. Upon the question before us I have no doubt. I have, therefore, nothing to do with the policy, but I confess, if I was at liberty to speak on that subject, my opinion on the policy of the case would also differ from that of the Attorney General. It is, however, a delicate topic. I pray to God that if the Attorney General's doctrine as to the law be established by the judgment of this Court, all the good he predicts of it may take place and none of the evils with which, I have the concern to say, it appears to me to be pregnant." In *South Dakota v. North Carolina,*[18] the question, as there presented, was discussed and decided against the contention of the State by a divided Court of five to four. The present Chief Justice wrote a strong and well sustained dissenting opinion, concurred in by Chief Justice Fuller, Justices McKenna and Day. The decree there was, however, confined to a statutory mortgage upon specific property. The question whether judgment for a deficiency would be entered was expressly reserved. The case was settled by compromise.

The Court has refused to take jurisdiction in a number of

[17]Virginia v. West Virginia, 220 U. S., 35.
[18]192 U. S., 286.

cases where the attempt was made to avoid the provisions of the Amendment.[19]

In *Penhallow v. Doane,*[20] Judge Iredell wrote an interesting opinion in which he discussed the relation which each of the original colonies bore to each other prior to the formation of the Confederation and the power conferred on the Confederation to establish Courts of Admiralty, and the effect of the judgments of such courts in prize cases. It is not practicable to make extracts from this opinion, but the following is of especial and permanent interest: "By a State forming a republic I do not mean the Legislature of the State, the executive of the State, or the judiciary, but all the citizens which compose that State and are, if I may so express myself, integral parts of it. * * * In a republic all the citizens, as such, are equal, and no citizen can rightfully exercise any authority over another, but in virtue of a power constitutionally given by the whole community which forms such body politic."

In *Talbot v. Jansen,*[21] an interesting question was presented in regard to the right of expatriation and how it was accomplished. Iredell wrote an opinion in which he discussed the law of nations, etc. Upon the right of expatriation and the limitations upon its exercise the opinion is interesting and enlightening.

In the case of *Hylton v. The United States,*[22] involving the question whether a tax on carriages was a direct tax, Iredell wrote a carefully guarded opinion concurring with the other Justices that the tax in question was not a direct tax within the meaning of the Constitution. He says: "There is no necessity or propriety in determining what is, or is not, a direct or indirect tax, in all cases. Some difficulties may arise which we do not at present foresee." His caution has

[19]Hans v. Louisiana, *supra.* Christian v. A. & N. C. R. R. Co., 123 U. S., 233; Murray v. Distilling Co., 213 U. S., 151.
[20]3 Dallas, 54.
[21]3 Dallas 133.
[22]3 Dallas, 171.

been justified by the history of the attempt to settle this much vexed question. Alexander Hamilton appeared for the Government. Iredell writes to Mrs. Iredell: "The day before yesterday Mr. Hamilton spoke in our court, attended by the most crowded audience I ever saw there, both Houses of Congress being almost deserted on the occasion. Though he was in very ill health he spoke with astonishing ability and in a most pleasing manner, and was listened to with the profoundest attention. His speech lasted three hours. * * * In one part of it he affected me extremely. Having occasion to observe how proper a subject it was for taxation, since it was a mere article of luxury which a man might either use or not as it was convenient to him, he added: 'It so happens that I once had a carriage myself and found it convenient to dispense with it.' "

At the Spring Term, 1793, of the Circuit Court at Richmond, before Jay, Iredell, and District Judge Griffin, the celebrated case of *Ware v. Hylton* was heard. During the war the Legislature of Virginia passed an act confiscating the debts of British subjects and directing the payment of such debts to the loan office of the State. The defendant, who was indebted to the plaintiff, a British subject, had, in obedience to the statute, made a partial payment thereon. Suit was brought on the bond. The defendants were represented by Patrick Henry, Marshall, Inis and Campbell. Iredell writes to Mrs. Iredell from Richmond, May 27th: "We began on the great British cases the second day of the court, and are now in the midst of them. The great Patrick Henry is to speak today. I never was more agreeably disappointed than in my acquaintance with him. I have been much in his company and his manners are very pleasing, and his mind, I am persuaded, highly liberal. It is a strong additional reason I have, added to many others, to hold in high detestation violent party prejudice."

The discussion was one of the most brilliant exhibitions ever witnessed at the bar of Virginia. Mr. Henry spoke for three consecutive days. The case was argued upon appeal at the February Term, 1796, of the Supreme Court,[23] Iredell wrote an opinion concurring with the majority of the Court that the Treaty of Peace enabled the creditor to sue for the debt, but was of the opinion (dissenting) that the recovery should be confined to the amount that had not been paid into the loan office. He said: "In delivering my opinion in this important case I feel myself deeply affected by the awful position in which I stand. The uncommon magnitude of the subject, its novelty, the high expectation it has excited, and the consequences with which a decision may be attended, have all impressed me with their fullest force." Referring to the argument, he said: "The cause has been spoken to, at the bar, with a degree of ability equal to any occasion. However painfully I may at any time reflect on the inadequacy of my own talents I shall, as long as I live, remember, with pleasure and respect, the arguments which I have heard in this case. They have discovered an ingenuity, a depth of investigation and a power of reasoning fully equal to anything I have ever witnessed, and some of them have been adorned with a splendor of eloquence surpassing what I have ever felt before. Fatigue has given way under its influence and the heart has been warmed while the understanding has been instructed." The opinion is exhaustive in learning. A competent judge has written that "as a legal argument it may be regarded as one of the best specimens that have been preserved of the old Supreme Court."[24]

Chief Justice Jay having resigned, and the Senate having refused to confirm the nomination of Judge Rutledge, there

[23] 3 Dallas, 199.
[24] Van Santvoord, Lives of the Chief Justices.

was much speculation as to who would be appointed. Governor Johnston wrote Iredell: "I am sorry that Mr. Cushing refused the office of Chief Justice, as I don't know whether a less exceptionable character can be obtained without passing over Mr. Wilson, which would perhaps be a measure that could not be easily reconciled to strict neutrality." Iredell writes Mrs. Iredell a few days after: "Mr. Ellsworth is nominated our Chief Justice, in consequence of which I think that Wilson will resign. * * * The kind expectation of my friends that I might be appointed Chief Justice were too flattering. Whatever other chance I might have had there could have been no propriety in passing by Judge Wilson to come at me."

Iredell rode the Middle Circuit during the spring of 1796. His charge at Philadelphia was published at the request of the grand jury. At the August Term, 1798, in the case of *Calder v. Bull,* [25] Iredell set forth very clearly his view respecting the power of the judiciary to declare invalid acts of the Legislature passed in violation of constitutional limitations. He says: "In a government composed of legislative, executive and judicial departments, established by a Constitution which imposed no limits on the legislative power, the consequence would inevitably be that whatever the Legislature chose to enact would be lawfully enacted, and the judicial power could never interpose to pronounce it void. It is true that some speculative jurists have held that a legislative act against natural justice must, in itself, be void; but I can not think that under such a government any court of justice would possess the power to declare it so. * * * It has been the policy of all the American States, which have individually framed their State Constitutions since the Revolution, and of the people of the United States, when they framed the Federal Constitution, to define with pre-

[25] 3 Dallas, 386.

cision the objects of the legislative power and to restrain its exercise within marked and settled boundaries. If any act of Congress, or of the Legislature of a State, violates those Constitutional provisions, it is unquestionably void; though I admit that as the authority to declare it void is of a delicate and awful nature, the Court will never resort to that authority but in a clear and urgent case. If, on the other hand, the Legislatures of the Union shall pass a law within the general scope of their Constitutional power, the Court can not pronounce it to be void merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard; the ablest and the purest men have differed on the subject, and all that the Court could properly say in such an event would be that the Legislature had passed an act which, in the opinion of the Judges, was inconsistent with the principles of natural justice." It is doubtful whether this principle, peculiar to American Constitutional law, with its limitations, has been more accurately stated.

Judge Iredell rode the Eastern Circuit with Judge Wilson. He was much pleased with the people of New England, receiving many courtesies from them. He writes from Boston that he soon found himself "engaged for every day in the week—sometimes different invitations on the same day. Judge Lowell has been particularly kind to me." His charge to the grand jury at Boston was published by request and referred to by the editor of the paper as "uniting eloquence with exhaustive knowledge and liberality." From Boston he writes: "I have constantly received distinction and courtesy here, and like Boston more and more. * * * It is scarcely possible to meet with a gentleman who is not a man of education. Such are the advantages of schools of public authority; every township is obliged to maintain one or more to which poor children can have access without

any pay." He writes from Exeter, New Hampshire: "I met in Boston with a gentleman who lives in Newbury Port of the name of Parsons, who appears to me to be the first lawyer I have met with in America, and is a remarkably agreeable man." This was Theophilus Parsons, later Chief Justice of Massachusetts. He writes that he had dined with the Committee and Corporation of Harvard College, "being seated next to the Lieutenant Governor, the famous Samuel Adams, who, though an old man, has a great deal of fire yet. He is polite and agreeable."

On May 27, 1797, Judge Iredell delivered a charge to the grand jury in Richmond, Virginia, which was "animated, perhaps too warm." At that time the grand jury frequently made presentment of matters which they regarded as worthy of public attention, although not the subject of criminal prosecution. They presented "as a real evil the circular letters of several members of the last Congress, and particularly letters with the signature of Samuel J. Cabell, endeavoring, at a time of real public danger, to disseminate unfounded calumnies against the happy Government of the United States, thereby to separate the people therefrom and to increase or produce a foreign influence ruinous to the peace, happiness and independence of these United States." Mr. Cabell made an angry retort, attacking the jury, judge and the Supreme Court. He proposed to bring the matter before Congress as a breach of privilege. Mr. Jefferson urged Mr. Monroe to call it to the attention of the Legislature. Just what they proposed to do with the jury or the judge does not very clearly appear. Judge Iredell published a card in which he said that the charge was prepared before he reached Richmond and had been delivered in Pennsylvania and Maryland; that he was not acquainted with Mr. Cabell and knew nothing of the letters referred to by the grand jury. He concludes: "With regard to the illiberal

epithets Mr. Cabell has bestowed not only upon me, but on the other Judges of the Supreme Court, I leave him in full possession of all the credit he can derive from the use of them. I defy him, or any other man, to show that, in the exercise of my judicial character, I have ever been influenced in the slightest degree by any man, either in or out of office, and I assure him that I shall be as little influenced by this new mode of attack by a member of Congress as I can be by any other." The political feeling in the country, and especially in Virginia, was at that time very bitter. Governor Johnston, Judge Iredell's brother-in-law, and always his wise friend, writing him in regard to this incident, said: "The answer was very proper, if proper to give it any answer at all." He further said that which every Judge knows from experience to be true: "I am sensible of the difficulties with which a man of warm feelings and conscious integrity submits to bear, without a reply, unmerited censure; yet I am not certain but that it is more suitable to the dignity of one placed in high and respectable departments of State to consider himself bound to answer only when called upon constitutionally before a proper tribunal."

Iredell rode the Southern Circuit during the spring of 1798, suffering much fatigue and discomfort. Judge Wilson, having suffered financial reverses, sought the hospitality of Governor Johnston and Judge Iredell, and found in them sympathetic friends. His health failed rapidly, resulting in his death August 21, 1798. He was buried at Hayes, the home of Governor Johnston. His remains were removed to Philadelphia a short time since. At the February Term, 1799, of the Supreme Court, Iredell sat for the last time. He filed "one of his best and most carefully written opinions" concurring with the conclusion reached by the other Judges in *Sims v. Irvine*.[26] He held the Circuit Court at

[26] 3 Dallas, 425.

Philadelphia, at which term several of the insurgents were on trial for treason. In his last charge to the grand jury he dwelt at much length on the law of treason and the Alien and Sedition laws. It is manifest that Iredell, as were many others, was deeply impressed with the belief that French philosophy and infidelity, coupled with the revolutionary proceedings in that country, were making an impression upon the people of this country, finding defenders among leaders of public sentiment, seriously threatening the peace of the country and the dissolution of the Union. He was a Federalist and joined with the members of that party in their reverence for Washington. He disliked and distrusted the French leaders and their principles. His charge was filled with warning against the influence of principles and conduct which, in his opinion, were involving the American people in the French Revolution, and the disturbed relations of that country with England. His concluding words in his last charge to a grand jury are interesting and illustrative of the condition of his mind. He says: "If you suffer this government to be destroyed what chance have you for any other? A scene of the most dreadful confusion must ensue. Anarchy will ride triumphant, and all lovers of order, decency, truth and justice be trampled under foot. May that God, whose peculiar province seems often to have interposed to save these United States from destruction, preserve us from this worst of all evils, and may the inhabitants of this happy country deserve His care and protection by a conduct best calculated to obtain them." The grand jury, requesting the publication of the charge, say: "At a time like the present, when false philosophy and wicked principles are spreading with rapidity under the imposing garb of liberty over the fairest country of the old world, we are convinced that the publication of a charge fraught with such clear and just observations on the nature and operation of the Con-

stitution and laws of the United States will be highly beneficial to the citizens thereof." As an illustration of the condition of public sentiment, Governor Johnston writes Iredell who, having concluded the trials in Philadelphia had come to Richmond, "I am glad that you have got away from the land of *treason* to the land of *sedition;* the change is something for the better." Chief Justice Ellsworth, riding the Southern Circuit, writes Iredell from Raleigh, N. C., June 10, 1799: "My opinion, collected from some gentlemen who have been lately traveling in that State (Virginia), and others who were at the Petersburg races, presents a melancholy picture of that country. These gentlemen returned with a firm conviction that the leaders there were determined upon the overthrow of the general government. * * * That the submission and assistance of North Carolina was counted on as a matter of course." The Chief Justice, however, adds: "As it was shortly after the election these may have been the momentary effusions of disappointed ambition."

Thirty years of constant and wearing work, coupled with the climate in which he lived and the long journeys on the Southern Circuit, which he rode four times in five years, had impaired Judge Iredell's health. He was unable to attend the August Term, 1799, of the Court. His illness increased until, on October 20, 1799, at his home in Edenton, he passed away, in the forty-ninth year of his age. His friend, the Rt. Rev. Charles Pettigrew, testified of him: "In the run of the above twenty years I have often heard high encomiums on the merits of this great and good man; but never in a single instance have I heard his character traduced or his integrity called in question."

His biographer, from whose excellent work I have largely drawn in the preparation of this sketch, says that with Judge Iredell's papers is an original "Treatise on Evidence," "an

* * * Essay on the Law of Pleading," and one on the "Doctrine of the Laws of England concerning Real Property so far as it is in use or force in the State of North Carolina"; the two last unfinished.

When it is remembered that he came to America at seventeen years of age, with neither wealth nor family influence; that his opportunities and sources of study were limited by the condition of the country; that for seven of the thirty years of his life here the country was engaged in war, we can, in some degree, appreciate the immense labor which he performed and the results which he accomplished. His life is a tribute to the teaching and example of his parents, the influence of those with whom he was brought into association in his adopted home, his industry, talents, patriotism, and lofty principles of honor and integrity.

Judge Iredell left one son, bearing his name, who became a lawyer of learning and distinction, Judge of the Superior Court, Governor, and United States Senator. He was, for many years, Reporter of the Supreme Court of the State and author of an excellent work on "The Law of Executors." He died during the year of 1853. His descendants are among the most honorable, useful and patriotic citizens of the State.

It has been the purpose of this sketch to set forth, in the space which could be allotted, a short survey of the judicial work of Judge Iredell. His early death cut short a career on the bench full of promise of enlarging scope and usefulness. That he would have continued to develop his high judicial qualities and, if permitted, shared with the "Great Chief Justice" the work of laying deep and strong the foundations of American Constitutional law can not be doubted. His opinions upon Constitutional questions evince a very high order of judicial statesmanship.

DAVID CALDWELL—TEACHER, PREACHER, PATRIOT

By CHARLES LEE SMITH.

No other North Carolinian of the Revolutionary period deserves more lasting fame than that consecrated preacher, learned teacher, and devoted patriot, the Reverend David Caldwell, D.D. He had his full share of the troubles of the times, as it was the delight of both the Tories and the British to persecute him. After driving him from his home, they destroyed with great wantonness his library and the valuable papers which he had prepared. An effort was made to seduce him with British gold, but neither money nor persecution could shake his loyalty to the cause he had espoused. His is one of the most illustrious names in the educational history of our State, and it has been said, "Dr. Caldwell, as a teacher, was probably more useful to the church (Presbyterian) than any other one man in the United States." He was an able preacher. Through his influence the Reverend John Anderson, D.D., the Reverend Samuel E. McCorkle, D.D., and many others who became distinguished, were brought into the ministry of his church.

David Caldwell, the son of a sturdy Scotch-Irish farmer, was born in Lancaster County, Pa., March 22, 1725. In early youth, after receiving the rudiments of an English education, he was apprenticed to a carpenter, and until his twenty-sixth year he worked at the bench. He then decided to enter the ministry, and his first steps were to obtain a classical education. For some time he studied in Eastern Pennsylvania at the school of the Reverend Robert Smith, the father of John B. Smith, so favorably known in Virginia as president of Hampden-Sidney College, and of the Reverend Samuel Stanhope Smith, D.D., at one time president of

Princeton College.[1] Before entering college he taught school for one or more years.

It is not certainly known what year he entered Princeton, though he was graduated in 1761. At the time he became a student the requirements for admission were as follows: "Candidates for admission into the lowest or Freshman class must be capable of composing grammatical Latin, translating Virgil, Cicero's Orations, and the four Evangelists in Greek; and by a late order (made in Mr. Davies's administration) must understand the principal rules of vulgar arithmetic. Candidates for any of the other higher classes are not only previously examined, but recite a fortnight upon trial, in that particular class for which they offer themselves; and are then fixed in that, or a lower, as they happen to be judged qualified. But, unless in very singular and extraordinary cases, none are received after the Junior year." [2]

His assiduity as a student may be gathered from the following incident related by Dr. Caruthers: "An elderly gentleman of good standing in one of his (Caldwell's) congregations stated to me a few weeks since that when he was a young man Dr. Caldwell was spending a night at his father's one summer about harvest, and while they were all sitting out in the open porch after supper, a remark was after some time made about the impropriety of sitting so long in the night air; when he (Dr. Caldwell) observed that, so far as his own experience had gone, there was nothing unwholesome in the night air; for while he was in college he usually studied in it and slept in it during the warm weather, as it was his practice to study at a table by the window, with the sash raised, until a late hour, then cross his arms on the table, lay his head on them, and sleep in that position till morning. This was not very far behind the most inveterate

[1] Foote's Sketches of North Carolina, p. 232.
[2] Maclean's History of the College of New Jersey, vol. 1, p. 272.

students of the seventeenth century, whether in Europe or America, and a man who had strength of constitution to pursue such a course of application, though of moderate abilities, could hardly fail to become a scholar." [3]

The scope of the instruction given at Princeton is set forth in a description of the college by President Finley, published in 1764; and as Dr. Caldwell was graduated in 1761, probably the courses were then substantially the same as while he was a student. After taking his degree in 1761 he taught for a year at Cape May. He then returned to Princeton, where he took a graduate course and at the same time served as tutor in languages; so it is certain that he had the system of instruction as it was under Dr. Finley's administration. In his account of the courses and methods President Finley says: "As to the branches of literature taught here, they are the same with those which are made parts of education in the European colleges, save only such as may be occasioned by the infancy of this institution. The students are divided into four distinct classes, which are called the Freshman, the Sophomore, the Junior, and the Senior. In each of these they continue one year, giving and receiving in their terms those tokens of respect and subjection which belong to their standings, in order to preserve a due subordination. The Freshman year is spent in Latin and Greek languages, particularly in reading Horace, Cicero's Orations, the Greek Testament, Lucian's Dialogues, and Xenophon's Cyropedia. In the Sophomore year they still prosecute the study of the languages, particularly Homer, Longinus, etc., and enter upon the sciences, geography, rhetoric, logic and the mathematics. They continue their mathematical studies throughout the Junior year, and also pass through a course of natural and moral philosophy, metaphysics, chronology, etc.; and the greater number, especially such as are educating for the serv-

[3] Caruthers's Caldwell, p. 20.

ice of the church, are initiated into the Hebrew. * * * The Senior year is entirely employed in reviews and composition. They now review the most improving parts of Latin and Greek classics, part of the Hebrew Bible, and all the arts and sciences. The weekly course of disputation is continued, which was also carried on through the preceding year. They discuss two or three theses in a week, some in the syllogistic and others in the forensic manner, alternately, the forensic being always performed in the English tongue." Besides the above there were public disputations on Sundays on theological questions, and once each month the Seniors delivered original orations before a public audience. Members of the Senior and lower classes were also required from time to time to declaim.[4] Such was the course of instruction taken by Dr. Caldwell, and such in general was the educational system which prevailed in the first institution for higher education established in North Carolina.

At a meeting of the Presbytery held at Princeton in September, 1762, David Caldwell was received as a candidate for the ministry. He was licensed to preach in 1763. In 1764 he labored as a missionary in North Carolina, returning to New Jersey in 1765, being ordained to the full work of the ministry at the Presbytery held at Trenton in July of that year. He immediately returned to North Carolina, where he labored as a missionary, until on March 3, 1768, he was installed as a pastor of the Buffalo and the Alamance congregations.

At that time there were but few Presbyterian ministers in North Carolina, and Dr. Caldwell was one of the very first to make this State his permanent home. His history is more identified with the moral and educational history of North Carolina than is that of any other one man of the eighteenth century. In 1766 he married the daughter of the

[4]Maclean's History of the College of New Jersey, vol. 1 , p. 266.

Reverend Alexander Craighead, and as the salary from his churches was not sufficient for the support of a family, it became necessary for him to supplement it by teaching school. At this time schools for primary education existed in various parts of the colony, but to him is due the honor of having established the first institution for the higher education that achieved more than local fame. The average attendance of students was from fifty to sixty, which was a large number for the time and circumstances of the country. The exercises of the school were not interrupted by the war till 1781, at that time nearly all his students having taken service in the American army. The school was reopened as soon as circumstances permitted, "though the number of students was small until peace, and with it incipient prosperity were restored to the country." For many years "his log cabin served North Carolina as an academy, a college, and a theological seminary." Such was his reputation as an instructor and disciplinarian, that in his school were students from all the States south of the Potomac. It is claimed that he was instrumental in bringing more men into the learned professions than any other man of his day, certainly in the Southern States. While many of his students continued their studies in Princeton and in the University of North Carolina, after the establishment of that institution, the larger number, and several of those who became the most distinguished in after-life, never went anywhere else for instruction, nor enjoyed other advantages for higher education than those afforded at his school. We are told that "Five of his scholars became governors of different States; many more became members of Congress; and a much greater number became lawyers, judges, physicians, and ministers of the gospel." Dr. Caldwell continued his labors as a teacher till about 1822, when he was forced by the infirmities of age to retire from active work.

Judge Archibald D. Murphey, in an address before the literary societies of the University of North Carolina in 1827, referring to educational conditions before the opening of that institution in 1795, has this to say about the Caldwell School: "The most prominent and useful of these schools[5] was kept by Dr. David Caldwell, of Guilford County. He instituted it shortly after the close of the war, and continued it for more than thirty years. The usefulness of Dr. Caldwell to the literature of North Carolina will never be sufficiently appreciated, but the opportunities for instruction in his school were very limited. There was no library attached to it; his students were supplied with a few of the Greek and Latin classics, Euclid's Elements of Mathematics, and Martin's Natural Philosophy. Moral philosophy was taught from a syllabus of lectures delivered by Dr. Witherspoon, in Princeton College. The students had no books on history or miscellaneous literature. There were indeed very few in the State, except in the libraries of lawyers who lived in the commercial towns. I well remember that after completing my course of studies under Dr. Caldwell I spent nearly two years without finding any books to read, except some old works on theological subjects. At length I accidentally met with Voltaire's History of Charles XII, of Sweden, an odd volume of Smollett's Roderick Random, and an abridgment of Don Quixote. These books gave me a taste for reading, which I had no opportunity of gratifying until I became a student in this University in the year 1796. Few of Dr. Caldwell's students had better opportunities of getting books than myself; and with these slender opportunities of instruction it is not surprising that so few became eminent in the liberal professions. At this day (1827), when libraries are established in all our towns, when every professional man

[5]For sketches of the schools, including Dr. Caldwell's, referred to by Judge Murphey, see the writer's History of Education in North Carolina (Washington, 1888).

and every respectable gentleman has a collection of books, it is difficult to conceive the inconveniences under which young men labored thirty or forty years ago."

The Reverend Dr. Caruthers says: "But the most important service he (Dr. Caldwell) rendered as a teacher was to the church or to the cause of religion, for nearly all the young men who came into the ministry of the Presbyterian Church for many years, not only in North Carolina but in the States south and west of it, were trained in his school, many of whom are still living (1842); and while some are superannuated, others are still useful men, either as preachers or as teachers in different institutions of learning." [6]

It is said that his mode of discipline was peculiar to himself, and while it did not admit of imitation, yet it was so successful that it could not be surpassed. His students were bound to him with bonds of affection, and an approving word from their "Dominie" was eagerly sought for. If the course of instruction at his school was not very extended it was thorough, as is testified by those who were prepared by him for future usefulness. Governor John M. Morehead, one of North Carolina's most distinguished sons, who studied under Dr. Caldwell and was prepared by him for the Junior class half advanced in the University of North Carolina, gave him the highest praise as a teacher, though at the time he was under his instruction Dr. Caldwell was between eighty-five and ninety years old.

Dr. Caldwell was a member of the State Convention of 1776, which drew up the "Bill of Rights" and framed the Constitution. He was also a member of the convention to consider the Constitution of the United States in 1788, where he took a decided stand as an advocate of States' rights; but in the party conflicts preceding the second war with Great Britain he was on the side of the Federalists. Such was the

[6] Caruthers's Caldwell, p. 36.

esteem in which he was held by his State, and such his reputation for scholarship, that on the establishment of the University of North Carolina the presidency was tendered him. On account of his years the honor was declined. In 1810 that institution conferred on him the honorary degree of Doctor of Divinity. He died August 25, 1824, and the next day was buried in the graveyard of Buffalo Presbyterian Church, Guilford County.

GOVERNOR SAMUEL JOHNSTON OF NORTH CAROLINA[1]

By R. D. W. CONNOR,
Secretary of the North Carolina Historical Commission.

On the east coast of Scotland, twelve miles from the confluence of the Firth of Tay with the German Ocean, lies the ancient town of Dundee, in population third, in commercial importance second among the cities of Scotland. The general appearance of Dundee, we are told, is picturesque and pleasing, and its surrounding scenery beautiful and inspiring. Thrift, intelligence, and independence are characteristics of its inhabitants. It is noted for its varied industrial enterprises, and from time immemorial has been famous among the cities of Britain for its extensive linen manufactures. A long line of men eminent in war, in statecraft, in law, and in letters adorns its annals. Its history carries us back to the time of the Crusades. In the twelfth century it received a charter from the hand of William the Lion. Within its walls William Wallace was educated, and there he struck his first blow against the domination of England. In the great Reformation of the sixteenth century its inhabitants took such an active and leading part as to earn for their town the appellation of "the Scottish Geneva." During the civil wars of the following century they twice gave over their property to pillage and themselves to massacre rather than submit to the tyranny of the House of Stuart. But in every crisis the indomitable spirit of Dundee rose superior to disaster and her people adhered to their convictions with a loyalty that never faltered and a faith that never failed.[2]

[1]An address delivered before the Grand Lodge of Masons, in the Masonic Temple, Raleigh, January 10, 1912, upon the presentation to the State by the Grand Lodge of a marble bust of Governor Samuel Johnston, first Grand Master of Masons of North Carolina.
[2]Encyclopædia Britannica, 9th ed., VII, 534-36.

In this fine old city, among its true and loyal people, the ancestors of Samuel Johnston lived, and here, in 1733, he himself was born.[3] The spirit of Dundee, its loyalty to principle, its unconquerable courage, and its inflexible adherence to duty, entered into his soul at his very birth, and developed and strengthened as he grew in years and in powers of body and mind. Throughout his life he displayed in public and in private affairs many of those qualities of mind and character which have given the Scotch, though small in number, such a large place in the world's history. Says Mr. Henry Cabot Lodge, "six centuries of bitter struggle for life and independence, waged continuously against nature and man, not only made the Scotch formidable in battle, renowned in every camp in Europe, but developed qualities of mind and character which became inseparable from the race. * * * Under the stress of all these centuries of trial they learned to be patient and persistent, with a fixity of purpose which never weakened, a tenacity which never slackened, and a determination which never wavered. The Scotch intellect, passing through the same severe ordeals, as it was quickened, tempered, and sharpened, so it acquired a certain relentlessness in reasoning which it never lost. It emerged at last complete, vigorous, acute, and penetrating. With all these strong qualities of mind and character was joined an intensity of conviction which burned beneath the cool and calculating manner of which the stern and unmoved exterior gave no sign, like the fire of a furnace, rarely flaming, but giving forth a fierce and lasting heat." [4] Had the author of these fine lines had the character of Samuel Johnston in his mind's

[3]McRee says December 15, 1733.—Life and Correspondence of James Iredell, I, 37. Johnston himself writing to his sister, Mrs. Iredell, January 24, 1794, says: "Yesterday finished my sixty-first birthday."—Ms. letter in C. E. Johnson Mss. Collections of the North Carolina Historical Commission. But Samuel Johnston, Sr., writing to Samuel Johnston, Jr., in a letter dated "Newbern, 17th, 1754," month omitted, says: "I give you joy of your being of age last Sunday."—Copy of letter in Collections of the N. C. Hist. Com. Original in the library at "Hayes."

[4]Address in the United States Senate, March 12, 1910, at the presentation to the United States by the State of South Carolina of a statue of John C. Calhoun.

eye, as he did have that of another eminent Scotch-descended Carolinian, his description could not have been more accurate.

In the great crises of our history in which he figured so largely, immediately preceding and immediately following the American Revolution, Samuel Johnston, with keen penetrating vision, saw more clearly than any of his colleagues the true nature of the problem confronting them. This problem was, on the one hand, to preserve in America the fundamental principles of English liberty against the encroachments of the British Parliament, and on the other, to secure the guarantees of law and order against the well-meant but ill-considered schemes of honest but ignorant reformers. For a full quarter of a century he pursued both of these ends, patiently and persistently, "with a fixity of purpose which never weakened, a tenacity which never slackened, and a determination which never wavered." Neither the wrath of a royal governor, threatening withdrawal of royal favor and deprivation of office, nor the fierce and unjust denunciations of party leaders, menacing him with loss of popular support and defeat at the polls, could swerve him one inch from the path of the public good as he understood it. Beneath his cool and calculating manner burned "an intensity of conviction" which gave him in the fullest degree that rarest of all virtues in men who serve the public—I mean courage, courage to fight the battles of the people, if need be, against the people themselves. Of course Johnston never questioned the right of the people to decide public affairs as they chose, but he frequently doubted the wisdom of their decisions; and when such a doubt arose in his mind he spoke his sentiments without fear or favor and no appeal or threat could move him. He was ready on all such occasions to maintain his positions with a "relentlessness in reasoning" that carried conviction, and out of defeat invariably wrung ultimate victory. More than

once in his public career the people, when confronted by his immovable will, in fits of party passion discarded his leadership for that of more compliant leaders; but only in their calmer moments to turn to him again to point the way out of the mazes into which their folly had entangled them.

A Scotchman by birth, Samuel Johnston was fortunate in his ancestral inheritance; an American by adoption, he was equally fortunate in his rearing and education. In early infancy[5] his lot was cast in North Carolina, the most democratic of the American colonies, and whatever tendency this fact may have given him toward democratic ideals was later strengthened by a New England education and by his legal studies.[6] At the age of twenty-one he became a resident of Edenton, then a small village of four or five hundred inhabitants, but the industrial, political, and social center for a large and fertile section of the province. Its leading inhabitants were men and women of wealth, education, and culture. Their social intercourse was easy, simple, and cordial. Cards, billiards, backgammon, dancing, tea drinking, hunting, fishing, and other outdoor sports, were their chief amusements. They read with appreciative insight the best literature of the day, made themselves familiar with the philosophy of

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[5]In his third year. His parents, Samuel and Helen (Scrymoure) Johnston came to North Carolina some time prior to May 25, 1735.—Colonial Records of North Carolina, IV, 9. They probably accompanied Samuel's brother, Gabriel, who become governor of the colony, November 2, 1734. McRee incorrectly gives the name of Governor Samuel Johnston's father as John.—Iredell, I, 36. Letters of his at "Hayes" show that his name was Samuel. See also Grimes: Abstracts of North Carolina Wills, 187, 188; and Col. Rec. IV, 1080, 1110. He resided in Onslow county, but owned large tracts of land not only in Onslow, but also in Craven, Bladen, New Hanover, and Chowan.—Col. Rec., IV, 72, 219, 222, 329, 594, 601, 628, 650, 800, 805, 1249. He was a justice of the peace in New Hanover, Bladen, Craven, and Onslow.—Col. Rec., IV, 218, 275, 346, 347, 814, 1239. He served also as collector of the customs at the port of Brunswick.—Col. Rec., IV, 395, 725, 998, 1287; and as road commissioner for Onslow county, State Records, XXIII, 221. His will, dated November 13, 1756, was probated in January, 1757.—Abstracts, 188. His wife having died of child-birth in 1751 (letter to his son), his family at the time of his death consisted of two sons, Samuel and John, and five daughters, Jane, Penelope, Isabelle, Ann, and Hannah. To his sons he devised 6,500 acres of land, and to his daughters land and slaves.—Abstracts, 188.

[6]Governor Josiah Martin, writing of Johnston, to Lord George Germain, May 17, 1777, says: "This Gentleman, my Lord, was educated in New England, where * * * it may be supposed he received that bent to Democracy which he has manifested upon all occasions."—Col. Rec., X, 401. Letters from his father, addressed to him while he was at school in New Haven, Conn., bear dates from 1750 to 1753. I have not been able to ascertain what school he attended. In 1754 he went to Edenton to study law under Thomas Barker.

the Spectator and the Tatler, and followed with sympathetic interest the fortunes of Sir Charles Grandison and Clarissa Harlowe. They kept in close touch with political events in England, studied critically the Parliamentary debates, and among themselves discussed great constitutional questions with an ability that would have done honor to the most learned lawyers of the Inner Temple.[7] Within the town and its immediate vicinity dwelt John Harvey, Joseph Hewes, Edward Buncombe, Stephen Cabarrus, and, after 1768, James Iredell. Preceding Iredell by a little more than a decade came Samuel Johnston, possessed of an ample fortune, a vigorous and penetrating intellect, and a sound and varied learning, which soon won for him a place of preëminence in the province. "He bore," says McRee, "the greatest weight of care and labor as the mountain its crown of granite. His powerful frame was a fit engine for the vigorous intellect that gave it animation. Strength was his characteristic. In his relations to the public, an inflexible sense of duty and justice dominated. There was a remarkable degree of self-reliance and majesty about the man. His erect carriage and his intolerance of indolence, meanness, vice, and wrong, gave to him an air of sternness. He commanded the respect and admiration, but not the love of the people." [8] At Edenton, surrounded by a group of loyal friends, Johnston entered upon the practice of his profession and in 1759 began a public career which, for length of service, extremes of political fortune, and lasting contributions to the welfare of the State, still stands unsurpassed in our history.[9]

[7]See the picture of Edenton society drawn by James Iredell in his diary, printed in McRee's Iredell.

[8]Iredell, I, 37-38.

[9]He was twelve times elected to the General Assembly, serving from 1759 to 1775, inclusive. On April 25, 1768, he was appointed Clerk of the Court for the Edenton District. In 1770 he was appointed Deputy Naval Officer of the province, but was removed by Gov. Martin, Nov. 16, 1775, on account of his activity in the revolutionary movement. Dec. 8, 1773, he was selected as one of the Committee of Continental Correspondence appointed by the General Assembly. He served in the first four Provincial Congresses, which met Aug. 25, 1774, April 3, 1775, Aug. 20, 1775, and April 4, 1776. Of the third and fourth he was elected President. The Congress, Sept. 8, 1775, elected him Treasurer for the Northern District. Sept.

Johnston's public career covered a period of forty-four years and embraced every branch of the public service. As legislator, as delegate to four provincial congresses, as president of two constitutional conventions, as member of the Continental Congress, as judge, as governor, as United States Senator, he rendered services to the State and Nation which rank him second to none among the statesmen of North Carolina. Time does not permit me today to dwell on all these points of his career, and I must content myself with inviting your attention to his services in just three of the great crises of our history: First, in organizing the Revolution in North Carolina; second, in framing the first state constitution; third, in the ratification by North Carolina of the Constitution of the United States.

You are of course familiar with the principal events which led up to the outbreak of the Revolution. Johnston watched the course of these events with the keenest interest and the most profound insight. By inheritance, by training, and by conviction he was a conservative in politics. He clung tenaciously to the things that were and viewed with apprehension, if not with distrust, any tendency of those in power to depart from the beaten path marked out by time and experience. It was not to be expected, therefore, that he, holding the principles of the British Constitution in great reverence, would look with favor upon departures from those principles so radical as those proposed by the British Ministry. It has frequently been pointed out that in the American Revolution

9, 1775, he was selected as the member-at-large of the Provincial Council, the executive body of the revolutionary government. The Provincial Council, Oct. 20, 1775, elected him Paymaster of Troops for the Edenton District. Dec. 21, 1776, he was appointed by the Provincial Congress a commissioner to codify the laws of the State. In 1779, 1783, 1784 he represented Chowan county in the State Senate. The General Assembly, July 12, 1781, elected him a delegate to the Continental Congress. In 1785 the States of New York and Massachusetts selected him as one of the commissioners to settle a boundary line dispute between them. He was three times elected Governor of North Carolina, Dec. 12, 1787, Nov. 11, 1788, and Nov. 14, 1789. He resigned the governorship in Dec., 1789 to accept election to the United States Senate, being the first Senator from North Carolina. In 1788 and 1789 he was President of the two Constitutional Conventions, at Hillsboro and Fayetteville, called to consider the ratification of the Federal Constitution. Dec. 11, 1789 he was elected a trustee of the University of North Carolina. From 1800 to 1803 he served as Superior Court Judge. He died in 1816.

England and not America represented the radical position. The Americans held to the British Constitution as they had received it from their fathers, they protested against the innovations of the Ministry, and they went to war to conserve the principles of English liberty as they had been handed down from time immemorial. They were the true conservatives. This, too, was the point of view of such British statesmen as Fox, and Pitt, and Burke, and Rockingham. In this contest, accordingly, there could be but one place for Samuel Johnston,—inheritance, education, conviction, all carried him at once into the camp of the Whig party.

From the passage of the Stamp Act in 1765 Johnston maintained a firm and decided stand against every step taken by the British Ministry to subject the colonies in their local affairs to the jurisdiction of Parliament. A special significance attaches to his services. His birth in Scotland, his residence in North Carolina, his education in Connecticut, his intimate correspondence with friends in England, all served to lift him above any narrow, contracted, provincial view of the contest and fitted him to be what he certainly was, the leader in North Carolina in the great continental movement which finally resulted in the American Union. Union was the great bugbear of the King and Ministry, and for some years before the actual outbreak of the Revolution an important object of their policy was to prevent the union of the colonies. They sought, therefore, as far as possible, to avoid all measures which, by giving them a common grievance, would also afford a basis upon which they could unite. In order to accomplish this purpose more effectively acts of Parliament to a large extent gave way in the government of the colonies to instructions from the King issued to the royal governors. These instructions the governors were required to consider as of higher authority than acts of the assemblies and as binding on both the governors and the assemblies. A

set was not framed to apply to all the colonies alike, but special instructions were sent to each colony as local circumstances dictated. Since these local circumstances differed so widely in the several colonies, the King and his ministers thought the patriots would not be able to find in these instructions any common grievance to serve as a basis for union.

In North Carolina the battle was fought out on three very important local measures which involved the financial policy of the province, the running of its southern boundary line, and the jurisdiction of the colonial courts. On all three the King issued positive instructions directing the course which the Assembly should pursue. Thus a momentous issue was presented for the consideration of its members: Should they permit the Assembly to degenerate into a mere machine whose highest function was to register the will of the Sovereign; or should they maintain it as the Constitution and their charters intended it to be, a free, deliberative, law-making body, responsible for its acts only to the people? Upon their answer to this question it is not too much to say hung the fate of the remotest posterity in this State. I record it as one of the proudest events in our history, beside which the glories of Moore's Creek, Kings Mountain, Guilford Court House, and even of Gettysburg itself pale into insignificance, that the Assembly of North Carolina had the insight to perceive their problem clearly, the courage to meet it boldly, and the statesmanship to solve it wisely.

"Appointed by the people [they declared] to watch over their rights and privileges, and to guard them from every encroachment of a private and public nature, it becomes our duty and will be our constant endeavor to preserve them secure and inviolate to the present age, and to transmit them unimpaired to posterity. * * * The rules of right and wrong, the limits of the prerogative of the Crown and of the privileges of the people are, in the present refined age, well known and ascertained; to exceed either of them is highly unjustifiable." [10]

[10] For a more extended account of this great contest, see my Cornelius Harnett: An Essay in North Carolina History, 68-78.

Hurling this declaration into the face of the royal governor the Assembly peremptorily refused obedience to the royal instructions. In this momentous affair Samuel Johnston stood fully abreast of the foremost in maintaining the dignity of the Assembly, the independence of the judiciary, and the right of the people to self-government. With unclouded vision he saw straight through the policy of the King and stood forth a more earnest advocate of union than ever. He urged the appointment of the committees of correspondence throughout the continent, served on the North Carolina committee, and favored the calling of a Continental Congress. When John Harvey, in the spring of 1774, suggested a provincial congress, Johnston gave the plan his powerful support,[11] and when the Congress met at New Bern, August 25, 1774, he was there as one of the members from Chowan. Upon the completion of its business this Congress authorized Johnston, in the event of Harvey's death, to summon another congress whenever he should deem it necessary. No more fit successor to Harvey could have been found. Johnston's unimpeachable personal character commanded the respect of the Loyalists,[12] his known conservatism was a guarantee that the revolutionary program under his leadership would be conducted with proper regard for the rights of all and in an orderly manner, and his thorough sympathy with the spirit and purposes of the movement assured the loyal support of the entire Whig party. How thoroughly he sympathized with the whole program is set forth in the following letter written to an English friend who once resided in North Carolina:

"You will not wonder [he writes] at my being more warmly affected with affairs of America than you seem to be. I came over so early and am now so riveted to it by my connections that I can not

[11]Col. Rec., X, 968.

[12]Archibald Neilson, a prominent Loyalist whom Gov. Martin appointed Johnston's successor as Deputy Naval Officer, wrote to James Iredell, July 8, 1775: "For Mr. Johnston, I have the truest esteem and regard. In these times, in spite of my opinion of his judgment, in spite of myself—I tremble for him. He is in an arduous situation: the eyes of all—more especially of the friends of order—are anxiously fixed on him."—McRee's Iredell, I, 260.

help feeling for it as if it were my *natale solum*. The ministry from the time of passing the Declaratory Act, on the repeal of the Stamp Act, seemed to have used every opportunity of teasing and fretting the people here as if on purpose to draw them into rebellion or some violent opposition to Government. At a time when the inhabitants of Boston were every man quietly employed about their own private affairs, the wise members of your House of Commons on the authority of ministerial scribbles declare they are in a state of open rebellion. On the strength of this they pass a set of laws which from their severity and injustice can not be carried into execution but by a military force, which they have very wisely provided, being conscious that no people who had once tasted the sweets of freedom would ever submit to them except in the last extremity. They have now brought things to a crisis and God only knows where it will end. It is useless, in disputes between different countries, to talk about the right which one has to give laws to the other, as that generally attends the power, though where that power is wantonly or cruelly exercised, there are instances where the weaker State has resisted with success; for when once the sword is drawn all nice distinctions fall to the ground; the difference between internal and external taxation will be little attended to, and it will hereafter be considered of no consequence whether the act be to regulate trade or raise a fund to support a majority in the House of Commons. By this desperate push the ministry will either confirm their power of making laws to bind the colonies in all cases whatsoever, or give up the right of making laws to bind them in any case." [13]

This is a very remarkable letter. Consider first of all its date. It was written at Edenton, September 23, 1774. At that time the boldest radicals in America, even such men as Samuel Adams, of Massachusetts; Patrick Henry, of Virginia; Cornelius Harnett, of North Carolina, scarcely dared breathe the word independence. But here is Samuel Johnston, most conservative of revolutionists, boldly declaring that the contest between England and her colonies was a dispute "between different countries," and threatening an appeal to arms to decide whether the British Parliament should make laws "to bind the colonies in all cases whatsoever," or be compelled to surrender "the right of making laws to bind

[13] To Alexander Elmsley, of London.—Col. Rec., IX, 1071.

them in any case." The man who ventured this bold declaration was no unknown individual, safe from ministerial wrath by reason of his obscurity, but was the foremost statesman of an important colony, and his name was not unfamiliar to those who gathered in the council chamber of the King.

The death of John Harvey in May, 1775, left Samuel Johnston the undisputed leader of the revolutionary party in North Carolina. In July he issued a call for a congress to meet in Hillsboro, August 20, and of this Congress he was unanimously chosen president. Until now Josiah Martin, the royal governor, had cherished the hope that Johnston would not go to the extreme of rebellion but that he would ultimately break with the Whig party and throw the great weight of his influence on the side of the royal government. Consequently early in the struggle, in very flattering terms, Martin had offered to recommend Johnston to the King for appointment to the next vacancy in the Council; and had refrained from removing him from his position as the deputy naval officer of the colony, "notwithstanding," he wrote, "I had found him uniformly in opposition to every measure of Government during my administration." [14] But now any further forbearance toward Johnston would be disloyalty to the King, and accordingly on October 7, 1775, the Governor addressed a letter to him notifying him of his removal. "The respect I have entertained for your private character," he said, had restrained him from taking this step heretofore; but now duty to his Royal Master would not permit his taking upon himself "the guilt of conniving at the undutiful behavior of one of the King's servants" in appearing "in the conspicuous character of Moderator of a popular Assembly unknown to the laws and constitution of this province.

[14] Gov. Martin to Johnston, Oct. 4, 1772: "In case of a vacancy at the Council Board I wish to know whether you will permit me to name you to the King; if it be agreeable to you, I shall be much flattered by an opportunity of making so honorable an acquisition to the Council of this Province."—Col. Rec., IX, 342. See also Martin to Lord Dartmouth, Col. Rec. IX, 1053; and to Lord Germain, X, 401.

* * * And [he continued] I have seen with greater surprise, if possible, your acceptance of the appointment of treasurer of the northern district of this colony, unconstitutionally and contrary to all law and usage conferred upon you by this body of your own creation." [15] To this communication Johnston replied in a letter of biting sarcasm but a model of courtesy and good taste. "It gives me pleasure," he said, referring to the Governor's reasons for his removal, "that I do not find neglect of duties of my office in the catalogue of my crimes," and then continued:

"At the same time that I hold myself obliged to your Excellency for the polite manner in which you are pleased to express yourself of my private character, you will pardon me for saying that I think I have reason to complain of the invidious point of view in which you are pleased to place my public transactions when you consider the late meeting of the delegates or deputies of the inhabitants of this province at Hillsborough, *a body of my own creation.* Your Excellency cannot be ignorant that I was a mere instrument in this business under the direction of the people; a people among whom I have long resided, and who have on all occasions placed the greatest confidence in me, to whose favorable opinion I owe everything I possess and to whom I am bound by gratitude (that most powerful and inviolable tie on every honest mind) to render every service they can demand of me, in defense of what they esteem their just rights, at the risk of my life and property.

You will further, Sir, be pleased to understand, that I never considered myself in the honorable light in which you place me, *one of the king's servants;* being entirely unknown to those who have the disposal of the king's favors, I never enjoyed nor had I a right to expect, any office under his Majesty. The office which I have for some years past executed under the deputation of Mr. Turner was an honest purchase for which I have punctually paid an annual sum, which I shall continue to pay till the expiration of the term for which I should have held it agreeably to our contract.

Permit me, Sir, to add that had all the king's servants in this province been as well informed of the disposition of the inhabitants as they might have been and taken the same pains to promote and preserve peace, good order, and obedience to the laws among them, that I flatter myself I have done, the source of your Excellency's

[15] Col. Rec., X, 262.

unnecessary lamentations had not at this day existed, or had it existed it would have been in so small a degree that ere this it would have been nearly exhausted; but, Sir, a recapitulation of errors which it is now too late to correct would be painful to me and might appear impertinent to your Excellency. I shall decline the ungrateful task, and beg leave, with all due respect, to subscribe myself, Sir, your Excellency's most obedient, humble servant." [16]

At the beginning of the Revolution Johnston, in common with the other Whig leaders throughout the continent, disclaimed any purpose of declaring independence. But once caught in the full sweep of the revolutionary movement they were carried along from one position to another until, by the opening of the year 1776, they had reached a situation which admitted of no other alternative. As North Carolina was the first colony to take the lead in demanding independence, so Samuel Johnston was among the first advocates of it in North Carolina. Writing March 3, 1776, he expressed the opinion that the future might "offer a more favorable opportunity for throwing off our connection with Great Britain," but immediately added:

"It is, however, highly improbable from anything that I have yet been able to learn of the disposition of the people at home, from the public papers, for I have not lately received any letters, that the colonies will be under the necessity of throwing off their allegiance to the king and Parliament of Great Britain this summer. If France and Spain are hearty and sincere in our cause, or sufficiently apprised of the importance of the connection with us to risk war with Great Britain, we shall undoubtedly succeed; if they are irresolute and play a doubtful game I shall not think our success so certain."

March 20, Joseph Hewes writing from Philadelphia, where he was in attendance on the Continental Congress, asked Johnston for his views on the subject of independence. In reply Johnston said:

"I am inclined to think with you that there is little prospect of an accommodation. You wish to know my sentiments on the subjects of treating with foreign powers and the independence of the

[16] Col. Rec., X, 332.

colonies. I have apprehensions that no foreign power will treat with us till we disclaim our dependence on Great Britain and I would wish to have assurances that they would afford us effectual service before we take that step. I have, I assure you, no other scruples on this head; the repeated insults and injuries we have received from the people of my native island has (sic) done away all my partiality for a connection with them and I have no apprehensions of our being able to establish and support an independence if France and Spain would join us cordially and risk a war with Great Britain in exchange for our trade." [17]

When the fourth Provincial Congress, at Johnston's summons, met at Halifax, April 4, 1776, the entire patriot party was fully abreast of his position on the subject of independence. "All our people here," he wrote, April 5, "are up for independence"; and a few days later he added: "We are going to the devil * * * without knowing how to help ourselves, and though many are sensible of this, yet they would rather go that way than to submit to the British Ministry. * * * Our people are full of the idea of independence." In compliance with this popular sentiment, the Congress, April 12, adopted its famous resolution empowering the North Carolina delegates in the Continental Congress "to concur with the delegates of the other colonies in declaring independency and forming foreign alliances." [18]

Samuel Johnston had now reached the climax of his influence and popularity, for by his election to the presidency of the Provincial Congress he had attained the highest position in public life to which a citizen of North Carolina in 1776 could aspire. The next few years were for him a period of eclipse. Deceived by the specious insinuations of his political opponents his constituents were led to discard his leadership and to accept that of men of fairer promises but of smaller achievements.

Immediately after declaring for independence the Con-

[17] Ms. letter in the library at "Hayes."
[18] For a full discussion of the movement toward independence, see my Cornelius Harnett, Chap. X.

gress at Halifax appointed a committee "to prepare a temporary civil constitution." Among its members were Johnston, Harnett, Abner Nash, Thomas Burke, Thomas Person, and William Hooper. They were (as I have said in another place)[19] men of political sagacity and ability, but their ideas of the kind of constitution that ought to be adopted were woefully inharmonious. Heretofore in the measures of resistance to the British Ministry remarkable unanimity had prevailed in the councils of the Whigs. But when they undertook to frame a constitution faction at once raised its head. Historians have designated these factions as "Conservatives" and "Radicals," terms which carry their own meaning and need no further explanation. However it may not be out of place to observe here that while both were equally devoted to constitutional liberty, the Radicals seem to have placed the greater emphasis on the noun, liberty, the Conservatives on its modifier, constitutional. The leader of the former was undoubtedly Willie Jones, while no one could have been found to question the supremacy of Samuel Johnston among the latter. Congress soon found that no agreement between the two could be reached while continued debate on the constitution would only consume time which ought to be given to more pressing matters. Consequently the committee was discharged and the adoption of a constitution was postponed till the next meeting of Congress in November. Thus the contest was removed from Congress to the people and became the leading issue of the election in October.

Willie Jones and his faction determined that Samuel Johnston should not have a seat in the November Congress, and at once began against him a campaign famous in our history for its violence. Democracy exulting in a freedom too newly acquired for it to have learned the virtue of self-restraint, struck blindly to right and left and laid low some of the

[19]Cornelius Harnett, 152.

sturdiest champions of constitutional liberty in the province. The contest raged fiercest in Chowan. "No means," says McRee, "were spared to poison the minds of the people; to inflame their prejudices; excite alarm; and sow in them, by indefinite charges and whispers, the seeds of distrust. * * * It were bootless now to inquire what base arts prevailed, or what calumnies were propagated. Mr. Johnston was defeated. The triumph was celebrated with riot and debauchery; and the orgies were concluded by burning Mr. Johnston in effigy." [20]

From that day to this much nonsense has been written and spoken about Johnston's hostility to democracy and his hankering after the fleshpots of monarchy, and the admirers of Willie Jones from then till now have expected us to believe that the man who for ten years had been willing to sacrifice his fortune, his ease, his peace of mind, his friends and family, and life itself, to overthrow the rule of monarchy was ready, immediately upon the achievement of that end, to conspire with his fellow-workers against that liberty which they had suffered so much to preserve. That Johnston did not believe in the "infallibility of the popular voice"; that he thought it right in a democracy for minorities to have sufficient safeguards against the tyranny of majorities; that he considered intelligence and experience more likely to conduct a government successfully than ignorance and inexperience, is all true enough. But that he also ascribed fully to the sentiment that all governments "derive their just powers from the consent of the governed"; that he believed frequency of elections to be the surest safeguard of liberty; that he thought representatives should be held directly responsible to their constituents and to nobody else, we have not only his whole public career but his most solemn declarations to prove. He advocated, it is true, a government of energy and power,

[20] Iredell, I, 334.

but a government deriving its energy and power wholly from the people. This is the very essence of true, genuine democracy.

Although not a member of the Congress which framed our first State Constitution, Johnston's duties as treasurer made it necessary for him to attend its session, and his presence there exerted a most wholesome influence on the final draft of that instrument. In mere matters of policy he manifested but little interest; but there were three points of prime importance to be settled which would ultimately determine the character of the government about to be formed. These were, first, the degree of responsibility to the people to which representatives should be held; second, the basis of the suffrage; and third, the degree of independence to be accorded to the judiciary. On these three points Johnston felt and thought deeply, and exerted himself to have his views incorporated in the Constitution.

In regard to the first he expressed himself as follows in a letter written from Halifax in April while the constitution was under consideration:

"The great difficulty in our way is, how to establish a check on the representatives of the people, to prevent their assuming more power than would be consistent with the liberties of the people. * * * Many projects have been proposed too tedious for a letter to communicate. * * * After all, it appears to me that there can be no check on the representatives of the people in a democracy but the people themselves; and in order that the check may be more efficient I would have annual elections." [21]

But by "the people," Johnston did not mean all the citizens of the State any more than we today, by the same term, mean to include all the citizens of the Commonwealth. Like us Johnston referred only to those citizens who were endowed with the franchise. He did not believe in unrestricted manhood suffrage. Such a basis he thought might be "well

[21] Iredell, I, 277.

adapted to the government of a numerous, cultivated people," but he did not think North Carolina in 1776 was ready for any such untried experiment, and he advocated, therefore, a property qualification. On this point he was "in great pain for the honor of the province" and viewed with alarm the tendency to turn the government over to "a set of men without reading, experience, or principle to govern them." [22]

But it was to the judiciary that he looked to safeguard the rights of the individual citizen, and in order that this safeguard might be the more effective he wished it to be independent of the transitory passions of majorities. On this subject he spoke with more than his usual vigor.

"God knows [he exclaimed] when there will be an end of this trifling here. A draft of the Constitution was presented to the House yesterday. * * * There is one thing in it which I cannot bear, and yet I am inclined to think it will stand. The inhabitants are impowered to elect the justices in their respective counties, who are to be the judges of the county courts. Numberless inconveniences must arise from so absurd an institution.[23] They talk [he wrote later] of having all the officers, even the judges and clerks, elected annually, with a number of other absurdities." [24]

Johnston's alarm was needless. Under his guidance conservative influences prevailed and a method of choosing judges in line with his views was adopted. In its final form the Constitution embodied to a large extent Johnston's views on all three of these cardinal points. It provided for a legislature of two chambers chosen annually, for a property qualification for electors for state senators, and for judges chosen by the General Assembly to serve during good behavior.

I know of no more striking personal triumph in the history of North Carolina than this achievement of Johnston. Politically discredited by his own people, without the support of a powerful political party, and totally devoid of that glam-

[22] To Thomas Burke.—State Rec., XI, 504.
[23] To James Iredell.—Col. Rec., X, 1040.
[24] To Mrs. James Iredell.—McRee's Iredell, I, 339.

our and subtle influence which accompanies high official position, he had, through the convincing logic of his arguments, the trust inspired by his acknowledged wisdom, and the confidence imposed in his integrity, forced a hostile Convention to accept his views and lay the cornerstones of the Commonwealth on firm and solid grounds. How firmly he builded is shown by the fact that fifty-eight years passed before annual sessions of the Assembly gave way to biennial sessions; seventy-nine years before the property qualification for electors for state senators was abolished; and ninety-one years before the election of judges was given to the people and their terms changed from good behavior to a term of years. Had Johnston been alive when these changes were proposed there can be no doubt that he would have advocated them. In 1776 he stood for a political system suitable to the physical, mental and moral conditions of the State at that period: in 1835 he would have done the same thing. As a practical statesman, more deeply concerned in securing a good working system than in promulgating vague and uncertain theories, he would have been among the first to recognize the changed conditions wrought by fifty years of marvelous development, and to have advocated changes in the Constitution in conformity with the changed spirit and needs of the time.

Johnston's eclipse was temporary. Accepting his defeat philosophically, he withdrew after the framing of the Constitution from all participation in politics, and watched the course of events in silence. For assuming this attitude he has been severely censured, both by his contemporaries and by posterity, who have charged him with yielding to pique, and with being supine and indifferent to the welfare of the State because he could not conduct its affairs according to his own wishes.[25] But is it not pertinent to ask what other

[25]See letters of Archibald Maclaine to George Hooper.—State Rec., XVI, 957, 963.

course he could have pursued? He was not an ordinary politician. He had no inordinate itching for public office. He was, indeed, ambitious to serve his country, but his country had pointedly and emphatically repudiated his leadership. Was it not, then, the part of wisdom to bow to the decree? Did not patriotism require him to refrain from futile opposition? The event clearly demonstrated that his course was both wise and patriotic, for the people soon came to their sober second thought and the reaction in Johnston's favor set in earlier than he could possibly have anticipated. They sent him to the State Senate, the General Assembly elected him treasurer, the Governor appointed him to the bench, the General Assembly chose him a delegate to the Continental Congress, and the Continental Congress elected him its presiding officer.[26] The reaction finally culminated in his election as Governor in 1787, and his relection in 1788 and again in 1789. Among the many interesting problems of his administration were the settlement of Indian affairs, the adjustment of the war debt, the treatment of the Loyalists, the cession of the western territory to the Federal Government, and the "State of Franklin"; but today time does not permit that we consider his policy toward them. The chief issue of his administration was the ratification of the Federal Constitution to the consideration of which we must devote a few moments.

The Convention to consider the new Constitution met at Hillsboro, July 21, 1788. "Conservatives" and "Radicals," now rapidly crystallizing into political parties as Federalists and Anti-Federalists, arrayed themselves for the contest under their former leaders, Samuel Johnston and Willie Jones. The Anti-Federalists controlled the Convention by a large majority, nevertheless out of respect for his office they unanimously elected Governor Johnston president. All the

[26]He declined to serve.

debates, however, were held in committee of the whole, and this plan, by calling Governor Johnston out of the chair, placed him in the arena in the very midst of the contest. Though he was the accepted leader of the Federalists, the burden of the debate fell upon the younger men, among whom James Iredell stood preëminent. Contesting preëminence with Iredell, but never endangering his position, were William R. Davie, Archibald Maclaine, and Richard Dobbs Spaight. Governor Johnston but rarely indulged his great talent for debate, but when he did enter the lists he manifested such a candor and courtesy toward his opponents that he won their respect and confidence, and he spoke with such a "relentlessness in reasoning" that but few cared to engage him in discussion. Johnston could not have been anything else than a Federalist. Since the signing of the treaty of peace with England the country had been drifting toward disunion and anarchy with a rapidity that alarmed conservative and thoughtful men. The issue presented in 1787 and 1788, therefore, was not the preservation of liberty but the prevention of anarchy, and on this issue there could be but one decision for Samuel Johnston. The day for the speculative theories and well-turned epigrams of the Declaration of Independence had passed; the time for the practical provisions of the Federal Constitution had come. Consequently the debates at Hillsboro dealt less with theories of government than with the practical operations of the particular plan under consideration.

In this plan Willie Jones and his followers saw all sorts of political hobgoblins, and professed to discover therein a purpose to destroy the autonomy of the States and to establish a consolidated nation. They attacked the impeachment clause on the ground that it placed not only Federal Senators and Representatives, but also State officials and members of the State Legislatures completely at the mercy of the National

Congress. Johnston very effectively disposed of this ridiculous contention by pointing out that "only officers of the United States were impeachable," and contended that Senators and Representatives were not Federal officers but officers of the States. Continuing he said:

"I never knew any instance of a man being impeached for a legislative act; nay, I never heard it suggested before. A representative is answerable to no power but his constituents. He is accountable to no being under heaven but the people who appoint him. * * * Removal from office is the punishment, to which is added future disqualification. How can a man be removed from office who has no office? An officer of this State is not liable to the United States. Congress cannot disqualify an officer of this State. No body can disqualify but the body which creates. * * * I should laugh at any judgment they should give against any officer of our own." [27]

But, said the opponents of the Constitution, "Congress is given power to control the time, place, and manner of electing senators and representatives. This clause does away with the right of the people to choose representatives every year"; under it Congress may pass an act "to continue the members for twenty years, or even for their natural lives"; and it plainly points "forward to the time when there will be no state legislatures, to the consolidation of all the states." To these arguments Johnston replied:

"I conceive that Congress can have no other power than the States had. * * * The powers of Congress are all circumscribed, defined, and clearly laid down. So far they may go, but no farther. * * * They are bound to act by the Constitution. They dare not recede from it."

All these arguments sound very learned and very eloquent, retorted the opponents of the Constitution, but the proposed Constitution does not contain a bill of rights to "keep the States from being swallowed up by a consolidated govern-

[27] Elliott's Debates. The following extracts from Johnston's speeches on the Constitution are all from the same source.

ment." But Governor Johnston, in an exceedingly clear-cut argument, pointed out not only the absurdity but even the danger of including a bill of rights in the Constitution. Said he:

"It appears to me, sir, that it would have been the highest absurdity to undertake to define what rights the people of the United States are entitled to; for that would be as much as to say they are entitled to nothing else. A bill of rights may be necessary in a monarchial government whose powers are undefined. Were we in the situation of a monarchial country? No, sir. Every right could not be enumerated, and the omitted rights would be sacrificed if security arose from an enumeration. The Congress cannot assume any other powers than those expressly given them without a palpable violation of the Constitution. * * * In a monarchy all power may be supposed to be vested in the monarch, except what may be reserved by a bill of rights. In England, in every instance where the rights of the people are not declared, the prerogative of the king is supposed to extend. But in this country we say that what rights we do not give away remain with us."

Though Johnston desired to throw all necessary safeguards around the rights of the people, he did not desire a Union that would be a mere rope of sand. The Union must have authority to enforce its decrees and maintain its integrity, and if he foresaw the rise of the doctrines of nullification and secession, he foresaw them only to expose what he thought was their fallacy.

"The Constitution [he declared] must be the supreme law of the land, otherwise it will be in the power of any State to counteract the other States, and withdraw itself from the Union. The laws made in pursuance thereof by Congress, ought to be the supreme law of the land, otherwise any one state might repeal the laws of the Union at large. * * * Every treaty should be the supreme law of the land; without this, any one state might involve the whole union in war."

Acts of Congress, however, must be in "pursuance" of the powers granted by the Constitution, for Johnston had no sympathy with the notion that the courts must enforce acts

of legislative bodies regardless of their constitutionality. As he said:

"When Congress makes a law in virtue of their [sic] constitutional authority, it will be actual law. * * * Every law consistent with the Constitution will have been made in pursuance of the powers granted by it. Every usurpation, or law repugnant to it, cannot have been made in pursuance of its powers. The latter will be nugatory and void."

Johnston, of course, did not think the Constitution perfect and he was as anxious as Willie Jones to have certain amendments made to it. But he took the position that North Carolina, then the fourth of the thirteen States in population, would have more weight in securing amendments in the Union than out of it. Indeed, he reasoned, as long as the State remains out of the Union there is no constitutional way in which she can propose amendments. Accordingly, as the leader of the Federalists, on July 30, he offered a resolution:

"That though certain amendments to the said Constitution may be wished for, yet that those amendments should be proposed subsequent to the ratification on the part of this State, and not previous to it."

Willie Jones promptly rallied his followers against this action and defeated Johnston's resolution by a vote of 184 to 84. Then after proposing a series of amendments, including a bill of rights, the Convention, by the same vote of 184 to 84, refused to ratify the Constitution and, August 2, adjourned *sine die*.

Thus a second time, in a second great political crisis, Willie Jones triumphed over his rival; but again, as in 1776, his triumph was short-lived. With wise forethought Iredell and Davie had caused the debates of the Convention to be reported and published, and through them appealed from the Convention to the people. How far these debates influenced public opinion it is of course impossible to say, but certain it is that no intelligent, impartial reader can

rise from their perusal without being convinced that the Federalists had much the better of the argument. Public opinion so far shifted toward the Federalists' position that when the second Convention met at Fayetteville, November 16, 1789, the Federalists had a larger majority than their opponents had had the year before. Again Samuel Johnston was unanimously elected president. The debates of this Convention were not reported; indeed, the debates of the former Convention had rendered further discussion unnecessary. The people of the State had read those debates and had recorded their decision by sending to the Convention a Federalist majority of more than one hundred. Accordingly after a brief session of only six days the Convention, November 21, 1789, by a vote of 195 to 77, ratified the Constitution of the United States and North Carolina reëntered the Federal Union. It has been so frequently affirmed that in North Carolina it is today very generally believed that this action of the Convention of 1789 was due to the adoption of the first ten amendments to the Federal Constitution; and, further, that the action of Willie Jones and his party in rejecting the Constitution in 1788 forced Congress to submit these amendments. In the interest of historical accuracy let us for just a moment examine this statement. A few dates quickly dispose of the matter. The North Carolina Convention rejected the Constitution August 2, 1788. On November 17, of the same year, the General Assembly passed the resolution calling a second Convention. It was not until September 25, 1789, nearly a year later, that Congress submitted the first ten amendments to the several States. When the North Carolina Convention met at Fayetteville, November 16, 1789, not a single State had acted on these amendments, and more than a year passed after North Carolina had ratified the Constitution before the required number of States had accepted the amendments. Moreover, when the Convention met at Fay-

etteville, in 1789, the opponents of the Constitution still urged its rejection because the amendments which had been proposed did not meet the objections of the former Convention in "some of the great and most exceptional parts" of the Constitution. The only result of the action of Jones and his party in 1788, therefore, was to keep North Carolina out of the Union for a year and thus to prevent the State's casting her vote for George Washington as the first President of the United States.

The privilege of transmitting the resolution of ratification to the President of the United States and of receiving from him an acknowledgment of his sincere gratification at this important event, fell to the lot of Samuel Johnston. It was fitting, too, that he who, for more than twenty years, had stood among the statesmen of North Carolina as the very personification of the spirit of union and nationalism should be the first to represent the State in the Federal Senate. Of his services there I can not speak today more than to say that he represented the interests of North Carolina with the same fidelity to convictions and courage in the discharge of his duties which had always characterized his course in public life; and that on the great national issues of the day he lifted himself far above the narrow provincialism which characterized the politics of North Carolina at that time and stood forth in the Federal Senate a truly national statesman. It had been well for North Carolina and her future position in the Union had she adhered to the leadership of Johnston, Davie, Iredell and the men who stood with them,—men too wise to trifle with their principles, too sincere to conceal their convictions, and too brave and high-minded to mislead their people even for so great a reward as popular favor. But in the loud and somewhat blatant politics of that day these men could play no part, and one by one they were gradually forced from public life to make way for other leaders who possessed

neither their wisdom, their sincerity, nor their courage. In 1793, Samuel Johnston retired from the Senate, and, except for a brief term on the bench, spent the remaining twenty-three years of his life in the full enjoyment of his happy family circle.

Thus, Mr. Grand Master, I have endeavored to point out, as briefly as possible, why it is that we deem Samuel Johnston worthy of a niche under the stately dome of our Capitol in company with Graham, and Ransom, and Morehead. On the mere score of office-holding he surpassed any of them; indeed, his career in this respect has not been surpassed by any other in our history. But in the fierce light of History what a paltry thing is the mere holding of public office; and how quickly posterity forgets those who present no other claim to fame. Posterity remembers and honors him only who to other claims adds those of high character, lofty ideals, and unselfish service; whose only aims in public life are the maintenance of law, the establishment of justice, and the preservation of liberty; who pursues these ends with a fixity of purpose which never weakens, a tenacity which never slackens, and a determination which never wavers. Measuring Samuel Johnston by this standard, I am prepared to say that among the statesmen of North Carolina he stands without a superior. Indeed, taking him all in all, it seems to me that he approaches nearer than any man in our history to Tennyson's fine ideal of the "Patriot Statesman."

> O Patriot Statesman, be thou wise to know
> The limits of resistance, and the bounds
> Determining concession; still be bold
> Not only to slight praise but suffer scorn;
> And be thy heart a fortress to maintain
> The day against the moment, and the year
> Against the day; thy voice, a music heard
> Thro' all the yells and counter-yells of feud
> And faction, and thy will, a power to make
> This ever-changing world of circumstance,
> In changing, chime to never-changing Law.

BIOGRAPHICAL, GENEALOGICAL AND HISTORICAL MEMORANDA

COMPILED AND EDITED BY MRS. E. E. MOFFITT.

JUDGE HENRY GROVES CONNOR

The article in this number of THE BOOKLET on Judge James Iredell is the third contribution which Judge Connor has made to its pages. To Vol. IV, No. 4, he contributed "The Conventions of 1778-1779 and the Federal Constitution." To Vol. VIII, No. 2, he contributed "The Convention of 1835." A biographical sketch of Judge Connor appeared in Vol. VIII, No. 2 (October, 1908). In 1909 Judge Connor resigned from the Supreme Court bench of North Carolina, to accept an appointment made by President Taft as Judge of the United States Court, from the Eastern District of North Carolina.

CHARLES LEE SMITH

A biographical sketch of Charles Lee Smith, Ph.D., LL.D., author of the article on *David Caldwell—Teacher, Preacher, Patriot,* in this number of THE BOOKLET, was published in Volume VIII, No. 4 (April, 1909). Since that time he has been elected a member of the Board of Trustees of the University of North Carolina, a member of the Board of Managers of the North Carolina Society of the Sons of the Revolution, and a member of the Advisory Board of THE NORTH CAROLINA BOOKLET. A recent volume of the *National Cyclopædia of American Biography* contains an interesting account of this public-spirited citizen of Raleigh.

R. D. W. CONNOR

Mr. Connor's address on Governor Samuel Johnston, appearing in this number of THE BOOKLET, is the seventh

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