

Hon. John Howe Peyton

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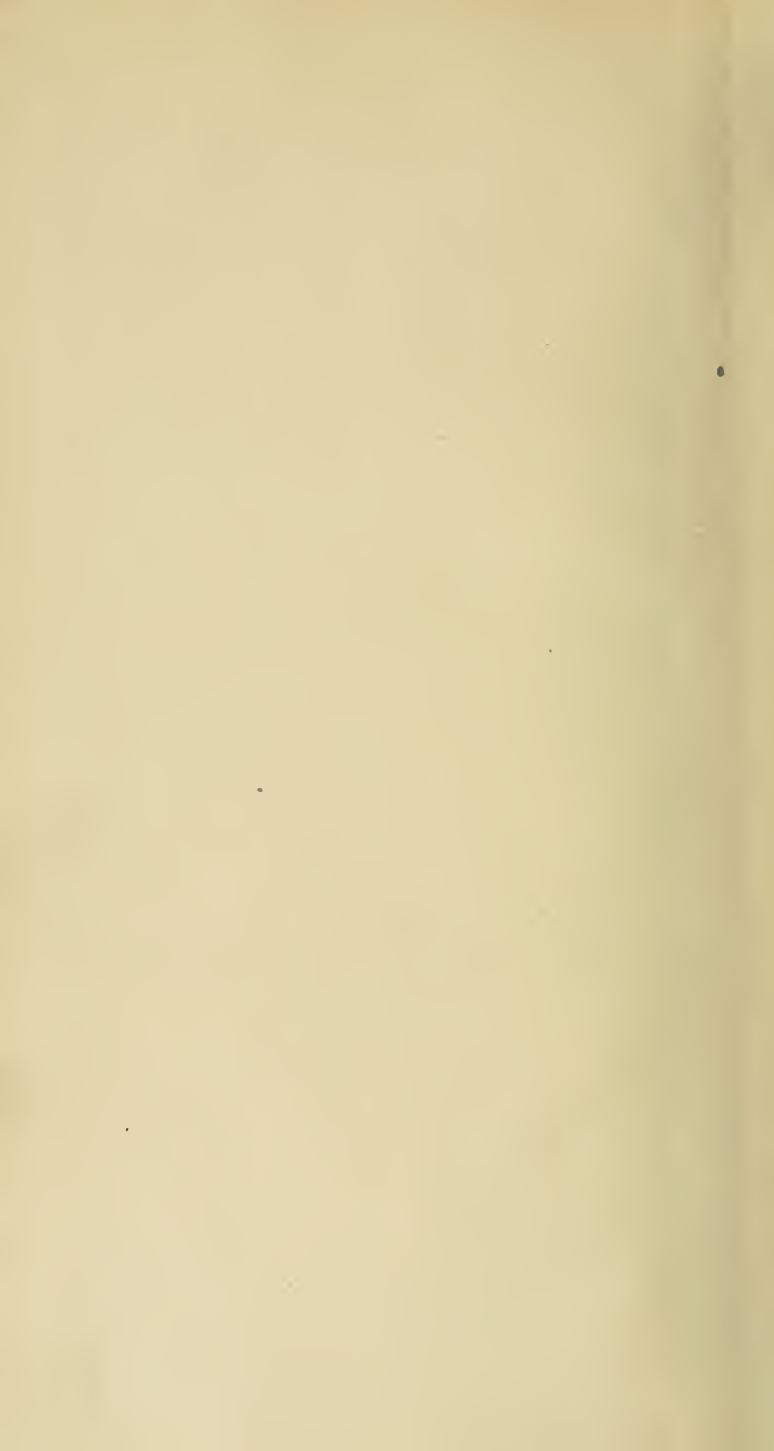
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Stephice
Jan^r. 1883.

Hon. John Howe Peyton.

SKETCH

OF THE

HON. JOHN HOWE PEYTON,

OF STAUNTON, VA.

By COL. J. T. L. PRESTON,

Professor of Modern Languages, &c., in the Virginia Military Institute,
Lexington, Va.

BOSTON.

DAVID CLAPP & SON.

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John A. Fryson

SKETCH

OF THE

HON. JOHN HOWE PEYTON.

Darlington 4m. Bdy
THE late John H. Peyton, Esq., of Staunton, Va., was one of the finest specimens that we have ever known of the *complete lawyer*. During the prime of life he pursued his profession with a laborious assiduity rarely equalled, and though as age advanced upon him he remitted his efforts, he did not discontinue his practice until a short time before his death, which occurred April 3, 1847, in the 69th year of his age. None of his contemporaries secured a more ample reward in either reputation or pecuniary emolument.

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We have spoken of Mr. Peyton as a complete lawyer. Law, as a practical profession, has several departments, and it is not unusual to see a lawyer distinguished in some of them, with a compensating deficiency in others. Some practitioners are successful collectors; some are much esteemed as judicious advisers in matters not strictly legal; some are favorite advocates, with a subdivision into those who are influential with the court, and those who are persuasive before a jury; some are designated good judges of law, or, in other words, safe counsellors, and of some the *forte* is Common Law Practice, while others are distinguished as chancery lawyers. The organization of the courts in Virginia, and the nature of the business, at least in the interior, requires every lawyer to enter upon the whole of this miscellaneous practice; and it is not to be wondered at that some, even good lawyers, are not equally strong in every part. Mr. Peyton knew every part of his profession thoroughly. He had studied diligently as a student; he had known the expectant struggles of the young practitioner; he had practised

under the old system before the reorganization of the judiciary, and afterwards under the new; he had met in contest the strongest men in each department of the profession, and he had made himself a champion in all. We may add that some lawyers who exhibit the highest skill in securing the rights of their clients, are foolishly ignorant of their own; in other words, they let slip the fair, well earned profits of their profession—not so with Mr. Peyton. He knew the value of his professional services; he gave them to the fullest extent to those who applied for them, and then he insisted upon just remuneration. We notice this point, not at random, but to present a feature belonging to the character of the complete lawyer.

The characteristic of Mr. Peyton's life was efficiency. This efficiency had for its elements native vigor of intellect, great resoluteness of character and courageous self-confidence, ample and thorough acquirements and the quickness, precision and dexterity of action that belong only to those who have been taught by a varied experience to understand thoroughly human nature. In conversation Mr. Peyton was ready, entertaining and instructive. But conversation was not his *forte*, though he was fond of it. He was not fluent, his manner was sometimes too direct for the highest style of polished social intercourse of a general nature, and besides he had a remarkable way of indulging in a strain of covert satirical banter, when his words would be so much at variance with the expression of his countenance, and particularly with the expression of his mouth, that the hearer was often in an uncomfortable state of uncertainty how to take him. His person was large, and his bearing dignified but not graceful. His manner was unaffected, but not without formality, nor was it perfectly conciliatory. Some styled him aristocratic, while none could deny that his self-respect and confident energy gave an imperious cast to his demeanor. We have oftener than once thought applicable to him, in a general way, those lines of Terence:

“ Ellum, confidens, catus,
Cum faciem videas, videtur esse quantivis preti.
Tristis severitas inest in voltu, atque in verbis fides.”

His voice was true and clear, and capable of sufficient variety, but without a single musical intonation, and a little sharper than you would expect to hear from a man of his size and form. If it is asked what was the style of his speaking, it may be replied—just what might be expected to belong to such a man as he has been described, that is to say, never was the speaker a more complete reflection of the man than in his case. We cannot believe that any one who knew him was ever surprised when they heard him speak; what he said was just what they would expect him to say. This is often the case with speakers and writers, but not always. Energy, reality and efficiency were his characteristics as a man, and equally so as a

speaker. Distinctness of conception lay at the foundation of his excellence. Some great speakers, some even preëminently great speakers, not unfrequently hurl unforger thunderbolts. They feel the maddening impulse of the god, but give forth their utterances before the true prophetic fury comes on.

Mr. Peyton's mind was no sybil's cave, whence came forth wind-driven leaves inscribed with mighty thoughts disposed by chance, but a spacious castle, from whose wide open portal issued men at arms, orderly arranged. He had hardly opened his case, when the hearer was aware that he had thought over the whole of it, had a given course to pursue, and would close when he came to the end of it. This distinctness of conception comprehended the subject as a whole, and shed its light upon each detail belonging to it. This ensured the most perfect method in all that he said. Before he began to speak he had determined in his own mind, not only the order of the different parts of his discourse, but also their relative importance in producing the general impression. Hence he was never led away by the tempting character of any peculiar topic, to expatiate upon it unduly; he did not take up matter irrelevant to the case because it might touch himself personally; he never spoke for those behind the bar, nor did he neglect to secure the fruits of victory in order to pursue an adversary to utter discomfiture. He spoke as a lawyer, he spoke for the verdict, and expected to gain it by showing that he was entitled to it. Some speakers hope to accomplish their object by single, or at least, successive impulses—now a clinching argumentative question, now a burst of brilliant declamation, and now a piece of keen wit, or a rough personality. Such speakers forget, or do not know, that a jury may admire, may be diverted, and even moved, without being won. He that gains the verdict must mould, and sway, and lead, and this is to be effected by continued persistent pressure, rather than by *tours de force*. This Mr. Peyton knew well, and observed it with perfect self-command. His hearers came away satisfied with the whole, rather than treasuring up remarkable points and passages. Let it not be supposed, however, that he was a cold speaker, who treated men as mere intellectual machines, to be set in motion by the pulleys, screws and levers of logic. Far from it; he understood human nature well, and knew the motive power of the feelings; but then he knew, too, that the way to excite the most effective sympathy is not to make a loud outcry, but to make a forcible exhibition of real suffering—that the best way to rouse our indignation against fraud, deceit, or oppression, is not to exhort us to hate it, but to show its hatefulness. One of his most distinguished cotemporaries upon the same circuit was celebrated for his powers as a criminal advocate; his manner was obviously upon the pathetic order, and perhaps a trifle too declamatory. We have seen them in the same cause, and have thought that if the eloquence

of Gen. Briscoe G. Baldwin flushed the countenance quicker, the earnestness of Mr. Peyton stirred the heart deeper. Of the oratory of a class of speakers by no means rare (not, however, including in their class the distinguished jurist above alluded to), it has been well said, "declamation roars while passion sleeps;" of speaking justly characterized by this line, Mr. Peyton's was the precise reverse. With him thought became passionate before the expression became glowing, as the wave swells before it crests itself with foam.

Mr. Peyton's language was forcible, pure and idiomatic. It served well the vehicle of his thoughts, but contributed nothing to them. There is a real and legitimate advantage belonging to the masterly use of words, of which many great speakers know well how to avail themselves.

Mr. Peyton attempted nothing of the sort. His diction was thoroughly English, with a marked preference for the Anglo-Saxon branch of the language, and his sentences came out in the most natural order with unusual clearness and vigor, but not unfrequently with a plainness that bordered upon homeliness. His style, however, was always that of speaking as distinguished from mere conversation—a distinction which some of our modern speakers forget, when in order to appear at their ease, they treat with no little disregard not only the rules of rhetoric, but the rules of grammar as well, and use words and phrases which are (to take a word from the vocabulary we are condemning) nothing better than slang. On the contrary, there was in Mr. Peyton's style the fruit of early studies and high-bred association, a classical tinge, extremely pleasant to the scholar, though perhaps not appreciable by those for whom he generally spoke. It must not be supposed, from what has been said of his excellent method, that he resembled in this respect some of our able but greatly tedious lawyers, who take up in regular succession every possible point in the case, however minute, and worry us by officiously offering help where none is needed—so far from it he showed his consummate skill as well in what he omitted as in what he handled, and, as a general thing, his speeches were shorter in duration, and yet fuller of matter than those of his opponent. His use of figurative language was easy and natural, and not stinted; but his figures were always introduced as illustrations and not as arguments. It is not unusual to meet with a speaker who is unable to enounce distinctly the general principle he wishes to use, throw out an illustration to enable himself to pick out the principle from it, or at least to give his hearers a chance to do it for themselves; not so with Mr. Peyton. He held up the torch of illustration, not to throw a light forward to guide himself in his own investigations, but to enable those following the more readily to tread the road along with him. He had a very noticeable fondness for recurring to the primary fundamental principles of morals, and

doubtless he was restrained, by his practical judiciousness, from indulging this disposition to the full. One of his favorite books was Lord Bacon's Essays, and under other circumstances he might himself have been a distinguished moral essayist.

As may well be supposed, his general strain was grave. The high idea he entertained of the dignity of his profession, and the earnestness with which he gave himself to it, alike precluded either levity or carelessness. However, he was fully able, quite ready upon occasion, to avail himself of a keen wit, that was all the more effective because it was dry and sarcastic. It occurs to us to mention an instance well known to his circuit, not illustrative of his severity but his pleasantry. In a criminal prosecution, he, as prosecuting attorney, was opposed by two gentlemen of ability, whose pathos had been so great as to draw abundant tears from their own eyes. One of them, a gentleman who has since filled a distinguished national position (Hon. Alexander H. H. Stuart, Secretary of the Interior of the United States, 1850-3), was noted for the facility with which he could cover over his brilliant eloquence with the liquid varnish of his tears. On this occasion he had been singularly lachrymose, and supported by his colleague in the same way, the sensation produced was very considerable. Mr. Peyton commenced his reply by regretting the disadvantage the commonwealth labored under in being represented by him who was a very poor hand at crying, and certainly was not able to cry against two at a time. The ludicrousness of the expression completely neutralized the pathos of his opponents. He was not averse either to a bit of farce now and then, as is shown by a story told of him. In a remote part of the circuit a lawyer wished to adorn a moving passage of a speech he was just rising to make, with an apposite example, and applied to Mr. Peyton, setting beside of him, to help him to the name of the man in the *Bible* who would have his pound of flesh. With imperturbable gravity he answered *Absalom!* The effect of thus confounding Shakspeare and scripture may be imagined.

We have said that Mr. Peyton was thoroughly furnished in every part of his profession; in one department his qualifications were peculiar and unsurpassed. Without disparagement to others, it may be said, we think, that he was the best commonwealth's attorney in the state of Virginia. He was the lawyer of the commonwealth, and he treated the commonwealth as a client, and labored for her with the same industry, zeal and fidelity that he manifested in behalf of any other client. The oft-quoted merciful maxim of the common law, "better that ninety and nine guilty men should escape than one innocent man should suffer," he interpreted as a caution to respect the rights of the innocent, and not as an injunction to clear the guilty, and he labored to reduce the percentage of rogues unwhipt of justice as low as possible. With a clearness and force rarely equalled would he point out the necessity of punishing

the guilty in order that the innocent might be safe, thus exhibiting the absolute consistency of strict justice with true mercy. So simply and earnestly would he do this, that he not only bound the consciences of the jury, but also made them feel that they were individually interested in the faithful execution of the laws. Here his clear perception of the moral principles upon which rests the penal code, and his fondness for recurring to general principles, stood him in great stead. It was delightful to hear him expatiate upon this theme, for upon no other was he more truly eloquent.

Mr. Peyton served at different times in both branches of the legislature, but we speak not of him as a politician. Our purpose has been solely to exhibit some of the qualities which made him an eminent member and ornament of the legal profession.

To this sketch may appropriately be appended the leading incidents in the life of Mr. Peyton, and the views entertained of him by a few of his cotemporaries, who have reduced them to writing. He was born at Stony Hill, Stafford County, Virginia, April 3, 1778. After having received the elements of education in Fredericksburg, he entered the University of New Jersey, Princeton, where he was graduated in 1797, and received from that institution the degree of A.M. He returned to Virginia and studied law under Judge Bushrod Washington, of the Supreme Court of the United States. Though pursuing a laborious course of legal reading, he continued to cultivate the taste for literature with which his parents had inspired him, and soon acquired the notice of the able and learned men of Fredericksburg and Richmond by the extensive and varied knowledge he displayed in his conversation. In 1800 he commenced the practice of the law at Fredericksburg, and almost immediately obtained an opportunity, in defence of a man charged with murder, of exhibiting his rare powers as an advocate. New opportunities for distinguishing himself were soon offered, and in the course of two years he was in full practice and his services rewarded by a handsome income. In 1804 he married Susan, daughter of William S. Madison, a niece of James Madison, D.D., Bishop of Virginia, and cousin of James Madison, fourth President of the United States. In 1806 he was elected a member of the House of Delegates from his native county, and served until 1810 with distinguished ability. He entered the legislature as the friend of James Madison, and advocated the foreign and domestic policy which afterwards guided Mr. Madison's administration as President of the United States. From the first he was regarded as a brilliant debater, and at the end of his first session it was the general opinion that he had no superior in the state as a parliamentary orator. During his term of service he wrote and pressed to adoption a series of resolutions upon the attitude of the state of Pennsylvania with reference to an amendment of the constitution of the United States pro-

viding a tribunal for settling disputes between the state and federal judiciary. "So able and important," says Judge John H. McCue, "were these resolutions, as to attract the attention of the leading statesmen of the nation, and to guide every other state in opposing the efforts of Pennsylvania. In the memorable discussion between Daniel Webster and Gen. Hayne of South Carolina, Mr. Webster, in his second speech in reply to Hayne, referred to and quoted Mr. Peyton's resolutions, and declared that they were so conclusive of the question as to admit of no further discussion." [See Webster's Works, Vol. III., pp. 352-54.] "Mr. Webster was so much impressed with Mr. Peyton's ability," continues Judge McCue, "that meeting Daniel Sheffey, long one of Virginia's representatives in congress, he asked,

"Do you know Peyton, of Virginia, the author of the resolutions passed by your legislature in 1810, on the subject of the federal and state judiciary?"

"Yes," replied Sheffey, "he is the leader of my circuit."

"I am not surprised to hear it," rejoined Mr. Webster.

"No," said Sheffey, "he is a sound lawyer, who unites to vigorous judgment and sterling ability intense study and vast learning."

"Is he a speaker?" inquired Mr. Webster.

"Not in the popular sense," said Sheffey; "he is not a florid speaker, indulges in no meretricious display of rhetoric, but thoroughly armed in the strength of his knowledge, research and cultivated ability, without effort he possesses gigantic power, and by it has risen to the head of the profession. And he is not only a great, but a good man."

"It is a misfortune that such a man had not been sent to Washington long ago," said Mr. W.: "he would have maintained Virginia's intellectual supremacy and by his sound statesmanship have enhanced her influence."

In 1809-10 Mr. Peyton removed from Fredericksburg to Staunton, owing to protracted ill health (he had suffered for years with chronic dysentery), and to accept the responsible office of Public Prosecutor in the Augusta, Albemarle and Rockbridge district. The late Judge Archibald Stuart met Mr. Peyton in Richmond in 1809, and was so much struck with his energy and ability, that he not only tendered this appointment to him, but persistently urged its acceptance. For over thirty years Mr. Peyton discharged the duties of this office, and one of his biographers, a former member of the Virginia bar, says that "his fame as a prosecutor of the pleas of the commonwealth has never been surpassed, if equalled, in Virginia. On this field he achieved triumphs of the most brilliant kind." This writer continues:

His pride in his profession, and the great principles of right and justice underlying it, no less than his inborn contempt for chicanery and fraud, not to speak of crime in its grosser forms, combined to make him a "terror to

evil doers." Some critics, even among the profession, sometimes were disposed to censure him as too harsh and unrelenting towards the prisoner at the bar. But if every circuit throughout our land possessed at this day so able, fearless and conscientious a prosecutor as did the Augusta and the surrounding circuit at that happier day in our history, perhaps we might find less cause to deplore the depravation of the public morals which so painfully marks the present era.

It would be a halting and very defective sketch of this eminent jurist which failed to speak of his striking *originality*. Negatively speaking, there was little or no common-place and hum-drum in his forensic arguments, his debates in the senate, or his addresses from the hustings to his constituents. In a positive sense his speeches, at least on great occasions and when his powers were thoroughly roused, rarely failed to be marked by some flash of genius. I recall a conversation just after the close of a protracted and laborious June term of the Augusta Circuit Court, in which the late Judge Lucas P. Thompson and Gen. Briscoe G. Baldwin bore the leading parts. The last named was paying generous tribute to Peyton's force and originality. Judge Thompson remarked in substance that he had never seen Mr. Peyton go through a cause deeply interesting and moving him in which he did not utter some view or sentiment illuminated by genius, or, at the least, some illustration marked by a bold originality; and he instanced two causes tried at the late term—one a civil suit and a very heavy *will* case, in which he made a novel and scorching application of a familiar fable of Æsop. I forbear to give its details, because both the critic and his subject have passed from earth.

In the same cause three signatures were to be identified and proved—that of the testator and also of the two attending witnesses—all three having died since their attestation. Many witnesses were called to prove the genuineness of the three names. Opposing counsel sought to badger the witnesses by urging them to specify what *peculiar marks* there were in the handwriting and signatures, whereby they could speak so positively as to their identity and genuineness. This of course, for the most part, they could not do, and in the argument of the cause before the jury, the same counsel strove to throw discredit and contempt upon those witnesses (all men of good character) for their failure and inability so to describe the quality and peculiar marks in the calligraphy of the signers as to show they were familiar with their handwriting. In his reply to these sallies of his opponent, Mr. Peyton swept away the whole airy fabric by a single happy illustration. "Gentlemen," he said, "you have often been assembled in crowds upon some public or festive occasion. Your hats have been thrown pell-mell in mass with perhaps a hundred other hats, all having a general resemblance. Suppose you had attempted to describe your hat to a friend or servant, so that he might go and pick it out for you. It has as many points for accurate description as a written signature—its color, height of crown, width of brim, lining, &c. Do you think that friend or servant could by any possibility have picked out your hat for you? And yet when you went yourself, the moment your eye would light upon it you instantly recognize it amongst a hundred or five hundred other hats. Familiarity with it has stamped its picture on your mind, and the moment you see it the hat *fills and fits the picture on your mind* as perfectly as the same hat fits your head." The jury were evidently won and gave full credence to the ridiculed witnesses.

The other instance during the same term (cited by Judge Thompson) occurred in the celebrated prosecution of Naaman Roberts for forgery—in forging the name of Col. Adam Dickinson to a bond for \$600.

The *body* of the bond was confessedly the handwriting of the prisoner at the bar. That was admitted. The *signature* was a tolerably successful attempt at imitating the peculiar handwriting of Adam Dickinson. But no expert could look at the whole paper and fail to see a *general* resemblance between the *body* of the instrument and the *signature*, raising a strong conviction in the mind that *both* proceeded from the *same* hand.

The defence strongly insisted upon excluding the body of the instrument from the view of the witness, by covering it with paper, or turning it down, and so confining the view to the *signature only*—upon the familiar doctrine of the law of evidence *forbidding a comparison of the various handwritings* of the party, as a ground for an opinion upon the identity or genuineness of the disputed writing. And this point was ably and elaborately argued by the prisoner's counsel.

The learned prosecutor met it thus :

“Gentlemen, this is *one entire instrument*, not two or more brought into comparison. Let me ask each one of you when you meet your friend, or when you meet a stranger, in seeking to identify him, what do you look at? Not his nose, though that is the most prominent feature of the human face—not at his mouth, his chin, his cheek; no, you look him straight in the eye, so aptly called ‘the window of the soul.’ You look him in the eye, but at the same time you see his whole face. Now put a mask on that face, leaving only the eyes visible, as the learned counsel would have you mask the face of this bond, leaving you to view only the fatal signature. If that human face so masked was the face of your bosom friend, could you for a moment identify him, even though permitted to look in at those windows of his soul? No, he would be as strange to you as this accursed bond has ever been strange to that worthy gentleman, Col. Adam Dickinson, but a glance at whose face traces the guilty authorship direct to the prisoner at the bar.”

This most striking illustration seemed to thrill the whole audience, as it virtually carried the jury.

Mr. Peyton never was a politician. His taste and predilection lay not in that direction. But no man was better informed of the course of public affairs, nor had a keener insight into the character or motives of public men. Once, and so far as I knew once only, did he participate in the debates of a Presidential canvass. It was the memorable one of 1840; and the speech was delivered from the Albemarle hustings. His analysis of the political character of Martin Van Buren, and his delineation of his public career from his desertion of De Witt Clinton down to his obsequious ingratiation with Andrew Jackson, was incisive and masterly, and all the more powerful and impressive because pronounced in a judicial rather than a partisan temper. Competent judges, long familiar with the very able harangues and debates on that rostrum, declared it one of the ablest that had been listened to by any Albemarle audience.

Of his services in the Virginia Senate, I need only say, what every one would naturally expect, they were most valuable from that enlightened conservatism in the prevention of crude and vicious legislation. In the last session of his first term in the senate a vigorous effort was made for the passage of a *stay-law* rather than an increase of taxation.

It hardly needs to be said that he opposed the former and sustained the latter measure with all the vigor of his honest and manly nature. Nor could he ever have looked with any patience upon that brood of enactments since

his day—the stay of executions, homestead exemptions, limitations upon sales of property, *et id omne genus*, professedly passed in the interest of the poor and the laboring man, yet in fact more detrimental to that class than to any other, and most damaging to the credit of the state abroad.

Let me say in conclusion that the person and figure of Mr. Peyton were fine and commanding. His carriage was always erect, his head well poised on his shoulders, while his ample chest gave token of great vitality. On rising to address court or jury, there was something more than commonly impressive in his personal presence, and whether clad in “Virginia homespun” or English blue broadcloth with gold buttons (and I have often seen him in both), whenever you saw him button his coat across his breast and slowly raise his spectacles to rest them on the lofty crown, you might confidently expect an intellectual treat of no mean order.

There never was a broader contrast presented in the same person than that between Howe Peyton the lawyer, the Public Prosecutor, or even the senatorial candidate amongst the people, and the same individual in his own home. Here, in the midst of his family, or surrounded by friends, all the rigor of his manner relaxed, and he was the model of an affectionate husband and father, and the most genial of companions. He was “given to hospitality,” and there was perhaps no mansion in all this favored region where it was more generously and elegantly dispensed, through many years, than at “Montgomery Hall.”

In the war of 1812–15 he served with distinction as major on the staff of Gen. Robert Porterfield, and on his return was chosen mayor of the city of Staunton, and served till 1817.

From the close of the war he gave his entire energies to the profession. During this time the distinguishing peculiarities of his intellect made themselves more manifest. It was observed that in all of his investigations his philosophical mind rose above the technicalities of the system of common law to the consideration of general principles, and he was never more eloquent than when expatiating upon those principles which lie at the foundation of all duty, and are equally applicable to all its forms.

In 1822 Mr. Peyton married his second wife, Ann Montgomery, daughter of Col. John Lewis, of the Sweet Springs, by his wife Mary, a daughter of Col. William Preston, of Smithfield. To her warm affection, which was displayed in the care of his only son and child by his first marriage, William Madison Peyton, and as the companion of his long life and the mother of a rising family, he owed for many years that domestic happiness which was the chief solace of his life, and from which he allowed no public honors wholly to withdraw him.

In 1836 he was elected state senator for the Augusta and Rockbridge district, and served after a second election till 1845, when he resigned the position on account of his declining health.

He addressed the following letter to his constituents on this occasion :

Fellow Citizens :—The term for which I was elected your senator is drawing to a close, and as it is not my intention to become again a candidate for your suffrages, I feel it a duty incumbent on me to apprize you of it thus early, that you may have full time to select for yourselves a suitable successor.

In taking leave of the district I tender you my grateful acknowledgments for the distinguished honor which you conferred upon me four years ago by electing me to the station I now occupy. Whilst acting in the discharge of the duties devolved upon me by this elevated trust, it has been my anxious desire to promote your immediate interests and the general welfare of my native state. That such is the opinion of my constituents I have not had the slightest reason to doubt. Under such circumstances it would be both my pride and pleasure to again serve you were it not for my peculiar situation.

I have now arrived at that period of life when the quiet and repose of the domestic fireside are much better suited to my taste and more congenial to my feelings than the arena of politics and the strife of parties. Besides this I have duties to discharge to a young and growing family incompatible with a longer continuance in public life.

I have felt the less difficulty in coming to this conclusion because I know that I can do so without injury to the whig cause or whig principles, in the success of which the people of my district feel so deep an interest. Their intelligence furnishes ample assurance that my place will be filled wisely and judiciously; and that they will call into their service some one fully competent to the discharge of all the high duties of the station, and who will devote himself to the furtherance of those great principles and sound measures of public policy which in the enlightened judgment of my constituents lie at the basis of all national prosperity.

Your fellow citizen,

JOHN H. PEYTON.

The Richmond papers and those of the state generally expressed their great regrets at his retirement; the "Whig" of Richmond remarking "that not only the people of his district but of Virginia generally would see with profound regret Mr. Peyton's purpose to retire from the public councils." "The abstraction," continued the Whig, "of his great abilities, large experience, legal and general knowledge, moderation, firmness and courtesy, from any legislative body, would be seriously felt; and where can there be found a man worthy to be his successor?" Notwithstanding his declining to be a candidate, the people of the district, unwilling to lose his services, insisted upon his consenting to serve again, and three candidates who had announced themselves, learning that if returned he would serve, withdrew from the canvas, and Mr. Peyton was elected without opposition. During this term he was prostrated by an attack of paralysis, and resigned his position as soon as he had sufficiently recovered from it to understand its serious nature.

In 1840 he was one of the Board of Visitors to the U. S. Military Academy at West Point, and wrote the able and instructive report of the board for that year. He had previously served on

several boards, and was for over ten years President of the Court of Directors of the Western Virginia Asylum.

On the first of June, 1844, he resigned the office of attorney for the commonwealth for the county of Augusta, when this order was made by the Court :

AUGUSTA COUNTY COURT,
First day of the June Term, 1844.

John Howe Peyton, Esq., who has acted as Commonwealth's Attorney in this County for thirty-two years, having this day resigned said office, the justices of the County in full session at their June term, do with unanimous consent express their high sense of Mr. Peyton's long and valuable services. They add a willing testimony to the distinguished ability, fidelity and zeal with which he has guarded the interest of the Commonwealth within the limits of the County, to his impartiality, prudence and firmness as a Public Prosecutor, and the commendable courtesy which has marked his intercourse with the Court, as becoming a public officer and a representative of the Commonwealth.

And it is the order of the Court that this testimonial, as an additional tribute of respect, be spread upon the records.

Immediately after his resignation he was sworn on the commission of the peace, but never took part in the proceedings of the court. He retired to his estate of Montgomery Hall, Augusta county, Va., and died there on the 27th of April, 1847. It may be truly said of him that there was no one in his public or private relations who was more loved, more honored, or more mourned by those who knew him best.

He left by his first marriage an only child, the late Col. William Madison Peyton, of Roanoke, a man eminent for his talents and acquirements, who served the state with great advantage to the public as delegate in the legislature, as state proxy in the James River and Kenawha Company, and in other stations.

By his second marriage he left two sons and eight daughters, who have married into the leading families of Virginia. His elder son by his second marriage is Col. John Lewis Peyton, ex-Confederate States Commissioner to England,* author of "*The American Crisis, or pages from the note-book of a State Agent during the Civil War in America;*" "*Over the Alleghanies and across the Prairies,*" &c. ; and other popular works.

* The late W. Hepworth Dixon, author of "New America," etc., and long editor of the *Athenæum*, said of Col. J. Lewis Peyton, that "he was the ablest of the able men sent by the South to represent its cause in Europe, and though unrecognized by the British government, he rendered unofficially signal service to his country." Col. Peyton lingered in England many years after the war, cheered by the respectful consideration and friendly esteem extended towards him by all classes, particularly persons of literature and science, and his departure for America was regretted as a general loss to society.

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