

Virginia

At a Circuit Superior Court of Law and Chancery continued by adjournment and held for the County of James City and the City of Williamsburg, at the Court House in the said City, on Thursday the twenty eighth day of November in the year one thousand eight hundred and thirty nine.

Before the Honourable Abel P. Upshur Judge of the said Court.

Among the Records and proceedings of the said Court are the following.

Bill filed December the 11th 1837 and Subpoena issued

To the Honourable Abel P. Upshur Judge of the Circuit Superior Court of Law and Chancery for the County of James City and City of Williamsburg

The bill of Complaint of Nathaniel Beverley Tucker and St George Tucker Coalter humbly complaining sheweth the following facts.

John Randolph of Roanoke died on the 24th of May 1833. Childless and seized and possessed of a large estate both real and personal. He survived his father and Mother and his next of kin are,

1. John St George Randolph, the son of Richard Randolph who was the son of the father and Mother of the said John Randolph of Roanoke.
2. Henry St George Tucker and the Complainant Nathaniel Beverley Tucker, one of the Mother of the said John Randolph by her second husband St George Tucker.
- 3^d Elizabeth Tucker Bryan (wife of John Randolph Bryan), and your Complainant St George Tucker Coalter, who are the Children of Frances Oland Coalter (formerly Tucker) the daughter of the Mother of the said John Randolph by her second husband aforesaid.

There is no other brother or sister of the said John Randolph of Roanoke, now or being, nor any descendant of any such, besides the said John St George Randolph, Henry St George Tucker, Nathaniel Beverley Tucker, Elizabeth Tucker Bryan and St George Tucker Coalter, and their descendants.

At a General Court held in the Capitol in the City of Richmond on the 15th day of July 1836 the following papers were offered for probat by William Muro, acting as Trustee for certain Slaves in the first of the said papers mentioned, as the last Will and testament and the Codicils thereto, of the said John Randolph. 1. a paper (a copy of which marked A is herewith ~~filed~~ exhibited as a part of this bill) without date but supposed to have been executed in the year 1821. 2. a paper (a copy of which marked B. is herewith filed as part of this bill) purporting to be a Codicil to some Will theretofore written and bearing date the 21st day of January 1826. 3. a paper (a copy of which marked C. is herewith filed as a part of this Bill) Consisting of several writings purporting to be Codicils to some Will theretofore written, and bearing date the 6th of May 1828. 4. a paper (a copy of which marked D. is herewith filed as part of this Bill) which purports to be a Codicil to some Will theretofore written, and bears date the 20th day of August 1831.

On these papers on the offering of the same for probat such proceedings were had, that on the 4th day of December 1837. the same were admitted to record in the General Court aforesaid, and by the Judgment of the said Court established as the last Will and testament and Codicils thereto of the said John Randolph, and on the seventh day of the said Month William Leigh the executor therein named qualified as such in the said Court.

Your Complainants charge, that no part of the estate of the said John Randolph is given them, or either of them by the testamentary papers aforesaid, but the whole is devised and bequeathed to other persons therein named, and they are thereby deprived and disinherited of their heritable and distributable portions of the said estate.

Your Complainants also charge, that, at the time of making and publishing the said testamentary papers, and each and every of them, the said John Randolph of Roanoke was of unsound mind and memory, and by reason thereof not of capacity to dispose of his estate by Will.

Your Complainants further charge that the testamentary paper aforesaid a copy of which marked A. is herein before referred to, was by the said John Randolph during his lifetime, cancelled, by cutting out of the same his name wherever it occurred in the Superscription thereto, with intent and design, utterly to annul, cancel, revoke, and abrogate the same.

Your Complainants further charge that sometime in the Spring of the year 1832, and subsequent to the execution of the last of the testamentary papers aforesaid the said John Randolph executed and published a paper purporting to be his last Will and Testament, by which he devised and bequeathed his whole estate, real and personal, to the said ^{John} St George Randolph, Henry St George Tucker, Nathaniel Beverley Tucker, Elizabeth Tucker Bryan, and St George Tucker Coates, to be among them divided in such proportions as according to the Statutes of descent and distribution then in force the same would have been divided among them, and by which Will the said John Randolph revoked all former Wills.

Your Complainants charge that the said last Will of the said John Randolph was by him committed to the said Henry St George Tucker by whom it was returned to the said John Randolph. They also charge that the said John Randolph in his lifetime never cancelled, annulled, revoked, or otherwise destroyed or abrogated the said Will, and that the same has been lost and destroyed by some person to your Complainants unknown.

Your Complainants further charge that by the first of the said testamentary papers the said John Randolph bequeathed to all his Slaves their freedom, and gave to his executor "a fund not exceeding Eight thousand dollars or so much thereof as might be necessary to transport and settle said Slaves in some other State or Territory of the United States giving to each above the age of forty, not less than 10 acres of land each." He also devised certain of his real estate therein mentioned to the said William Meade and Francis Scott Key "to be disposed of towards bettering the condition of his said manumitted Slaves;" and by the

testamentary paper aforesaid a copy of which marked D. is herein before referred to, he bequeathed a certain fund in the hands of certain persons therein named to his executor to be applied to carrying into effect the provisions of his former Will in relation to his Slaves.

Your Complainants further charge that they are apprehensive that by the admission of the said testamentary papers to probate and the grant of administration thereon, to the said William Leigh as aforesaid, the said executor, and the Trustees therein named, will consider themselves empowered and required to carry into effect the said provisions in relation to the Slaves, and that unless restrained by this Court, they will immediately transport the Slaves beyond the limits of this Commonwealth so that in the event the said papers shall by a decree of this Court, be pronounced not to be the last Will and Testament of the said John Randolph their distributable interest in the said Slaves will be lost, but to your Complainants, or they will be forced into a foreign Jurisdiction to assert their claim to them.

Your Complainants further charge that John St George Randolph one of the aforesaid heirs and distributees of the said John Randolph of Roanoke, is a Sinatic, and that his estate has been committed to Frederick Hebron, by a proper proceeding in a Court of competent Jurisdiction.

In Consideration whereof, and for as much as your Complainants are without remedy in the premises save in a Court of Equity, Your Complainants pray that the said William Leigh as executor, and the said William Meade and Francis Scott Key as Trustees as aforesaid, and the said Henry St George Tucker, John Randolph Bryan, and Elizabeth Tucker Bryan his wife, may be made parties defendants to this Bill and required to answer the same on oath, fully and particularly as if the different allegations thereof were here again set forth and they and each of them should be severally interrogated. That the said Henry St George Tucker be required to state whether the said last Will and Testament of the said John Randolph was committed to him in the year 1832, as aforesaid, and how he disposed of the same, and whether the said John Randolph did not thereby devise and bequeath his estate in the manner herein before stated. That the said William Leigh may be restrained and enjoined by an order of this Court from carrying into effect any of the provisions of the said testamentary papers in relation to the said Slaves, or from removing them or any of them out of this Commonwealth, or from doing any other act as executor as aforesaid prejudicial to the heritable or distributable rights of your Complainants. That the said William Meade and Francis Scott Key and each of them may be also enjoined and restrained from executing the trusts conferred on them by the said Testamentary papers in relation to the said Slaves. That an office or offices, may be directed to be taken before a Jury of lawful men to be

impassioned and sworn as the law stands on the Common Law side of this Honorable Court, whether the said testamentary papers or any or either of them is the last Will & Testament, or the Codicil, or Codicils thereof, of the said John Randolph, or not.

That the said last Will and Testament of the said John Randolph made and published in the Spring of the year 1802, may when discovered be compared to his produce, or the contents thereof proved so that the same may be admitted to probate and that your Complainants may have such other and further relief in this premises as is consistent with equity and good conscience and your Complainants will ever pray.

Henry L. Beards for the Complainants

The following exhibits are filed with the foregoing bill

Exhibits

A

In the Name of God, Amen! I John Randolph of Henrico do declare this my last Will and Testament hereby revoking all other Wills whatsoever.

1. I give and bequeath to all my slaves their freedom, heartily regretting that I have ever been the owner of one.
2. I give to my executor a sum not exceeding eight thousand dollars or so much thereof as may be necessary to transport and settle said Slaves to and in some other State or Territory of the U. S. going to all above the age of fifty not less than ten acres of land each.

To my old and faithful Servant Espee and his wife Hesty who I trust may be suffered to remain in the State, I give and bequeath three and a half barrels of Corn, two hundred weight of Pot, a pair of Strong shoes, a suit of Clothes and a blanket each, to be paid them annually, also an annual hat to Espee and ten pounds of Coffee and twenty of brown Sugar.

To my woman Servant Nancy the like allowance as to her Mother - To Julia (alias Susie) the same - To Pison the same - To Johnny my boy Servant the same - during their respective natural lives.

I confirm to my Brother Beverley the Slaves I gave him, and for which I have a receipt.

I bequeath to John Randolph Clay four hundred dollars annually to support his education, until he shall arrive at the age of twenty four years earnestly exhorting him never to eat the bread of idleness or dependance.

I bequeath to my Nephew John Randolph Bryan my Gold Watch, Chain and Keys and the Choice of my horses. I bequeath to his brother Thomas the

choice of two of my horses.

To William Hugh of Henrico I bequeath to have and his heirs forever all the land on which I live lying between the River Ferry road and Cravington's, Cock's, Spruells and Moulton's lines.

Also the books, plates, linen, hardware and kitchen furniture, liquors, Stock, tools and every thing as it now stands, hereby appointing him my sole executor and I desire that he may not be required to give security or to make an inventory of any thing here; that is at my mansion house or ^{the} Middle quarters.

[Cut out in the original] B. Dudley all the interest I have under the will of M^{rs} Martha Conant.

My interest under the will of M^{rs} Judith Randolph I desire my executor to see if he shall see fit, but not otherwise.

The land above the River Ferry road and the lower Quarter and the land I bought of the Bonds to be sold at my said executor's discretion and whatever sum [Cut out in the original] of debts I give and bequeath to Francis Scott Key and the ^{res} ~~res~~ M^{rs} Conant to be disposed of towards bettering the condition of my manumitted Slaves.

I have not included my Mother's descendants in my will because her husband besides the whole profits of my late father's estate during the minority of my brother and myself has contrived to get to himself the Slaves given by my Grandfather Blake as her marriage portion when my father married her which Slaves were inventoried at my father's death as part of his estate and were as much his as ^{that} any he had. One half of them now scattered from Maryland to Mississippi were entitled to freedom at my brother Richard's death as the other were have been at mine. Adieu my home and love

[Cut out in the original] (Seal)
In presence of
Richard Randolph Jun^r

Codicil to this my Will made the 5th day of December 1821.
I revoke the bequest to J. B. Dudley I bequeath the same to my executor to whom also I give in fee simple all my lots and houses in Farmville and every other species of property whatever that I do possess of - Saving the aforesaid specifications in my Will
[Cut out in the original]

Amelia County
The reason of the above revocation I have communicated to William J. Beardsley

4) impounded and shown as the law directs, on the Common law side of the Honorable Court, whether the said testamentary paper or any or either of them is the last Will & Testament, or the Codicil or Codicils thereof, of the said John Randolph, or not.

That the said last Will and Testament of the said John Randolph made and published in the Spring of the year 1821, may when discovered be compared to the produce, or the contents thereof, so that the same may be admitted to probate, and that your Complainants may have such other and further relief in this premises as is consistent with equity and good conscience, and your Complainants will ever pray.

* Virginia, of Williamsburg to W;

Before me of the Judges of the Great Court the within named Mathanuel Beveridge yesterday made oath that the matters and things in the within Bill set forth, so far as same are stated on his own knowledge are true, and that so far as they are on information derived from others he believes them to be true: Given under hand and seal the 11th December 1837.

Thos. B. Christian (Seal)

City of Williamsburg 11th Decr 1837.

Execution is awarded according to the prayer of the bill: Upon the Complainants or one of them executing bond with security in the penalty of One thousand dollars conditioned as the law directs.

Given under hand and seal the date above.

To the Clerk of the Court Superior Court of Law & Chancery for County of James City

Thos. B. Christian (Seal)

near half to coffee and ten pounds of Coffee and twenty of brown sugar.

To my woman servant Nancy the like allowance as to her Mother - To Julia (alias Jupiter) the same - To Queen the same - To Johnny my boy servant the same - during their respective natural lives.

I confirm to my Brother Beveridge the slaves I gave him, and for which I have a receipt.

I bequeath to John Randolph Clay four hundred dollars annually to complete his education, until he shall arrive at the age of twenty four years earnestly exhorting him never to eat the bread of idleness or dependence.

I bequeath to my Nephew John Randolph Bryan my Gold Watch, Chain and Keys and the Choice of my horses. I bequeath to his Brother Thomas the

Choice of two of my horses.

To William Hugh of Halifax I bequeath to have and his heirs forever all the land in which I live lying between the Queen's Ferry road and Curvington's, Cook's, Spruells and Merlon's lines.

Also the books, plate, linen, household and kitchen furniture, liquors, Stock, tools and every thing as it now stands, hereby appointing him my sole executor and I desire that he may not be required to give security or to make an inventory of any thing here, that is at my mansion house or ^{the} Middle quarters.

[Cut out in the original.] B. Dudley all the interest I have under the will of Mr. Martha Conroy.

My interest under the will of Mr. Judith Randolph I desire my executor to sell if he shall see fit, but not otherwise.

The land above the Queen's ferry road and the lower Quarter and the land I bought of the Roads to be sold at my said executor's discretion and whatever I own [Cut out in the original.] of debt I give and bequeath to Francis Scott Key and the now Mrs. Meade to be disposed of towards bettering the condition of my manumitted slaves.

I have not included my Mother's descendants in my will because her husband besides the whole profits of my late father's estate during the minority of my brother and myself has contrived to get to himself the slaves given by my Grand father Blane as her marriage portion when my father married her which slaves were inconsiderable at my father's death as part of his estate and were as much his as any he has. One half of them now scattered from Maryland to Mississippi were entitled to freedom at my brother Richard's death as the other would have been at mine. Witness my hand and seal.

In presence of
Richard Randolph Junr

[Cut out in the original.] (Seal)

Codicil to this my Will made the 5th day of December 1821.

I write this bequest to B. Dudley I bequeath the same to my executor to whom also I give in fee simple all my lands and houses in Farmville and every other species of property whatever that I do possess of. Saving the aforesaid specifications in my Will.

[Cut out in the original.]

Amelia County

The reason of the above variation I have communicated to William J. Beveridge.

In the Name of God, Amen! I John Randolph of Roanoke being of sound mind and memory but of infirm health, do ordain this Will to my last Will and Testament, now in the possession of William Leigh esquire of Halifax County, Virginia, executor thereof, which said appointment I do hereby confirm, with all the bequests made to him therein, and bequests as for the benefit of all, each and every of my slaves, whether by name or otherwise, and bequests to him and them which may be contained in any Codicil to my said last Will.

I make the same provision for my body servant John that I made in my said Will for his father Opea and the same provision for the said John's wife Betsy that I made for Betty the wife of Opea aforesaid. And similar provision for my man servant Saba and his wife Celar and the same for Muelable Nancy at the Lower Quarter, Archers Wife. And I humbly request the Governor, Assembly (the only request that I ever preferred to them) to let the above named and such other of my old and faithful slaves as desire it, to remain in Virginia or recommending them each and all to the care of my said executor, who I know is too wise and just and humane to send them to Liberia or any other place in Africa or the West Indies. I revoke all and every bequest made in any said Will, or in any former Codicil thereof (except as aforesaid to my executor William Leigh and my said slaves whether by name or otherwise) of every description whatsoever, whether of my own proper estate, or in expectancy, or reversion, from the Blind and Bizarre estates or from any other Contingency or Cause whatsoever. These reversions or remainders, or executory devises, or whatsoever the Law Choicesth shall them I bequeath to my said executor as a fund to be used at his discretion for the benefit of my slaves aforesaid, the surplus if any to be his own.

I also give and bequeath to the said Wm Leigh my executor, the land that I bought of Pleasant Lipscomb's estate, to him and his heirs forever. I also give and bequeath to my said executor Thichens forever the lot of fifty three acres of land lying at the deep gut in Staunton ⁱⁿ Halifax County by that I bought of William Sims Parmer and I request my said executor not to sell or lease the same, but to work it in three shifts; and to enable him so to do, I give and bequeath to him the lot of one hundred and sev-

enty five acres of land in Halifax which I also bought of William Sims Parmer to have and to hold during his natural life and at his decease to that one of his children to whom he shall bequeath the aforesaid lot of fifty three acres at the deep gut.

I give and bequeath to my friend Thomas M. Benton all that part of the tract of land that I bought of Jonathan Reed's heirs that lies on the Southeastern side of Little Kanoke containing about six hundred acres, as a mark of my regard to one whose friendship towards me was not expressed in any words.

I also give him my large pistols made by Wiggden & Butler. To my friend Dr. John Brockenbrough I leave all my plate made by Wm. D. Bridge & Remick, viz, 4 tea set, 1 coffee set, 1 sugar dish and tongs, two tea-cups, 4 sauce dishes. All the rest and residue of my plate, furniture of my desk, plantation utensils &c. I give to my said executor Wm. Leigh - and all my books, maps, charts, pictures, prints &c. except three folio manuscript volumes bound in parchment which I bequeath to the Master and fellows (and their successors) of Trinity College Cambridge Old England; the first College of the first University in the World.

To my friend William J. Barksdale of New Branch esquire I give my new English saddle and bridle; my new Spanish my new English boots and shoes, two pair of each; my Gold watch made by Barwin with the Chain and Case except the oldest case with the Randolph arms and Motto Me admirari, which I leave to R. Kidder Randolph of Rhode Island.

I also leave to the said W. J. Barksdale the horse of any of my manes or fillies. I leave to Edmond Kirby of Mottoway the most Choice of my manes or fillies and any one of my horses or Cows, to be selected by himself. Also my double gun. To Peyton Randolph of Bush river Prince Edward I leave my small cooking gun by Mortimer.

All the rest and residue of my estate real or personal I leave to my executor William Leigh hereby directing that no inventory or appraisement be made of my estate and that no security shall be required by my said executor for the faithful discharge of the trust reposed in him. His own Character being the best security and where that is wanting all other is unavailing.

In witness whereof I have hereunto set my hand and affixed my seal the following interment and expunging being made in the paragraph the name Opea interlined in the third paragraph the word "former" inter-

and the word "or" expunged; and in the 7th paragraph the words "and tings" inter-
lined] this thirty first day of January one thousand eight hundred and twenty
by six (the whole of this Codicil being written by my own hand)

In presence of
M. Alexander
Nathl. Macon

John Randolph of Roanoke (Seal)

Memorandum

The folio volumes of M. D. books in parchment contain the
records &c. of the Old London Company.

C.

Being in great extremity but in my perfect senses I write this Codicil to
my will in the possession of my friend Wm. Leigh of Halifax require to
declare that that will is my sole last will and testament and that if any
other be made of subsequent date whether will or Codicil I do hereby revoke
the same. Witness my hand and seal May sixth 1828

Witness—Edmund Morgan
Jc: M. Daniel, Robert Carrington

John Randolph of Roanoke (Seal)

N.B.

When I was about to embark for Europe in 1822 I did write a Codicil on
board the Steamboat that was carrying me to the packet Ship Amity which
Codicil by my direction Mr. Leigh destroyed.

Since writing the above it has occurred to me that the will referred to as be-
ing in Mr. Leigh's possession makes no disposition of the lands that I purchased
of Walter Coles and Letty his wife also the land bought of Daniel
consisting of two small tracts in Halifax—also of the land purchased of
Deacon Lipscomb's heirs—Now this writing intrusts that I give and bequeath
the whole of the above recited lands purchased since the date of my will afore-
said to William Leigh require my faithful friend who has given me aid and
comfort not with words only but by deeds. I also give and bequeath to him and
his heirs forever not only each and every one of the before mentioned tracts of
land but all the property of every description and kind whatsoever that I may
have acquired since the date of that will aforesaid

Witness my hand and seal this same sixth day of May 1828
Edmund Morgan
Jc: M. Daniel
Robert Carrington

John Randolph of Roanoke (Seal)

In the Will above recited I give to my said exor. Wm. Leigh the refusal of the
land above the Owens (now Clark's) ferry road at a price I then thought very mod-
erate but which a change in the times has rendered too high to answer my friendly
intentions towards my said executor in giving him that refusal. I do therefore
so far ~~and~~ ^{but} so far only modify ^{my} said will as to reduce that price 50 per cent, on other
words one half, at which he may take all the land above the ferry road, that I inher-
ited from my father, all that I bought of the late John Daniel deceased, and of
Jem. Beasley, Charles Beasley and others of that name and family this last being
the land that Gabriel Beasley used to have in possession and whereon Beverly
Tucker lived and which I hold by deed from him and his wife of record in Chan-
celle County Court. Witness my hand and seal, day and year aforesaid.

Witness

John Randolph of Roanoke (Seal)

[The words "but so far only" and the word "from"
in the preceding page being first interlined]

Edmund Morgan

Jc: M. Daniel

Robert Carrington

As lawyers and Courts of Law are extremely addicted to making wills for
dead men which they never have made when living it is my will I desire that no
person who shall set aside or attempt to set aside the will above referred to shall
ever inherit possess or enjoy any part of my real estate real or personal.

Seals

John Randolph of Roanoke (Seal)

Robert Carrington

Edmund Morgan

Jc: M. Daniel

D.

On the eve of my embarking for the U.S. considering my very feeble health to
say nothing of the dangers of the seas I add this Codicil to my last will and testa-
ment and the Codicils thereto, affirming them all except so far as they may be
inconsistent with the following disposition of my estate.

1. It is my will and desire that my dear niece Elizabeth Tucker Bryan shall
have my lower quarters with the lands purchased of Coles & wife and of Allen
Gilliam's estate with the mill and I do hereby bequeath the same to her and
her heirs forever.

2. To my brother Henry S. G. Tucker I give and bequeath all my Bushy Forest

estate, on both sides of little Necke bought of the Reads and all my interest in the estate of M^{rs} Martha Connon and my lots and houses in Farmville.

3. I have upwards of two thousand pounds Sterling in the hands Baring Brothers & Co. of London and upwards of one thousand pounds like money in the hands of Gowan & Mass. This money I leave to my executor Wm^o Leigh as a fund for carrying into execution my Will respecting my slaves. And in addition to the provision which I have made for my faithful servant John, sometimes called John White. I charge my whole estate with an annuity to him during his life of fifty dollars - and as the only favour ^{that} I ever asked of any government I do entreat the Assembly of Virginia to permit the said John and his family to remain in Virginia and I do earnestly recommend him and them to my executor aforesaid and to my dear brother and niece aforesaid.

4. My plate and library I leave to my dear niece E. T. Bryan.

Witness my hand in Warwick Street Charing Cross London this twenty sixth day of August One thousand eight hundred and thirty one to which I have also appended my seal.

John Randolph of Roanoke. (Seal)

At a General Court held at the Capitol in the City of Richmond on the 13th day of July 1836

William Meade - - - - - Plaintiff
against
Frederick Hobson Committee of St George Randolph a
person of unsound mind, Henry St. George Tucker, John
R. Bryan and Elizabeth T. his wife - - - - - Defendants
acts of John Randolph late of Roanoke deceased.

This day came the said parties by their attorneys, who being fully heard and their arguments with the evidence adduced in this cause, being maturely considered, it is the opinion of a majority of ^{the} Judges of this Court that the said John Randolph of Roanoke deceased, at the times respectively of executing the instrument of writing attested by Richard Randolph junior, the Codicil which bears date the 5th day of December 1824, the Codicil bearing date as aforesaid on the 5th day of December 1824, the Codicil bearing date the 31st day of January 1826 the four Codicils bearing date the 6th day of May 1828; and the Codicil bearing date the 26th day of August 1831 - was of sound and disposing mind and memory, and was under ^{no} influence. Therefore it is ordered that the said several

instruments of writing be recorded as the true last Will and testament of the said John Randolph of Roanoke deceased. From the order admitting to record the several instruments of writing aforesaid, the defendant Frederick Hobson Committee of St. George Randolph prayed an appeal; and from so much thereof as admits to record instruments of date prior to the 26th day of August 1831, the said Henry St. George Tucker and John R. Bryan and Elizabeth his wife pray an appeal; and the said William Meade agreeing to disprove with bond and security from the said defendants for the prosecution of their said appeals such appeals are allowed.

And at a General Court held at the Capitol in the City of Richmond on Monday the 11th day of December 1837.

A copy of the judgment of the Court of Appeals in the said case ^{was} produced to this Court, bearing date the 3rd day of July 1837, whereby it was considered by the said Court of Appeals that the judgment aforesaid of the General Court be affirmed; which judgment of the said Court of Appeals was duly entered of record in the said General Court.

And at the same General Court continued by adjournment and held at the Capitol aforesaid on the 7th day of December 1837, the petition of William Leigh the executor named in the said last Will and testament of the said John Randolph and who made oath thereto in the form prescribed by the Act of Assembly passed the 16th day of February 1825, entitled "an act to amend the act entitled an act authorizing into one the several acts concerning Wills, the distribution of intestates estates, and the duty of executors and administrators" and together with William H. Clark John H. Winbush, Amos Barksdale, William M. Wathen, Henry A. Wathen and John Marshall his son (which said William H. Clark, John H. Winbush, Amos Barksdale, William M. Wathen, Henry A. Wathen juratific on oath as to their sufficiency) entered into and acknowledged a bond in the penalty of three hundred and fifty thousand dollars, conditioned as the Act first aforesaid directs. Certificate is granted the said William Leigh for obtaining a probat of the said will in due form.

Teste
N. P. Howard, - Clerk
A Copy, Teste
N. P. Howard - Clerk

Answers of William Leigh executor of John Randolph deceased Henry St. George Tucker and John R. Bryan and wife filed.

At Rules here in the Clerk's Office of the Circuit Superior Court of Law and Chancery for the County of James City and City of Williamsburg, from the ~~1st~~ ^{to the 12th} day of May (inclusive) in the year one thousand eight hundred and thirty eight. The defendants William Leigh executor of John Randolph deceased, Henry St. Tucker, and John R. Bryan and wife, this day filed their answers to the plaintiffs bill in this cause.

The answer of William Leigh executor of John Randolph of Roanoke to the bill of complaint exhibited against him and others in the Superior Court of James City County by Nathaniel Beverley Tucker and St. George Coates.

This defendant answering, &c. answers and says he admits that the plaintiffs have correctly set forth the relationship of themselves and of the defendants Henry St. George Tucker and Elizabeth Tucker Bryan and of St. George Randolph to the said John Randolph of Roanoke.

He admits also that the general Court of Virginia, on the motion of William Meade admitted, on the 13th day of July 1836, to record the following instruments of writing executed by the said John Randolph as the true last will and testament of the said John Randolph, namely, the instrument of writing attested by Richard Randolph jr. the Codicil whereof bears date the 5th day of December 1821; the Codicil bearing date as aforesaid the 5th day of December 1821; the Codicil bearing date the 31st day of December 1826; the four Codicils bearing date the 6th day of May 1828; and the Codicil bearing date the 26th day of August 1831. - being the same papers as this defendant presumes, exhibited by the plaintiffs with their bill, and of which copies will hereafter be filed, if the same be not already filed. The defendants Frederick Hobson Committee of St. George Randolph, Henry St. George Tucker and John R. Bryan and Elizabeth Tucker his wife, entered themselves parties defendants, in the General Court, to the motion of the said William Meade, and appealed from the judgment of the said Court to the Court of Appeals; - the said Frederick Hobson from the whole judgment, and the said Henry St. George Tucker, and John R. Bryan and Elizabeth Tucker his wife from so much thereof as admitted to record the instruments of dates prior to the 26th day of August 1831. On the 3rd day of July 1837. (The dates are taken from a copy of the judgment of the General

Court now before this defendant) the Court of Appeals affirmed the judgment of the General Court which said judgment of the Court of Appeals was entered of record in the General Court on the 4th day of December 1837, and on the 7th day of the same month of December this defendant qualified in the General Court as the executor of the aforesaid last will and testament of the said John Randolph. And he admits that it is his intention to carry into effect as well as he can and as soon as he can safely do so, the provisions of the said last will and testament in favour of the slaves of the said John Randolph.

This defendant has been advised and he therefore insists that the aforesaid judgments of the General Court and Court of Appeals are conclusive as to the defendants Frederick Hobson, Committee of St. George Randolph, Henry St. Geo. Tucker, and John R. Bryan and Elizabeth Tucker his wife. And he insists that they are conclusive also on the plaintiffs. He believes and therefore charges that both the plaintiffs knew that the controversy was depending; that one or both of them attended the trial, had all the evidence ^{introduced} ~~presented~~ within their reach, which went to prove the invalidity of the testamentary papers; and indeed made the same opposition to the motion of the said William Meade, which they could or would have ~~made~~ ^{made} had they been formal parties on the record. And this defendant believes that they refrained from entering themselves parties on the record solely with a view of securing to the parties adverse to the will and testamentary papers two trials of the same question; - one in the General Court under the names of those who had made themselves parties on the record in that Court, and in case of failure there, another by proceeding by bill in Chancery. But this latter proceeding, this defendant contends, is given to those who did not appear and contest the probat; and not to those who did appear and contest it, altho' the appearance may not have been formally entered on the record. In his opinion nothing more should be required to bar a resort to the proceeding by bill in Chancery than proof that the party had a fair opportunity of appearing, of preparing for the trial, and of opposing the probat, and that he did appear and oppose it. And this defendant believing fully, that the plaintiffs had not only the fairest opportunity of opposing, but that they did in fact substantially appear, either in person or by counsel, and did oppose the probat, he insists that the judgments of the General Court and the Court of Appeals are conclusive and final as to the plaintiffs, and that they are thereby barred from proceeding by bill in Chancery to contest the validity of the will.

This defendant admits that by the testamentary papers admitted to view in the General Court, no part of the estate of the said John Randolph is given to the plaintiffs, unless perhaps some share may be given to the plaintiff Mathaniel Beverley Tucker by the writing first mentioned in the judgment of the General Court, and which for the sake of distinction will hereafter be called in this answer the Will of 1821. But he cannot admit, that, in the present state of things, the plaintiffs are wholly "deprived" of their heritable and distributable portions of the said estate. By the testamentary papers a considerable ^{part} of the estate of the said John Randolph is given to this defendant, who releases all his right thereto, the heirs and next of kin; of which part this defendant procures, the plaintiffs have received or will receive their due proportions, amounting in value to no inconsiderable sums.

Neither can this defendant admit that at the time of making and publishing the said testamentary papers, and each and every of them, the said John Randolph was of unsound mind and memory, and by reason thereof was not of capacity to dispose of his estate by will. The first of the said papers was executed, this defendant believes in the latter part of November of the year 1821, and the last bears date the 26th day of August 1831. During the whole period, this defendant was well acquainted with the said John Randolph, and was frequently in his company, conversing with him in the most confidential manner, as well on general topics as on matters relating to his own private affairs, and he does not remember, that he ever saw him, during the period aforesaid, when he considered him of unsound mind.

During the same period the said John Randolph managed his very large estate and managed it judiciously. And from the date of the first paper to March 1829, he was, this defendant believes, a Member of the Congress of the United States, and in 1829 he was a member of the Virginia Convention, and this defendant believes that he was regarded by many as the very ablest man and by all as among the ablest men in Congress and in the Virginia Convention.

And this defendant is so thoroughly convinced of the soundness and indeed of the extraordinary sagacity and vigor of his mind, that he is surprised at the sweeping charge of incapacity, and cannot even imagine that any evidence can be produced to sustain it. The plaintiffs cannot have made the charge upon their own observation or upon their own knowledge; for they were not

present at the making of any one of the papers, and during the whole period, from the making of the first to the date of the last paper, they seldom saw the said John Randolph and had very little intercourse with him. And this defendant does not believe that any evidence can be produced to sustain the charge, for he has never yet met with a single person, in the habit of associating with him, who will depose that the said John Randolph was of unsound mind at the date of the making ^{of} ~~any~~ or any of the testamentary papers. Indeed this defendant has understood that the plaintiffs do not contend that his mind was different at the time he made the papers, from its general and ordinary state; but that his mind from a long time back, commencing previous to the making of any of the testamentary papers, was, at all times unsound, so as to incapacitate the said John Randolph from disposing of his estate by will: not that he was incapable of managing his affairs, or that he was of unsound mind on general subjects, but that he had conceived so violent and so unreasonable a dislike to the Honorable St. George Tucker as to produce an unsoundness of mind on that particular subject, which influenced his conduct in regard to all connected with the said St. George Tucker. As to which this defendant can only say that he never suspected and never heard that his mind was unsound in respect to this particular matter until since his death. He is confident that the plaintiff Mathaniel Beverley Tucker, did not immediately after his death, think him incapable of disposing of his estate by will; for not long after his death the said plaintiff told this defendant that the said John Randolph, the Spring or winter before he died, had been anxious to get home from Washington, in order, as the plaintiff believed, to make his will, and the plaintiff regretted that he had made no such will, as he expected a fair provision would have been made for him by it.

And certainly the dislike of the said John Randolph to the said St. George Tucker, however violent and unreasonable it may have been, did not prevent him from giving a part of his estate to his descendants, as is manifest from the Codicil of the 26th day of August 1831, by which he gave property of very considerable value to the defendants Henry St. Geo. Tucker, and Elizabeth Tucker Bryan, the son and grand daughter of the said St. Geo. Tucker.

This defendant admits that the said John Randolph did cut his name out of the Will of 1821, wherever it occurred in the Subscribers. But he denies that the said Will was thereby cancelled or destroyed. He was with the

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said John Randolph a short time before ^{very} and at the time he cut his name out of the said will, and he is thoroughly convinced that at the time he cut his name out of the said will he was of unsound mind, and was therefore incapable of destroying or cancelling the said will. It is to be observed that the plaintiffs omit to allege that he was of sound mind when he cut his name out of the said will - an omission to be accounted for, as this defendant believes, from their entire conviction that he was ^{then} of unsound mind. Within a few hours after he cut his name out of the said will, the said John Randolph made another instrument of writing, by which no part of his estate was given to the plaintiff, and by which the far greater part was given to John C. Bryan, the infant son of John C. and Elizabeth Tucker Bryan, for life, with other limitations, a copy of which paper if necessary, will in due time be found among the papers in this cause. A motion was made in the General Court, in behalf of the said John C. Bryan for probat of the said paper, which motion was opposed by the said William Meade. The General Court admitted the said paper to record as the last will and testament of the said John Randolph, from which judgment the said William Meade appealed to the Court of Appeals, by which Court the judgment of the General Court was reversed, on the ground that at the time the said John Randolph made the paper, he was of unsound mind. During this controversy, this defendant is certain that both the plaintiffs asserted that the said John Randolph was of unsound mind, at the time he made the paper last above mentioned, and indeed one of the plaintiffs Nathaniel Bessey Tucker told this defendant distinctly and plainly that he so regarded him. That the said John Randolph cut his name out of the will of 1821 only a few hours before he made the paper in favour of the said John C. Bryan, will be manifest from the following facts which are within this defendant's knowledge. In February or March 1822 the said John Randolph wrote to this defendant from Washington - the letter now is, or lately was among the papers in the General Court - that Mark Alexander ^{sent} would deliver him his will. In the May or June following this defendant received from a gentleman at Raleigh Courthouse, who told him that the same had been left with him by Mr Alexander - among the papers sent to him by the said John Randolph, a packet sealed with the seal and endorsed in the said Alexander's hand writing to the following effect (this defendant

17.
does not pretend at this time to remember the precise words) "The will and Codicil of John Randolph of Roanoke devised to be left with William Leigh Esq^r the within named exec^r. When this defendant received this packet, he broke the seal of Mr Alexander's envelope and found ^{enclosed} another packet sealed with the seal of the said John Randolph and endorsed in his hand writing. Without breaking the seal of this last mentioned packet, he opened it in Mr Alexander's envelope, which he sealed with a wafer, and put the packet in his pocket where it remained unopened, until he took it out to carry it to the said John Randolph. In the latter part of December 1831 the said John Randolph wrote to him requesting him the first time he came to his house to bring his will as he intended to ^{alter} revoke or destroy it (this defendant met at this time remembering the precise words used by him) Accordingly this defendant carried the packet to the said John Randolph's house and delivered it to him, as well as he now remembers, between 8 and 10 o'clock of the night of the 1st day of January 1832. The said John Randolph immediately opened it, took out the will and was about to destroy it - he believes to have it - when this defendant suggested to him that he had better cancel it than to destroy it. He then cut his name out of it and without putting it out of his hands he read aloud to this defendant certain parts of it; the whole of it this defendant believes, with the exception of the devises and bequests to this defendant himself. This defendant well remembers that he read from the will a clause by which he emancipated his slaves and gave to his executor \$8000 for removing them from this State; also another clause by which he gave to his house towards certain cloths and provisions, annually during their lives; also a further clause by which he directed his executor to sell his Lower Quarter, his lands lying above Cross's ferry road and the lands he bought of the Roads and to pay the proceeds to the aforesaid William Meade and Mrs. S. Key to be used by them for benefiting the condition of his slaves. He also read from the same will a devise of his interest under Mr Corbin's will to Doctor Duntley, and the Codicil revoking that devise, and he read from the same paper, a note that he had informed Mr William Parkstad why he had made the revocation. After the death of the said John Randolph the will of 1821 - was found among his papers enclosed in Mr Alexander's envelope in the same State in which it was exhibited in the General Court. The new will is written on the envelope of a former one and this defendant

believes that the paper itself (it is not before him and he does not remember the endorsements on it) will show that it was the said John Randolph's envelope to his will, sent to this defendant by Marsh Alexander Esq. From the above facts, this defendant thinks it is manifest that the paper out of which the said John Randolph cut his name, in the presence of this defendant, is the will of 1821 admitted to record in the General Court.

This defendant continued in the same room with the said John Randolph until a late hour and then retired to another room and went to bed. After he had fallen asleep the said John Randolph came into the room and gave him the paper which was offered for probate in behalf of John C. Bryan, saying that he had written it to guard against accidents and when he had leisure he intended to write another. This defendant thinks too, that there is an endorsement by the said John Randolph on the said paper, in which he states that he had that night cancelled his former will in the presence of this defendant, but the paper is not before him and he may be mistaken as to the endorsements or writing which he supposed upon it. He is confident however that the name was cut out of the old will and the new will written (meaning the paper of John C. Bryan) during the same night.

And in his opinion there is nothing ^{whatever} to justify the plaintiffs in insisting that the said John Randolph was of sound mind at the time he cut his name out of the will of 1821, while they at the same time insist that he was of unsound mind, at the time he made the paper of the 1st January 1832. In reading ^{over} what he has stated about the said John Randolph's cutting his name out of the will of 1821, he finds that he has stated that the name was cut ^{out} before the parts of the will before mentioned were read to him. He wishes to be precisely accurate as to every matter stated in his answer, and he now states that he is not certain whether the name was cut out before the parts of the will were read or the parts read before the name was cut out. He is entirely certain that the said John Randolph never put the will out of his hands until he had both read the parts above mentioned and also cut out his name.

This defendant cannot admit that the said John Randolph "subsequent to the last testamentary paper admitted to record in the General

Court executed and published a paper purporting to be his last will, by which he devised his estate real and personal to the said H. Geo. Randolph, Henry H. Geo. Tucker, Nathl. Beveridge Tucker, Elizabeth J. Bryan, and St. George Quatten, to be among them divided in such proportions as according to the laws of descent and distributions then in force the same would have been divided among them, and by which will he revoked all former wills." This defendant knows nothing of any such will. He was indeed told by the defendant Henry H. Geo. Tucker that the said John Randolph sent him a will in the Spring, perhaps in March 1832, the effect of which would be that his estate would be divided according to the laws of descent and distributions, but this defendant did not understand that the estate was so devised by the will. The said Henry H. Geo. Tucker also told him that he had returned the said will to the said John Randolph. The plaintiffs do not allege that at the time ^{this paper was made} the said John Randolph was of sound mind and the omission is remarkable; considering that they have charged him with so general an incapacity, and this defendant believes that the omission is to be accounted for from the conviction of the plaintiffs that he was then of unsound mind. This defendant was frequently with the said John Randolph during the winter of 1831-2 & the Spring of 1832 and this defendant is satisfied that throughout the whole of the said winter and as late as the 1st of May in the Spring, the said John Randolph was plainly of unsound mind and incapable of disposing of his property by will. And this defendant not admitting the execution of such a paper, insists that, if such a will was ever executed, the same was a mere nullity. This defendant does not know what became of the said paper, if it was ever executed, and cannot admit that the same was ever cancelled, annulled, revoked or otherwise destroyed or abrogated by the said John Randolph, or that the same had been lost and destroyed by some person unknown. Indeed the allegations of the plaintiffs show that they know not what has become of the paper, and this defendant submits that, as the paper cannot be found and cannot be proved to have been made, way with by some other person even if it shall be proved that such a paper was made, the fair and rational and legal inference is that the same was destroyed by the said John Randolph himself. This defendant takes no property whatever under the testamentary papers aforesaid. He however believes them to be the true last will and

testament of the said John Randolph, declaring he debited and long letters in-
 tentive as to the disposition of his estate at least so far as to the disposition relates to
 his slaves; and he considers it his duty in compliance with his promises repeat-
 edly made to the said John Randolph in his lifetime to use all proper means to
 sustain them. He has always deplored the wretched state of health both of body
 and mind, under which the said John Randolph laboured during the latter
 part of his life and to which he thinks is ascribable the state in which he left
 his testamentary papers, so well calculated to produce litigation. He never doubt-
 ed but that there would be great litigation about them and the only part which
 he ever intended to take in it, was to endeavour to have the case fairly and
 fully submitted to the proper tribunals, so that justice might be done.
 He is compelled to say however that the course pursued by the plaintiffs appear
 to him well calculated to prevent a fair trial of the case not content with the
 decisions of the two highest Courts in the Commonwealth whose decisions
 would have been final to the persons really interested in the question, namely
 the slaves, had it been adverse to them, they have chosen to institute the present
 suit in a Court remote from the residence of the substantial defendants and
 remote also from ^{by far the} the greater number of the witnesses, most of whom he
 believes reside in or near the County of Charlotte. He does not regard the de-
 fendants Henry St. Geo. Tucker, John R. Bryan and Elizabeth V. his wife
 and Frederick Holson, Committee of St. George Randolph as substantial de-
 fendants. It is obviously the interest of the latter that the plaintiffs should
 succeed, and this defendant believes that the three former ^{also} wish them to succeed
 because he has always understood that their course, when the case was before
 the General Court, contended that the said John Randolph died wholly
 intestate, and because they appeared from so much of the judgment of the
 General Court as admitted to record the papers under which the said slaves
 are entitled to their freedom. And so fully is he convinced that they will
 make no serious opposition to the claim of the plaintiffs, that he will ^{be} great-
 ly and agreeably surprised, if he and the other defendants maintaining
 the rights of the slaves, shall receive their aid in sustaining the aforesaid
 testamentary papers. In truth this defendant considers the slaves as the
 real defendants, who necessarily labour under so many disadvantages
 that he thinks it unfair in the plaintiffs to add to these disadvantages by
 bringing their suit in a Court so inconvenient to, and therefore so will

calculated to prevent the attendance of those who ought to attend the trial on their be-
 half. The plaintiffs too, have instituted their suit in the Court of a County in
 which no one defendant real or nominal resides, and rely as he understands, on
 the mere service of the Subpoena within the County on the defendant John R.
 Bryan to give the ^{said} Court jurisdiction. This defendant was informed in the City
 of Richmond, soon after he qualified as the exactor and whilst the said John R.
 Bryan was also in Richmond, that the suit was to be instituted in the Court
 of the County of James City, and he therefore believes that it was arranged between
 the plaintiffs or one of them and the said Bryan that the latter should go to the
 County of James City, and there remain until the subpoena could be served
 upon him. If by such an arrangement the plaintiffs can have the case tried
 in the Court of the County of James City, it is obvious that they might have
 carried the case to be tried in any and most distant and inconvenient County
 in the State, in short they had it in their power to select their own forum as
 among the numerous Courts of the Commonwealth, and an example will be
 given, by following which, plaintiffs in Chancery with the aid of a willing de-
 fendant, will be able to select their own Courts, either with the view of harass-
 ing the real defendants or of obtaining some improper advantage in the pro-
 ceeding - an example well calculated not only to aid the views of the oppres-
 sor but to impair the fairness of ~~the~~ which ought always to prevail in the
 administration of justice. And this defendant feels himself bound to resist
 by all legal means the establishment of such an example in the present case
 not only on account of its general dangerous consequences, but especially because
 he fears that it may operate to the injury of the slaves the only real defendants
 as he believes, whose rights it is his duty to protect. And he therefore considers him-
 self bound to ask the Court to send the case to some other more convenient
 tribunal. It cannot be sent to be tried in the County of the County of which
~~the said John Randolph had his domicile, for a reason known to the Court, but~~
 the said John Randolph had his domicile, for a reason known to the Court, but
 he thinks that, according to the true spirit of the laws of this Commonwealth
 the case ought to be sent to be tried in the Court of some County of the judicial
 Circuit adjacent to the one in which this defendant resides. And, if he shall
 fail to obtain the transfer of the whole case, he will then insist that the issues
 or issues, should any be directed, ought to be tried in Court of some Circuit
 adjacent to the one in which he resides, or at least in a Court not so greatly in-
 convenient to the substantial defendants in the cause. And this defendant

having fully answered prayer to be hence dismissed with his Costs on this behalf expended.

W. Calfax County to wit; This day William Joseph appeared before me a Justice of the Peace for the County aforesaid, and made oath that the matters and things stated in the foregoing answer, so far as they are stated upon his own knowledge are true, and so far as they are stated upon his belief and the information of others, he believes them to be true. Given under my hand, this the 22nd day of February 1838.

W. Calfax, J.P.

The Separate answer of Henry S. Tucker to a bill of Complaint exhibited against him and others in the Superior Court of Law and Chancery for the County of James City by A. B. Tucker and St. George Coates.

The defendant saving the usual exceptions for answer saith that he is perfectly willing that an issue be directed for the trial of the question decisive vel non sought by the bill, and proceeding to answer the particular enquiries directed to him by the bill he makes the following succinct statement.

In the month of March 1832, about the 20th of the month, this defendant received a letter from W. J. Randolph his brother accompanied by a testamentary paper requesting him immediately to repair to Roanoke as he thought himself in extremity. The defendant set out immediately and reached Roanoke about the 21st as well as he recollects when he found his brother quite ill, but occasionally calm and apparently in his senses. The morning of his arrival he returned the will to his brother who took it from him but how he afterwards disposed of it the defendant knows not. It never has been found among his papers, nor has the defendant ^{ever} seen it since. The defendant does not recollect distinctly the provisions of the instrument, which by the way, had been sent to him open for him to read. He remembers that he was made sole executor by that will, that all the slaves (some few perhaps excepted) should be sold 500 miles out of the State, and he thinks it so provided that the estate was to be divided among his brothers and his nephews, and more, as it would be in case of intestacy. This defendant considered the provision as to the slaves somewhat as to occasion a doubt whether upon reflection his brother would adhere to that instrument and as it has not been found, he has always supposed it was destroyed

by his brother.

The defendant is not aware of any other matter in relation to that paper, which it is important to state, which is within his recollection and denying fraudulently submits the whole matter to the decision of the proper tribunals.

H. S. Tucker

Henrico County

Shewn to before me a Justice of Peace in and for the said County given under my hand, this 12th of March 1838

J. S. Mosby (J.P.)

Virginia. Superior Court of Law and Equity for the City of Williamsburg and County of James City. May Term 1838.

The Separate answer of John Randolph Bryan and Elizabeth Tucker Bryan to the bill of Complaint of Nathaniel Borsley Tucker & St. George Tucker Coates exhibited against them and others in the Circuit Superior Court of Law for the City of Williamsburg and County of James City.

These respondents say that they know nothing of the execution of the several testamentary papers in the said bill mentioned. Neither contacting nor supporting that paper which purports to be a will executed in the year 1821 nor those which purport to be Codicils executed in the years 1826 & 1828, respectively, they claim the benefit of the testamentary paper which purports to have been executed in the year 1831, which they affirm to be the true last will and testament of the said John Randolph in the bill mentioned, tho' the will to which the same was intended to be taken as a Codicil, may have been lost or destroyed. They further state that the respondent, Elizabeth Tucker Bryan, is, as alleged in the bill, the daughter of the uterine sister of the said John Randolph, and as such entitled to one tenth part of any estate as to which the said Randolph may have died intestate. And having fully answered the said bill, these respondents pray to be hence dismissed.

J. R. Bryan

E. T. Bryan

(Replieans)

To the foregoing answers the plaintiffs by their Counsel instanter replied generally.

Met for hearing in fact

And at Rules held in the Clerk's Office of the said Court, from the fourth

to the ninth day of June (inclusive) in the year One thousand eight hundred and thirty eight aforesaid. On the motion of the plaintiffs by their Counsel, this cause was set for hearing as to the defendant Francis Scott Key on process.

Set for hearing on part

And at Rules held in the Clerk's Office of the said Court, from the first to the sixth day of October (inclusive) in the year One thousand eight hundred and thirty eight aforesaid. On the motion of the plaintiffs by their Counsel, this cause was set for hearing as to the defendants William Leigh executor of John deceased Henry St. George Tucker and John L. Bryan and wife, &c. this answers.

Deposition of Anna Bland Dudley, filed November the 24th 1838. State of Tennessee } In pursuance of the annexed Commission to us }
Williamson County } dated from the Honorable the Circuit Superior Court of Law and Chancery for the County of James City and City of Williamsburg in the Commonwealth of Virginia. We have caused to come before us at the dwelling house of Mrs. Anna Bland Dudley in said County of Williamson in the State of Tennessee, on this day the same being Saturday the third day of November A.D. 1838, the said Anna Bland Dudley aged about seventy five years, a witness as well on behalf of Nathaniel Beverly Tucker and St. George Tucker Coactors plaintiffs, as William Leigh executor of John Randolph deceased William Meade and Francis Scott Key Trustees under the Will of the said John Randolph deceased, Henry St. George Tucker, John Randolph Bryan and Elizabeth Tucker Bryan his wife. Defendants, in a suit now depending in the said Circuit Superior Court of Law and Chancery for the County of James City and City of Williamsburg in the Commonwealth of Virginia, between the said Nathaniel Beverly Tucker and St. George Tucker Coactors plaintiffs and the said William Leigh executor of John Randolph deceased and other defendants, who being duly sworn and adjuredly examined on the Holy Evangelist of Almighty God, deposed and saith, at the oath and examination aforesaid as follows, to wit:

Question by the agent of Nathaniel Beverly Tucker

State your relationship to the late John Randolph of Virginia and the extent of your acquaintance with his family.

Edward M. Pinckard and ^{Freightman} James B. Carter two of the acting justices of the peace in and for said County of Williamson in the State of Tennessee at the place and on the day in the Caption mentioned and was reduced to writing by John Marshall in our presence and in the presence of the Witnesses, and that said Marshall shall is not interested in said suit, nor ^{he} the agent, attorney or solicitor of any ~~one~~ of the parties nor of the parties being present at the taking of the same. and we do certify that we are not agent, attorney or solicitor for any of said parties and that we are in no way interested in the event of said suit. Given under our hands and seals on this 3rd day November A.D. 1838

J. B. Carter (J.P.) Seal
E. M. Pinckard (J.P.) Seal

Depositions of Henry A. Watkins, William M. Watkins, Winslow Robinson, William Smith, John Marshall, John Meador, and Clement Carlington, filed November the 27th 1838.

The depositions of Henry A. Watkins, William M. Watkins, John Marshall, John Meador, Joseph M. Danice, Clement Carlington, Winslow Robinson, Thomas D. Richardson and others taken at the Tavern of Algott Cardwell in the County of Charlotte, Thursday the 8th day of November 1838, between the hours of one O'clock A.M. and 6 O'clock P.M. to be read as evidence in a Chancery Cause now pending in the Circuit Superior Court of Law and Chancery for James City County held at the City of Williamsburg, wherein Nathaniel B. Tucker and St. George T. Coactors are plaintiffs, and William Leigh executor of John Randolph deceased and others are defendants.

Cap^t Henry A. Watkins sworn and examined
Question by the defendant's Counsel. Were you acquainted with the late John Randolph of Roanoke during the year 1821, and from that time to the year 1831? and if so, state what was his condition and state of mind in that time.
Answered My acquaintance with Mr. Randolph commenced many years ago before his removal from Roanoke to Roanoke. heard the first publick speech he ever made in this County, in which he came in contact with Mr. Henry, and my acquaintance with him continued from thence forward until his death. It is well known that for much the greater part of that time Mr. Randolph represented this district in Congress, and was one of the delegates of the district in the Convention called to revise the State Constitution. I mention these facts as evidence of the great confidence obtained in the District for his eminent talents

and faithful discharge of his public duties - I believe he never failed in his election but once. Mr. Eppie's deposition was by a small majority, during the last War, or during the discussion of the War Measures - I cannot bring myself to bear particularly as to the year 1821, or as to any particular date, but I state that Altho' I saw him at no time laboring under some excitement on the subject of religion, I never saw him at any time when I considered him of unsound mind, or incapable of making a will, until after his return from Russia in the year 1831. After that time I considered his mind in a bad state as I have before testified in a controversy before the General Court. A copy of my deposition given on that occasion is annexed, and I now reaffirm all that I said in that deposition and ask that it may be taken as a part of this. The removal of Mr. R. from Beaufort was long before the year 1821. The time at which I saw Mr. R. when he was laboring under religious excitement was also previous to that year.

Question by the plff's Attorney - Has you known certainly that anterior to the year 1818 (when Mr. R. was under religious excitement) he had been decidedly deranged - would not the many peculiarities and eccentricities of his manner, subsequent to that time, and up to the year 1832, been derived from a derangement of his derangement?

Answer. I was intimate with Mr. R. and he was frequently at my house, and I have never known of his doing anything prior to his return from Russia that I would ascribe to derangement. I have seen him when he had taken some too freely, and the only effect it had was to make him more talkative and fluent than at other times.

Question by Plff's Attorney - Was not Mr. R. very bitter in his denunciations of Judge Tucker the elder deceased, and did not his feelings generally exhibit an antipathy against the defendants of Judge T. the elder.

Answer. Of Judge Tucker the elder, I do not recollect to have heard Mr. R. speak. As to his feeling towards Beverley Tucker, I refer to my testimony given in the trial before the General Court, in which I introduced a letter from Mr. R. on that subject. After Mr. R's return from Russia I heard him say that Beverley Tucker and himself had become entirely reconciled, and that he (Mr. R.) could not now do without his brother Beverley. They were at my house together, and their manner to each other was friendly and even affectionate. Beverley Tucker slept in the same room with and nursed his brother during their visit to my house.

Question by Plff's Attorney. After Mr. R's return from Russia did you hear him say what disposition he had made of his property?

Answer. I did not.

Henry A. Watkins.

Charlotte County, to wit:

The foregoing deposition of Henry A. Watkins was this day taken, subscribed and sworn to before me a justice of the peace for the County aforesaid, and the further examination of him, and the other witnesses is continued until tomorrow to be proceeded in at the same place and between the same parties mentioned in the Caption hereto. Given under my hand this day and year first above written.

J. P. Marshall.

November the 9th 1838.

The Deposition of Henry A. Watkins esq. continued.

Question by Deft's Counsel. Have you examined the annexed Copy of your testimony given before the General Court, in a controversy about Mr. Randolph's will, and is it the same referred to in that part of your deposition which was taken on yesterday?

Answer. It is, in substance, the testimony I gave before the General Court, and the same I alluded to on yesterday; and I hereby give the same as my will of the state of Mr. Randolph's mind after his return from Russia. And further this deponent saith not.

Henry A. Watkins

Copy of the testimony of Henry A. Watkins, given before the General Court, in a controversy the will of the late John Randolph of Beaufort, deceased.

[Sworn in behalf of the defendant Made]

Henry A. Watkins Sworn. Says that he saw Mr. Randolph after his return from Russia on November 1831. He arrived at the Court House in Charlotte County Court day. I called to see him in the morning, and found him much excited, and very talkative. He had much to say to those who came into his room, and there were a great many who came to shake hands with him. I noticed that he did not give his friends that cordial shake of the hand that he used to do. He was not as cordial to me as formerly, and he seemed changed as to all of his friends. There was a Stage passenger present in the room, who had a gun, which Mr. Randolph was desirous of getting. I thought it but an ordinary gun, and the

stranger seemed willing he should have it. Mr. Randolph said he would exchange, and give him another which was at his house, and he wished the stranger to go to his house to get the gun, altho he lived a mile off the Stage road. Finally Mr. Randolph agreed to buy the gun, and to give, as I understood, thirty dollars for it. Mr. R. took out some money and attempted to count out the sum, but seemed perplexed and unable to count it correctly, after counting it several times, before he gave it to the gentleman, he asked another friend to count it. He did so, and found there was ten dollars too much, in the parcel he had counted, when I went out, I remarked that the mind of Mr. Randolph was in a wretched state. In the winter of 1832 I received a letter from him dated in January. In the ensuing Spring he sent a servant to me with a letter requesting me to come and see him, stating he was in a disagreeable situation, and I must be sure to come. This letter was dated the 11th April and I went to his house on the 12th when I arrived I found the gates barred up, and had to send by a servant to Mr. Randolph announcing my arrival, when he sent a servant to let me in. I found him in a very low state he was reading his bible. I remarked that I was glad to see him reading his bible. He made some sensible remarks on the subject in a way but soon fell off to some other subject. In the course of the conversation he pointed to some guns in the room and said "It is these guns that protect me. Had we not for them my negroes would have murdered me." - Shortly after he said that it would be much grieved and mortified when I reached home. I told him I hoped not, and asked him what evils he predicted. - If he prophesied in regard to my affairs, I said I hoped he would prophesy good and not evil. He said he could not. I then urged him further and he said, my mill house would be burned down in my absence. He seemed to wonder at my doubting his knowledge of what was going on at my house. I told Mr. R. that Judge Leigh would probably be at his house during that evening. At the mention of Mr. Leigh he exhibited much temper towards him. I said he would visit him here if he would not, that he dared not visit him. He offered to bet the same house that he would not come, and spoke of him in a manner that I never heard him before and never expected to hear. While we were speaking a servant came and said Judge Leigh had come. Mr. Randolph's temper changed entirely on meeting Judge Leigh, whom he received with great cordiality. The letter which I received from Mr. R. inviting me to his house

is sufficient to convince any man that he was deranged. The witness then produced the letter referred to dated 11th April 1832, and it was read. I must remark that the day I saw him at the Court house, he delivered an address to the people of Charleston, which was a sensible one, and much admired, and at that time the only reason that I had for believing that he was deranged, was that he treated his friends so coldly, and that he urged a Stage passenger to go a mile off the Stage road to get a gun, which did not seem a rational request. - The Stage passenger was an Englishman. Mr. R. seemed better acquainted with the ship in England from which the gun came than the carrier.

By Mr. Taylor. - There was an error in counting the money for the gun, he had counted ten dollars too much. I do not pretend to Judge of the value of the Gun. I thought it a common error, and did not see what he wanted of it. I thought he had ~~enough~~ enough guns, and those he showed me and said protected him from his negroes, were sufficient I should suppose for any man. By Mr. Johnson. Mr. Randolph was fond of fine guns, I believe frequently made purchases of them when in England. By Mr. Taylor. How long did you remain with Mr. Randolph in April? Ans. from about eight or nine in the morning until about two in the afternoon. He said nothing about his slaves but what I have mentioned, during the time. I do not recollect any other fact that had a tendency to show what was the state of his mind. I remember that after he went to Mr. Cardwell's he was much relieved. His memory was better. He had a difficulty in recollecting names. I did not perceive it often. After he changed his residence he said he was better. On the day on which I visited him, there was one subject on which he was clear and rational. On all other subjects he appeared to be wild. But on the subject of his bible he was never more rational in his life. We frequently talked upon it and his remarks were sensible and judicious. By Mr. Johnson. - I believe he was in the habit of using opium or some substitute for it. On the day on which he offered resolutions at the Court house, I knew that he did drink something. But as to his taking opium, my knowledge is only hearsay.

By Mr. Stanard. From the time that he moved to the Court house to the time he offered the resolutions, did you think him in a sane state of mind? Ans. I always thought Mr. Randolph's mind was in a bad state from the time of his return from Russia to his departure for Philadelphia. Question. - Were there any particular facts which induced you to think ^{him} insane.

Ans: I do not know any other facts than I have already stated that prejudices that opinion. When he offered the resolutions he was living at home.

Henry A. Watkins

Mem: The witness having mentioned the receipt of a letter in January 1832 from the said J. R. and spoken of it as a sensible letter: and the defendant's counsel having objected to the opinion of the witness as to the character of the letter being taken as evidence in the case, the plaintiff's counsel; on the cross examination of the witness, insisted on the production of the letter; but the witness objected to the production of the letter on the ground of the reflections therein contained upon the several persons therein named: the witness however submitted to the judgment and decision of the Court, whether he was bound to produce the letter, and whether the whole, or what part of the same should be received as evidence, protesting that the letter should not be deemed to have been voluntarily produced by him; the defendant's counsel disclaimed all objection to the production of the said letter, and also on the part of Wm. M. Watkins expressed his desire that no part of the letter alluding to him should be suppressed: Whereupon the letter was, by the direction of the Court submitted by the witness (dated 24th Jan: 1832 - 11 O'clock at night) and is hereto annexed.

Henry A. Watkins re-examines - Wished to correct his testimony given yesterday as to the person with whom Mr. Randolph bargained concerning the gun at Charlotte Court House on November Court day in 1831. I stated yesterday that he was a stage passenger. I am since informed it was mistaken in so supposing, and that the individual mentioned came to the Court House in a private conveyance.

Henry A. Watkins

[Referred to in the foregoing deposition]

To Henry A. Watkins

Come and see me if you can, I mean if you are able I beseech you - If you cannot come - pray for me - for the affliction at present press of a righteous man avasteth much.

Friday 10 - but in fact 11 of April

embellished - I am in extremities on the word of a Christian I write with a blotting pen upon greasy paper, and an all offenser on the eye of God - because I am under the ^{powerful} influence of the Prince of darkness who tempts me with a beautiful Melatress "Melatress Girl"

and a bottle of ice Champagne Champagne
~~XXXXXXXXXX~~

(S. R. of) Scambs

To Henry A. Watkins Esquire

Pass the lower (Sometimes called) P-f-a-h

S. R. of Scambs

embellished Friday 11 April '32

[Referred to in the foregoing deposition]

Scambs Tuesday Night near

Cleves O'clock January 24 - 1832

My dear Sir,

Mr. Marshall who has been detained here by accident and bad weather, just as we were packing to go to bed informed me that it had been represented to you that in a speech made by me at Dr. Edwards November Court I had made an offensive allusion to yourself or to your sons, or to all three of you.

This circumstance does not in the least surprise me, for I have long ^{known} that there is no falsehood which can be propagated against me that is not correct and put into circulation respecting me, and it hangs to test many of them continue to be believed in spite of their daily detection and exposure.

I am glad that Mr. Marshall's accidental mention of this matter enables me to state distinctly that it is rank falsehood invented by some mischief maker. I never made any allusion to you or any member

"of your family in any speech at any time - except to Mr. J. J.

"Bouldin of his claims to my gratitude for his support of me against J. R. M.

"Epps &c: I then touched on the famous "Charlotte resolutions" P. Gorington

"of Chairmen, when your brother for the first time joined Col. Root, Col. M.

"Lucas Minton, Gideon Spencer, Col. J. Root &c and that party.

"I said that Col. J. W. Uggall was the only person present who had the sa-

"gacity to see, and the firmness to oppose (and to oppose himself to) these reso-

"lutions as tending to affect my election - for although Mr. J. J. Bouldin and

"Mr. Beverley neither did not want discommod to perceive the real tendency

"of the resolutions which was apparent to the meanest capacity; yet unhappily

"neither of them had the courage and firmness to come out against them Mr. J. J. B. laying all the blame upon your brother, & Beverley exonerating himself

"on account of the narrowness of his connection with me (the very notion that
 "should have inspired his tongue and moved his arm in my defence) that
 "as soon as I saw the Charlotte resolutions in George Town Columbia where
 "I had apartments, and where then Mr B. W. Leigh and L. W. Tazewell
 "were in a visit (and my guests) I told them that my election was lost, as was
 "the case, accordingly, that I told the same thing to Mr J. J. Boulton and
 "Mr Beverley &c. as soon as I got home, from that day I had ceased to keep
 "up any thing like an intimate acquaintance with the one and had given
 "into the other, the Cut direct, which had sent him off to the wilds of Missoury
 "of your brother I spoke as a man whom I loved: should continue to love
 "with all his faults, as I trusted and believed he did me with all mine;
 "which although not precisely of the same description as his, were in no wise
 "more venial"

Next Morning I called in at Mr Wm. Anderson's office, to see Mr
 "J. J. Boulton and make a true statement of what I had said in reference
 "to him * and his Sons and Sons-in-law; the day preceding.

You know the weather I was hard pressed for time and Mr J. Miller of
 "Peachwater was with me. I spoke of the general degeneracy and falling off
 "our male population, and in my zeal to make my case as strong as possible
 "I referred to our best specimens of the present day. I said that Old Capt. John
 "Morton, who died on the top of Cornhill Mountain returning from Honduras
 "soon after I came to Virginia from the North and who was my father's
 "adjoining neighbour and friend - although he had left a numerous and
 "respectable posterity had not Son or grand Son equal to himself. I made
 "the same remark in reference to the Son and grand Sons of your late
 "uncle Col. Wm. Minton, and said that all the the late Jas. Minton was
 "a most excellent and amiable Man, or one could say that in point of
 "energy, sagacity and efficient usefulness of Character, he was to compare
 "with his father - and that Jas. Minton had too much modesty to want to
 "to have preferred any such Claims"

I then referred to your own father and said that "he has not Son or grand
 "Son that could take the lead of him. I slightly alluded to your Brother's
 "infirmity to make the case bear on J. J. B. and then said I believe
 "which had been grossly perverted.

these very words. Certainly in substance the same words

"that as to my friend Henry Matthews although one of the kind
 "est and best men in the world, he would be the first to admit the higher
 "claims of his father on the Country, for general utility and energy of Character"
 "and then added sportively that I was too old to know much of his Sons
 "personally, but that I would venture to affirm that placed in their grand
 "father's shoes and having to keep of the Calf, whilst the wife milked the Cow
 "they never would have achieved what he had done in point of Charac
 "ter and fortune. That, now adays, the young people had too much done for
 "them, for them to exert themselves as their fathers and Grand fathers had
 "done" wishing to take the strongest cases I also mentioned Capt. Mat.
 "Price, whose Son although a very good fellow would never stand on his father's toes

I also noticed Weyall's tergiversation on the instructions of Dr. Billa
 "his final wife for Coffee - and I described him as a contemptible Weather Cook
 "I spoke in terms of the severest reprehension of your Brother's con
 "nexion by marriage; when he offered for the Senate and was opposed by Col.
 "Kice. I stated that on the night of that election, when he was so cruelly treated
 "by them [R. S. V. whom I did not name: particularly]

I saw your brother for the first time drunk that he got dead drunk at
 "Mr P. Randolph's, where he never was before; and had been a martyr to
 "that unhappy propensity ever since, but for which he might have been
 "and ought to have been and would have been the first man in the County and
 "district and (as far as I know) South of James River."

If to prefer your father to you both be injurious, then I have injured
 "you: but I was taking the strongest cases against myself, admitting
 "that the sons were good, very good but not equal to the old Stock
 "I must say good night for I am exhausted and you must be tired
 "of all this - Most truly yours

J. P. R.

If my object had been to bring forward ^{instances of} degeneracy, I should have noticed the
 "gigantic Sons of a certain great Orator, who have great bodies indeed
 "but very little minds. George Mason's Son a defaulter and embezzler
 "of the funds of the funds of the Bank of which he was President H. H. H. H.
 "Look also at the Chief Justice's Sons, who although very respectable, Mr Thomas Marshall
 "especially, yet some of them are as weak men as any in the state. Mr. Wickham
 "has not a Son equal to his father. Col. Jns. Taylor worse and worse, in short look at

the said delashingtons. Randolphs what wife degenerate

To Henry A. Watkins Esquire

Ward Fork

Randolph of Roanoke * or I believe since

The foregoing on 7 pages is in substance the testimony given by me before the General Court and referred to in the preceding deposition which I have annexed as part thereof

Henry A. Watkins

Charlotte County to, Wit;

The foregoing deposition of Henry A. Watkins commenced on this day the 8th day of November, and continued on this 9th day of Nov^r. 1838. was this day sworn to and subscribed before me, a Justice of the Peace for the County aforesaid, between the hours and at the place mentioned in the Caption hereto. Given under my hand this 9th day of November 1838.

Wyatt Carpenter

William M. Watkins sworn and examined.

Question by Defendant's Counsel. were you acquainted with the late John Randolph of Roanoke during the year 1821 and from that year down to his departure for Russia in 1830. If so state your impression of the condition of his mind during that period?

Answer. Yes, intimately. I lived in five or six miles of his residence, and visited him frequently during that time, during the whole of which time. I never saw him, but what I considered him perfectly sane, and competent to make a will, or do any other kind of business. I did, however, hear that in the year 1826 he was in a deranged state of mind, but did not see him during the excitement. He represented the district in which he lived generally between the years 1821 & 1830 and I invariably voted for him, which I would not have done had I considered him an insane man. I believe that no representative ever had more of the confidence of his constituents than Mr. R. enjoyed during the whole of that time. I consider his insanity occasional only and very far from being continued. The only times that I ever saw Mr. R. deranged were in the year 1820 and after his return from Russia; and I am sure had he been deranged at any other times, except in the year 1826, I should have heard of it.

Question by Deft's Counsel. What would you say was the state of Mr. Randolph's mind in 1821, down to the 5th of December of that year?

Answer. I have no doubt from a number of circumstances, his election in the spring of that year, my contiguity to him, and having not heard of his insanity or any intimation of it, that he was perfectly in his right mind. I never heard of any one's refusing to ^{record} a vote for him on the ground of his insanity.

Question by Deft's Counsel. What was Mr. R's state of mind after his return from Russia?

Answer. My testimony as to that and other matters is fully set forth in the testimony given by me before the General Court in a former controversy about Mr. Randolph's will - a copy of the testimony in which case is hereto annexed, being answer to the above question.

Question by Deft's Counsel. At what time during the year 1821 did you see Mr. Randolph?

Answer. I have no distinct recollection of ^{seeing} him during that year, but it is probable that I did, and if so, it must have been after his return from Congress in that year.

Question by Deft's Counsel. You have said that Mr. R. was in your opinion, deranged, in the year 1820 & 1822. Did no circumstances occur between those times, which would have induced you to suspect Mr. Randolph's insanity, had you known that, frequently before the year 1820, he had been in a state of absolute frenzy?

Answer. I did hear that once before the year 1820, he was deranged; but notwithstanding that fact, and even had I heard or known that he had been deranged often, than once before the year 1820, I should not have suspected, from any thing that came under my observation, [except on the occasion above referred to] that he was insane.

Question by Deft's Counsel. What was the state of Mr. R's feelings towards Judge Tucker, the elder, deceased? towards his children? and towards Judge Kinney Tucker before he went to Mississippi - during his stay there - and after his return to Virginia in 1832.

Answer. Towards Judge T. the elder his feelings were unkind and bitter, - charging him with having defrauded him of property to which he was entitled by inheritance from his father. Towards Judge Henry Tucker he frequently expressed kind sentiments, though he was sometimes harsh towards him. He was kind and affectionate to Dorothy Tucker before his removal to Mississippi, after that time and until his return to this State, he was unkind and harsh

after his return in 1832. I saw them but once together, and that was in a public Assembly, on which occasion he seemed to be kind and affectionate. And further this deponent saith not—

Wm. McWatkins

Charlotte County, Va.

The above deposition was subscribed and sworn to before me a Justice of the Peace for the County aforesaid this 9th day of November 1833. between the hours and at the place mentioned in the Caption to the first deposition.

Wyatt Cardwell

Testimony of William McWatkins Esq^r on the controversy before the General Court, about the Will of John Randolph dec^d of Roanoke.

Wm. McWatkins sworn. Declared whether he was in the company of Mr. Randolph during the year 1832, and what were his impressions as to the state of his mind at that period; says that he resides five or six ^{distance} miles from Mr. R's residence, where he has lived for many years. Witness had for a number of years previous to his death, visited him often, and been intimate with him. The witness here asked whether it would be proper for him to speak of the state of Mr. Randolph's mind previous to his removal to Rufin, and being informed that he was at liberty to use his own discretion in that respect— he continued: I consider Mr. Randolph subject to high excitements, and on one occasion, in 1820. I regarded him as a deranged person, on his return from the mission to Rufin, he arrived at our Court house on the 1st Monday in November 1831. Shortly after I heard of his arrival, I visited him in his room, where other persons were calling on him at the time. I then considered him highly excited, and at breakfast, he indulged in obscene conversations which excited in me some surprise. On that day he addressed the people of Charlotte, and from his speech I did not consider him deranged. It seemed to be his object to effect a reconciliation between himself and the late Judge Boutwell and their several friends. I visited him a few days after his arrival at his house. My opinion was, from what I observed on that occasion, that he was not only excited but deranged. I will mention some of my reasons for entertaining this opinion. Perhaps no man in this County owned a better set of Slaves than Mr. R— and he was kind and affectionate master. In his absence they had

behaved very well. Indeed they were remarkable for their good conduct; so much so, that I had never known but one instance in which a Slave belonging to him had been carried before a Magistrate. On the day of my visit he said he considered that his Slaves had behaved very badly. Stated that he had made a will setting them all at liberty on his death; but that their conduct had been so bad that he would revoke the will and send them to New Orleans and sell them. I have never heard him speak of his will before, and this was one fact that induced me to think he was not in his right mind. He also abused his overseers, and abused his friends, Judge Leigh and Mr. John Marshall of Charlotte in particular. He had recently gotten a costly Carpet, and he frequently asked Mr. Clay, one of his overseers, how many yards it would take to cover a certain room. But before Mr. C. could give him an answer, he would commence making the calculation himself, and break off without finishing it; and would draw Mr. C's attention from the computation to some other subject. I believe I told Mr. C. not to take any notice of what Mr. R. said or did on that day. These were the principal circumstances which induced me to believe that Mr. R. was deranged on that day. I repeated my visits from time to time and was of opinion that he was getting worse. Among the circumstances ^{which} created that opinion was his conduct towards Robert Carrington. In order to be understood with regard to this affair I must describe the position of Mr. Carrington's land. It was bounded on one side by the Staunton River, and on two sides by Mr. Randolph's estate; so that Mr. R. had but one way to get out of his estate with a view of shutting up Mr. C. Mr. R. purchased two tracts of land, one of Elisha Huntly and the other of J^r Robert Boutwell. Mr. Randolph said to me that he had bought up these tracts of land so as to shut up Mr. Carrington. I asked Mr. R. if he did not know that every man had a right of way to Market, to the Court house &c. He answered, "Oh! yes, but I shall get it into the Court of appeals, and that will answer my purpose." He also said that he had expected Mr. Bryan to visit him, and it was when he did not come for in that case there must have been a deal between Bryan and Mr. Carrington. There was another circumstance that confirmed my belief in his derangement. He had changed the servants of his house who were among the best in the County, and had taken free hands in their places to wait on him. There was one old servant, Elisha, who had always been a great favorite, and whom he used to call "old daddy" Elisha towards whom he had taken a dislike, and abused him with violent

would frequently in my hearing. He had put some of his field hands into the house in place of his former domestics.

Questioned whether the old servants were sent out to the field? Did not know, but believes that some of them were. Essex and Holly were great favorites. I do not ^{recollect} know that he ever abused or spoke ill of Holly, but he did of Essex. After this I do not recollect to have seen Suba or Johnny in the yard. They were among those who were turned out of the house. The purchase of the land to shut Carrington up was made probably about two months after his return home.

It at length became so painful to me to be with Mr. R. that I determined not to visit him again unless sent for. The next time that I saw him was about the middle of February or a little later. It was the coldest weather we had had during that winter, and nearly as cold as the coldest during the last season. He came to my house in his Carriage, drawn by two fine negroes who had been waggons. He brought with him, beef, fowls, rum, wine, tea (and I believe coffee) and loaf and brown sugar. I was surprised to see any one turn out ⁱⁿ such cold weather, but when he came into the house instead of warming himself, he asked for a brush, and went out, saying that some sugar had been spilt on the Carpet of the Carriage, and that if it was soiled he would send it to Robinson's and sell it at auction, observing that it was an English Carriage. He told me afterwards that he had got frost bitten in brushing out the Carriage. He said he had not intended to come to my house, but that he was going to Mr. Green's to acknowledge some debts and having ^{heard} that Mr. Green was sick, he had come to me to do it before me. I was also a justice of the peace Mr. Daniel was with him, and while he was certifying the debts, Mr. R. wrote several letters, and sent them off by a servant, telling him to be back by sunrise, as he intended to start at that time. I sat up with Mr. R. until 4 o'clock, in the morning. He would not go to bed, and talked constantly, and strange talk some of it was. Some part of his conversation was exceedingly vulgar, and it would be improper to repeat the language which he made use of. But in the course of the night he spoke as brilliantly as I have ever heard him. It was upon a point stated by himself that "the more free a government the more corrupt it is." He also wrote a very handsome letter to Mr. Mildred Carrington who had been involved in the same controversy with Robert Carrington. At about

4 o'clock. I told him ^{that} I must have some sleep, and retired leaving a servant in the room with him. When I awoke, the servant told me that Mr. R. had not been asleep during my absence. Perhaps I ought to say, that on this occasion he spoke often of his intercourse with women, and his passions as a man.

In the month of March 1832, he sent for me, informing that Judge Leigh and others were to dine with him. He heard at that time, changed his dinner hours to a very inconvenient time for the Country, and did not dine until candle light. I therefore did not go until I had got my dinner at home. I found Mr. R. on a sofa, and I not hearing voice, and he not speaking above a whisper, he told Judge Leigh to tell me ^{that} he was drunk - that he had had a row with Judge Leigh and others, and had sent for me to keep it up. Unless I am so directed by the Court, I don't wish to state what took place during that night. The effects of intoxication upon him were the same upon a sane man. His derangement was on this occasion as much worse than what I had formerly observed, as there is a difference between a sober and a drunken man. It was little better than madness.

Questioned whether Mr. R. was in the habit of drinking to intoxication? Answered. When I first visited him at his house after his arrival from Russia, he told me he had drunk very little for several months, but as he had not seen me for a long time, he would drink a glass or two with me. He then drank two glasses of wine. On another occasion I visited him in the afternoon, and thinking it was not proper to remain with him, I left him, and he drank one glass of wine at my departure. I ought also to remark that when he came to my house in February he had wine and rum with him, and he took a lump of sugar, and dipped it in rum, and sucked it, twice he did this, and that was all the drinking I saw him do while there.

Questioned. How many times did you go to Mr. R's house, before you came to visit him? Answered. I do not know but probably four or five times. At one time I went there and found the gate barred which was very unusual. It was between November and February that I ceased visiting him. I have no recollection how many times I visited him between November and his visit to me in February. But it became very painful to me to meet him, shortly after his return. By the Court. Was it about Christmas that you ceased your visits? Answered. I do not know, but think it was before. I have endeavored to recall my recollections; but I cannot be more particular in regard to dates than I have already stated. [Witness asked if there was any paper

in Court containing the contract between Randolph & Hurdley. Think that contract was in progress when he discontinued his visits. The Clerk of the Court stated that no such document was in Court.]

I assisted in certifying the deeds in February. They did not relate to the contract with Hurdley.

Questioned by the Court. I staid the night with him when I visited him in March, and let up with him until 4 o'clock in the morning. Judge Leigh was let off at an early hour. During the night I slept about two hours and when I awoke Mr. Randolph was in a garret room, an unusual place for him to be in. He had continued drinking during the night. At first, he said he was determined to keep up the frolic, and sent for several boxes of wine, and ice. But after one glass had been drunk he forgot it, and commenced drinking warm toddy, which he continued. We drank but one glass of wine. I understood that the drinking was commenced by him to drive the gout from his stomach - having had a violent attack of gout in the stomach a few days before. About the last of March or the first of April he visited my house. I was not at home when he came, but on coming in, I found him ⁱⁿ the bed in a room which I occupied. He seemed more like an idiot than a madman. He was very weak, and raised himself on the bed when he spoke to me. He said "Mr. Watkins you have not the faith. Mr. Watkins has the faith. Mr. Clepton has the faith, but I haven't the faith." Mr. Clepton was a Baptist Clergyman whom he had invited to his house shortly before, and he acceded to him. He said that when he sat out from home, Suba and Mr. Daniel were with him; but the Devil had beset them at Fernies Branch, that Daniel had gone to Cub Creek to be prayed for, and that Suba run back home. Suba was then at my house, in the yard. He said also that the Devil had beset ^{Wm. B.} ~~me~~ me, and he had gone ^{up} to Cub Creek to be prayed for, all his conversation at that time was of a similar character. Shortly after that period Mr. R. went to the Court-house to live, and I did not see him for some time. I frequently sent him things from my house and among others a fish, for which he wrote me a letter of thanks, in which he stated that he had been unable to write for some time, and that that was the first time he had ^{thought of} resumed his pen.

After he moved to the Court-house he appeared to be better, and was sometimes quite rational. I went to see him occasionally, but whenever

I perceived that he was excited, which frequently was the case, I left him. His state of mind was, I thought, improved; but I did not consider him altogether right. I did not see him drink at all while at the Court-house. I saw no signs of intemperance in his conduct at that time.

By Mr. Johnson. What effect did his derangement have upon his writing?

Answer. I did not see it at any time excepting when he wrote to Mr. Carrington, and the note he wrote to me. When he wrote to Mr. C. he wished me to copy the letter; but I refused as I did not wish to be involved in the quarrel. His first attempt was a failure. The letter was written with a pen, and the one he sent was as handsome a letter as he ever wrote. When I first visited him after his return from Russia, the change in his servants was not made. I cannot recollect when it was made. It was prior to his visit to my house in February, as he was then driven by the wagoner. I believe he ate some of the beef which ^{he} brought along with him at that time. The state of his bodily health from the time of his arrival in March was very bad. I attributed his excitability much to his want of health. I remarked that he had some favourite servants. One was one, and a little boy who was a great favourite, whom he used to employ in picking up leaves, mine for amusement than for use. When I was at his house in March, I saw him stick a fork into the little boys ear, so that the blood trickled down from the wound. Whether the fork went through or not, I cannot say. I suppose it was about nine o'clock when he dispatched the servant from my house with letters, and ordered him to return by sunrise the next morning. I do not know whether the letters which were sent went by ^{the} mail or not, nor whether it was a mail day. I do not recollect at what hour the mail closed. I will remark that when I first perceived that state of mind which I thought derangement, considering that it might be injurious to Mr. Randolph, I did not call it derangement for some time, until I found I was obliged to denominate it derangement in order to save his character, and I was blamed by Judge Leigh for doing so. When Mr. R. made the contract with Hurdley I said I would not have made that contract for all that Mr. R. was worth meaning that I would not purchase or sell of or from him. I did not consider him competent to make a contract from the time he returned from Russia to the time he went to live at the Court-house, which was the last of March or the first of April 1832. Part of the reasons for this opinion was that when he bought the lands from Hurdley & Woulton, he intended to shut Carrington

up, and that was an act which I considered beneath Mr. Randolph, and one which he never would have done, had he been in a sane state of mind. There had been ill will between the families of Randolph and Carrington for some time. Judge Carrington, the father of Robert, had purchased part of the estate of Mr. Randolph's father, and ill will had existed to the last hour. Do not think I ceased to visit Mr. Randolph as early as the first of December. I visited him four or five times and am certain that it was not as often as once a week.

By Mr. Starnes. At what time did you think it proper to characterize Mr. Randolph's conduct as derangement? Ans. I cannot recollect, but I remember that at the time of his visit to me in February, I exclaimed to Mr. Daniel, as he came into the house, "Poor Mr. Randolph! deranged." I cannot say when Mr. Leigh called me to account for having called him deranged. It was after my visit to Mr. R. when he was drunk. Judge Ship was the most intimate friend of Mr. Randolph, and Mr. Marshall was always intimate with him. I considered them as much ^{his} most intimate friends. I was not so much so. I am sure I had not his confidence; but as they lived farther off, I visited him often, and I was always fond of his society and conversation. I had visited him often, and righteously acts had passed between us for many years. Questioned as to Mr. Randolph's drinking. When I first visited him he drank two glasses of wine; and at another time he drank one. I think it was in March that he told me he had gotten frost bitten when he went to his carriage to brush out the sugar.

Questioned as to the land of Mr. Carrington. I believe that Mr. Randolph had endeavored to purchase his land of Mr. Carrington after the death of Old Judge Carrington. There were frequent bickerings between them. Mr. R. was very unforgiving in his temper. It was the principal fault in his character. Questioned by Mr. Starnes. Could you not suppose that this feeling towards Mr. Carrington induced him to purchase the land to injure him, instead of derangement? Ans. If that circumstance stood alone I might have supposed so, but taken with others it strengthens my opinion of Mr. R.'s derangement. I think it a dishonorable act, which in his right mind ^{Mr. R.} would not have done. I consider it dishonorable to do an act for the purpose of injuring another.

Questioned by Mr. Johnson. Did you often at that period hear Mr. R. speak on the subject of domestic slavery. When he visited me in February he introduced

the subject ^{defended} of Slavery, and quoted Chapter and verse in its support from the Bible. I do not think that from his return from Russia until his departure, I saw him at any time when he was entirely sound in his intellect. When he was living at the Court house I thought that at short intervals, he was sane; but it was for very short periods. I remained with him, and he was liable to constant excitement. I was present when he addressed the people of Charlotte at the Comptons, and offered resolutions on the subject of the Proclamation, and I thought ^{that} he was deranged then. I might be singular in my opinion. It ought to be observed that I was a subject of his abuse on that occasion, and perhaps it had an undue weight upon my mind. He presented resolutions to the meeting, and I do not believe there was a single observation in his speech which applied to the resolutions, he discussed the Missouri question - the yagor question and many others of the kind, but did not refer to the resolutions which he had submitted. I did not consider Mr. R.'s remarks in February on the subject of Slavery, if taken separate, as an indication of derangement. It is often the case that men whose minds are deranged make judicious and sensible remarks. I never heard Mr. R. more brilliant or more forcible than in discussing the proposition which he stated himself that "the more free a government, the more corrupt." When I saw him in 1820, it was at my own house, and I was convinced that he was deranged, and not only myself, but Mr. Watkins was struck with the appearance of a deranged state of his intellect. It was on his return from Congress that he called at my house. I never saw him at any other time previous to his migration to Russia when I thought him deranged. But I have heard that he was in that condition in 1826, as also in 1818 or 19. On one occasion about the latter date ^{he} fell out with one of his overseers, and went for me to meet him and some other gentlemen at his Lower Quarter. I went to meet him. The cause of his displeasure at the overseer was that he had heard that he was the father of some mulatto children. I saw no derangement in his conduct then, although much excited.

In regard to the land which Mr. R. purchased to shut up Mr. Carrington, he gave an extraordinary price for one of the pieces, which he had of Dr. Bouldin. I thought he also gave H. Combs more than the value of the land, but others thought differently. He made other purchases of lands about that time. I could not see the reason for it, and thought it a foolish expenditure.

Questioned by Mr. Jones. When you first saw Mr. Randolph, to what did you attribute his conduct? Ans. I attributed it then to high excitement. But the first time I saw him after his arrival at home, I changed any opinion. But still kept my opinion to myself to avoid injuring him. I did not see Mr. Randolph drunk, but on one

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occasion, when at my house he did not drink, with the exception of sucking the
sugar dipped in rum, twice only when I came down in the morning the servant
told me that Mr. R. had drunk nothing in my absence. When I saw him in
March he did not drink wine, but hot toddy, and it was said by someone that he
took it to drive the gut out of his stomach.

In 1820, when I saw him, as I thought, deranged, it was in the Spring, and he
was on his way home from Congress. I visited him frequently afterwards, but
I have no recollection of seeing him again in that condition. I do not think his
memory ever misgave him.

By Mr. Johnson. Did you ever discover in him any incapacity to decide on his
rights of property? Ans. I do not know that any question ever occurred to enable
me to judge. I have heard of a law in relation to an overseer of his, in which
he was promoted. [The witness said as he knew nothing of this case except by
hearsay, although the facts were matter of notoriety, he could not state them on
his knowledge.] I took the acknowledgments of the deeds, because, I thought if
any controversy should arise as to the acknowledgments, I should be able to state
the circumstances. I did not think it quite correct to do so: but I thought it would
do no injury to any one, and affect no one's rights, to take the acknowledgments.

Had I believed it could have done any injury to any one, I should not have done it.
By Mr. Robertson. Did you ever hear Mr. R. use obscene language before
the times you have mentioned? Ans. No. I never heard him use such language
previous to his return from Russia. He was generally very chaste and delicate
in his language.

By Mr. Taylor. Did you observe that Mr. Randolph's mind was more dis-
ordered on some subjects than others? Ans. I did not, except that when he was
at my house in March, religion was the principal subject on which he spoke.
He seemed then ^{to be} very much afraid of the Devil. He abused his servants very
much, and seemed much excited in relation to them - but not more deranged
on that subject than on others.

By Mr. Robertson. At any time between the period of Mr. R.'s return and
the month of March, did you think him capable of disposing of his property?
Ans. I did not think he could manage his property discreetly during that
time. Question. Did you, at any other time than that you have mentioned
hear him say that he intended to liberate his servants, but that they had
behaved so badly, he would send them to New Orleans? Ans. Yes, at one

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time. I think it must have been at his house that I heard it.

Questioned by the Court. When Judge Leigh remonstrated with you for speaking
of Mr. Randolph's conduct as the effect of derangement, upon what ground did
he object to your speaking? did he disagree with you in opinion?

Ans. He did not disagree with me as to the fact of Mr. R.'s derangement; but ob-
jected to its being stated on the supposition that it would be injurious to Mr. R. I
knew that Mr. R. wished to be a candidate for the Legislature at the election of
1832. Many of his friends were in favor of his being elected to the Legislature, but
I opposed it.

By Mr. Johnson. Do you know that Mr. Randolph was in the habit of taking
opium? Ans. I did not see him take opium at any time. When I saw him at his
house after his return from Russia he had a small phial which contained a com-
potion of opium, the name of which I did not know, but which I have since been in-
formed was Morphine. The phial was labeled "Opium", and Mr. R. told me he
kept it in case he should do any thing ^{unusual} ~~unpleasant~~ ^{unusual} ~~unpleasant~~ in which event he would
use it to put an end to his existence. I never saw him take any of it. He told me
that a small number of drops would do. I think this was on his first visit; but
cannot be certain.

By Mr. Standard. According to your observation of the process of his memory,
should you suppose that if he had made a disposition of his property when he was
perfectly sane, he would so far forget the transaction as to make declarations to
the contrary of that disposition; or do you think ~~that~~ he would forget it at any
time? Answer. I do not think he would. I do not mean to say that he would
not do things which he would forget; but that in a state of insanity, he would
not forget what he had done when he was sane.

By the Court. Do you think that when in a sane state of mind he would
forget what he had done when insane? Answer. I would not state positively;
but it is my opinion that he would.

The above written on three sheets is the testimony referred to in my
answer to the 3^d question of defendant's Counsel in the foregoing deposition.

Wm. M. Watkins

Charlotte County, Va. 11th day of Nov. 1838.

The foregoing subscribed and sworn to before me a Justice of the
Peace for the County aforesaid this 2^d day of November 1838.

Wm. Cardwell

Winslow Robinson sworn and examined.

Question by the defendant's Counsel.

Had you any acquaintance with Mr. Randolph in the year 1821, and from what time to the year 1832? and if so, state what was his condition and state of mind.

Answer. My acquaintance with Mr. Randolph was very limited, not exceeding that enjoyed by the great body of his constituents. I saw him when he appeared in public only.

I recollect distinctly that I saw him several times at the Courthouse in the year 1821. It was in February of that year that I was married, and I met with Mr. R. a short time afterwards, he had heard of my marriage, and took occasion to say some kind things of Major Wescott whose daughter I had married. It is this circumstance that fixes the date in my mind. I recollect that on that occasion he appeared to be calm and free from excitement and I considered him of perfectly sound mind. I saw him several times afterwards during that year, and never remarked any want of soundness of mind; indeed I may say in general that I never saw him at any time from the first time I ever saw him which I think was in the year 1821 until his death, that I did not consider him of sound mind, except once which was at Prince Edward Courthouse shortly after his return from his mission to Russia. on his return from Russia he arrived at our Court House November Court day 1831, and made a short speech to the people which I heard. he then appeared calm, his speech was highly conciliatory, and the people appeared to be pleased with it. It was afterwards and I think the same month I saw him at Prince Edward Courthouse, he was speaking when I reached the Courthouse, and I left there before he had concluded. of course I heard only a part of his speech. he seemed to have lost his good humors, and was very bitter in his denunciations of many persons, and of classes of persons in the district. I then thought that he was either deranged, or labouring with the excitement of artificial stimulus.

Question by Counsel for Deft. how late in the year 1821, do you think it was you had the conversation with Mr. R.?

Answer. I cannot recollect with any accuracy, tho' I remember it was warm weather, and I think it was in the summer or spring.

By the defendant's Counsel. State any matter coming within your knowledge

in regard to any of the testamentary papers of Mr. R.

Answer. My deposition given before the general Court and which is hereto annexed, contains all that I know on that subject, and which I now refer to as my answer to the question.

Question by Plff's Counsel. From your habits of intercourse with Mr. Randolph might he not have been labouring under derangement frequently between the year 1820 & 1832, and you not have known it?

Answer. Yes, certainly. I only saw him in public.

Question by Plff's Counsel. Have you not heard that frequently, between the periods above alluded to, Mr. Randolph was labouring under partial delusion exhibiting itself in various shapes?

Answer. I think it was about the year 1826, that he took the big side from Washington. I did not see him, but understood he was labouring under great excitement. And further this deponent saith not.

(Winslow Robinson)

Charlotte County, to wit:

The foregoing deposition of Winslow Robinson, was duly taken, subscribed and sworn to before me, a Justice of the Peace of the said County, between the hours of one o'clock A.M. and 6 o'clock P.M. on this 9th day of November 1838, at the Tavern of Weyatt Cardwell in the County of Charlotte. Given under my hand this 9th day of November 1838.

(Weyatt Cardwell)

Copy of the testimony of Winslow Robinson given before the General Court [Winslow Robinson sworn on behalf of the defendant Meade.]

Winslow Robinson sworn. Shown the cancelled will envelope, and Codicil of 1821 and the Codicil of 1826, and questioned whether those papers had been left in his possession, said that said papers were deposited with him as the Clerk of Charlotte County, and transmitted by him to this Court. Witness produced a memorandum of the receipt of the papers, which he now files. Judge Leigh deposited with witness the former will, on the 9th of July 1835. He left the will of 1832, with me, on the same day, when he left the last will of 1832 with me, he requested me to assist in examining Mr. Randolph's papers. The old will was found in the paper now before the Court in a portable writing desk of Mr. R. The Codicil of 1826 was left with me by Mr. Weyatt Cardwell on

the 1st of July 1834. Mr. G. said it came from Judge Beverly Tucker. The Codicil of 1828 was left with me by Judge Beverly Tucker on the 14th of July 1833. The Codicil of 1831, was never deposited in my hands. Mr. Cardwell, Judge Beverly Tucker and Judge Leigh were with me when Mr. Randolph's papers were examined. There were many packages, and the papers were very numerous.

Question by the Court, The will found in the writing desk was the will of 1821, which was found in an envelope described by Mr. Alexander as the one in which he enclosed the paper received from Mr. Randolph to Mr. Leigh. Witness attended himself and delivered these papers to the Clerk of this Court. They had never been out of witness's possession, after being deposited with him by Mr. Stanard. Can you say more distinctly what this writing desk was? Had it been carried to Philadelphia by Mr. Randolph? Ans. I do not know. There was a number of boxes and other packages sufficient to fill a cart. I understood from Mr. Cardwell that they were brought back from Philadelphia, and that the writing desk had been brought back with them. I was invited by Judge Leigh to be present while they were examined and witnessed the opening of all of them with the exception of one, the key of which could not be found, and which was forced open while I was at my dinner. The will was found in a portable writing desk, or case, covered with leather, which was snugly locked up. All the boxes were carefully searched, and every paper examined. The examination took place on the 9th of July 1833.

Windsor Robinson as examiner asked if there is in his custody as Clerk of Charlotte a re-conveyance of Slaves from Judge Beverly Tucker to Mr. Randolph? Answer. I think there is none.

[Memorandum referred to in foregoing deposition]

The will of John Randolph of Roanoke.

deposited in the Clerk's office Tuesday the 9th day of July 1833 by Judge William Leigh.

The old conveyance will deposited by Judge Leigh same day.

The Codicil of 1828 deposited in Office 14th July 1833 by Judge Beverly Tucker
Codicil of 31 Jan 1826 deposited by Mr. Wyath Cardwell July 4th 1834.

The above is the testimony referred to in my answer to the 3rd question

of defendant's Counsel on the foregoing deposition

Charlotte County to wit.

The above subscribed and sworn to before me this 9th November 1835.

Windsor Robinson

Wyath Cardwell S.D.

Nov: 10. 1835. The examination of witnesses resumed
Capt. Wm. Smith sworn and examined.

Question by Defendant's Counsel. Were you acquainted with the late John Randolph of Roanoke, during the year 1821, and from that year down to his retirement from Congress in 1829? if so, state your impressions of the state of his mind during the whole of that period, and your opportunities of forming an opinion.

Answer. I was acquainted with Mr. R. from my boyhood, but not particularly acquainted with him until the year 1817, when I came to Charlotte Courthouse to live. I kept tavern at the Courthouse, and he was in the habit of staying with me until he went to Russia; after his return he put up at my house some five or six different times. Between 1820 & 1829, when he was at the Courthouse, he always staid at my house, and I saw him frequently every year, that he was in the County during that period. Until after his return from Russia I saw nothing in his conduct which induced me to believe ^{that} he was insane; during the whole of the period ~~from~~ ^{between} 1820 & 1829 he was the most clear-headed and sensible man I ever saw or knew, and did nothing that came to my knowledge, indicating insanity.

Question by Plff's Counsel. Were you at all intimate with Mr. R. or were you ever at his house?

Answer. I was never at Mr. R.'s house but once while he was at home. Whenever Mr. R. was at my house I had frequent conversations with him; - was generally invited to his room, where his communications with me, upon general topics, were free and familiar; though I did not regard myself as an intimate or confidential friend of his. My intercourse with him was confined to his visits at my house and his appearance on public occasions.

Question by Plff's Counsel. Did not Mr. Randolph, in the year 1821 or 22 or 23, conduct himself, at the Courthouse, in such a manner as to induce many persons to give it as their opinion that he was deranged?

Answer. Between 1822 and 1829 [I think it was in the year 1828] on Court day Mr. Randolph got mad with his servant Tuba and whipped him through

the street, which caused some persons to say they believed he had gone mad. I did not see any reason for that opinion. Mr. R. had been sick and had ordered his boy Suba to take charge of some bread that was baked at home, and have it in readiness for him to eat at dinner, as he could eat no other sort when he came for the bread. Suba was absent at another dinner; he went out to look for Suba and found him, and whipped him back to my house.

Question by Defendant's Counsel. What was the state of Mr. R.'s mind, according to your opinion, when you saw him in the fall and winter of 1821, after his return from Russia?

Answer. At November Court in 1821, he made a public speech, and the night after that he staid at my house, and I regarded him as a decided madman. I was up with him during nearly the whole night. He was at my house several times after the time above mentioned, and his delirium was the same; and further this deponent saith not.

(Alm: Smith)

Charlotte County, to wit;

The foregoing deposition of Alm: Smith was this day duly taken, subscribed and sworn to before me a Justice of the Peace in the County aforesaid, between the hours and at the place mentioned in the caption to the above depositions. Given under my hand this 10th day of Nov: 1825.

(Allyatt Cardwell)

John Marshall sworn and examined.

Question by Defendant's Counsel. Were you acquainted with the late John Randolph of Roanoke during the year 1821, and from that year down to his retirement from Congress in 1829? if so, state your impressions as to the state of his mind during the whole of that period, and your opportunities of forming an opinion.

Answer. I was well acquainted with Mr. Randolph from a period long anterior to 1821 down to his death; and from 1815 frequently staid at his house at night, when no other white person but him and myself were there, and have often slept in the same room with him. I have no doubt I saw him in every recess of Congress from 1815 till he finally left Congress in 1829, except when he went to Europe in the recess. I attended Charlotte Court during the whole period, and Prince Edward's Court until about the year 1825. I heard nearly all of the addresses delivered by him, at the Court houses of those counties, to the people, and saw him a few days after the serious illness spoken off by

Watkins, Robert Carrington and others in 1828. I was with him at his own house, and conversed with him a good deal at that time: the date I do not recollect, except as it is stated by others, to be in 1828. I recollect the weather was mild when I saw him, and there was no fire in the room. I recollect seeing him and conversing with him after he determined to go to Europe the first time; I suppose it was just before he set out for Congress in the autumn of 1821. The conversation related to his business when absent. From 1820 till he finally returned from Congress in 1829, I never saw him when his mind was, in my opinion, unsound. In 1818, I was much with Mr. R. He was then greatly excited, but I never saw him as brilliant. His mind was clear and his memory good; and although my attention was called to the state of his mind, from the excitement that was obvious to me, and from the many things rumoured about him, it so happened, that whenever I saw him during that year, I could not detect the slightest delusion or folly about him. After this was off, he talked on the subject of religion, and he had prayers in his family frequently when I was there. He conducted the prayers and reading with great propriety whenever I was present. I heard the state of his mind spoken of when he first returned home after Deaton's death; and also of his trip from Washington to Charlotte Court house and back to Richmond in 1826. What I heard of him at these various times, I am sure would have called my attention to any conversation or action of his affording evidence of insanity, but nothing during the period, stated in the question, occurred, that came under my observation, that made me doubt the soundness of his mind whenever I saw him. If I am to state what my impression is as to the state of his mind during the above period, both from my observations and reports and rumors, I should say that I am under the impression that his mind sometimes lost its balance, probably that was the case in 1818-1819, about the time of Deaton's death, and in 1826.

Question by Deft's Counsel. You mention a conversation with Mr. R. on business, which took place you think in the fall 1821. Was Mr. R. perfectly calm on that occasion, and was his conversation rational and pertinent?

Ans. Yes, entirely so; but I cannot recollect dates. From the nature of the conversation I learned that he had determined to go to Europe. It could not have been on the eve of his departure for Congress in 1823 or 1825; the conversation recollects concerns are of that. The object of the conversation was to make provision for the management of his business during his absence.

Question by Deft's Counsel. You say you cannot recollect dates with precision.

do you recollect the visit of Richard Randolph junior, to Mr. R. (?) If so state your impression of the state of Mr. R.'s mind at that particular time.
 Answer. I saw Mr. Richard Randolph when he was in Charlotte, it was the first time I had ever seen him, and I have no doubt I saw J. Randolph in the time Richard Randolph was in the County, but I cannot recollect the date. I have stated above that I never saw Mr. R.'s mind deranged in the period spoken of, from 1821 till he finally left Congress in 1829. I do not recollect the year I saw Richard Randolph in Charlotte. I know it was before 1822, for in that year I met with him in Orange County & know him by Deft's Counsel. What was Mr. R.'s state of mind after his return from Russia and particularly during the winter of 1821-22?

Answer. In that and all other matters relating to Mr. R.'s will, or state of his mind from the time he returned from Russia until his death, I gave testimony before the General Court in a former controversy about Mr. Randolph's will, a copy of which I have examined, and it is hereby annexed as my answer to the above question. The facts set forth I recollect to be true, at this time, except the dates: - some of the dates, at the time I gave my testimony were stated from the original papers then before me - letters &c. and my own memoranda upon them. I have no doubt they were correctly stated. The original papers were filed in Court, office copies of them are here, and I have no doubt they are correct.

J. Marshall

Charlotte County, to wit:

The foregoing deposition of John Marshall, was this day duly taken, subscribed and sworn before me, a Justice of the peace for the County aforesaid, between the hours and at the place mentioned in the caption to the above depositions. Given under my hand this 10th day of Nov^r 1838.

W. J. Cardwell

Testimony of John Marshall before the General Court, in a controversy about the will of John Randolph of Roanoke.

John Marshall sworn. Questioned as to the state of Mr. Randolph's mind after his return from Russia, and at every period up to the time of his leaving Charlotte County for Philadelphia.

I saw Mr. Randolph the day on which he arrived at Charlotte Court House after his return from Russia. It was November Court day in 1821.

I was with him only a few moments previous to his speech to the people. I was with him again after he returned from the crowd. He announced that he would be ill to receive company. He had told me that if he did not go home to his own house that night, he would go to my house in the evening. I went to his room in the tavern in the evening, with the expectation that he would go to my house with me. He kept me sometimes under that expectation but finally gave it up, and I staid with him until bed time. He was in a restless state of mind, and appeared to be in very bad health. During the evening he got hold of a bundle of papers, consisting of bits of articles purchased in England, and in searching among them, seemed much perplexed. He would search to ascertain if a certain paper was there, and having found it, would return it to the bundle, and search for another, and then search again to ascertain whether he had returned the one he had taken out first. He exhibited a great deal of confusion in managing the papers. He told me during the evening, that John (his servant) had been not only a servant to him, but a friend - that he had rendered him services which no other man could have rendered - that he could find any thing among his baggage that he wanted, and could do without sleep longer than any person he ever knew. He used some strong language if he ever forgot him. He seemed to regret that he had kept John from his family by not going home that night. He talked of going home the next morning. He remained at the Court house till late the next day. I do not recollect that I saw him set out. He had made me promise to visit him at his house as soon as I could get away from the Court. The day after the Court adjourned, in the course of the week I went up to visit him. Judge Leigh and Mr. St. George Costler were with him. I found him with his company, dressed very neatly, and his manner was stately. He gave me a cordial reception. John was there in attendance upon him. There was an old negro man named Essex who according to his own and Mr. R.'s account was upwards of 80 years old. He was the most gentle servant I ever saw, and Mr. Randolph used to call ^{him} familiarly daddy Essex; and although the relations of master & servant were kept up between them, it was done with the most cordiality and kindness in the manner of each. I had ever witnessed between master & slave. It was the custom of Essex when leaving his master's service at night, to give him the usual salutation, and wish him good repose, and this civility was retained by the master. I recollect that some three or four years previous to 1831, on visiting Mr. Randolph I found him much distressed and he stated

to me that he had whipped Efeva, and it had broken his heart. He said it did not hurt him worse than he could have done with a broom straw. He said that Efeva was not without his fault, and that he would get spirituous liquors by means which could not be allowed, and that in his (Mr. R.) presence he had done this. I think he said his negroes knew that he (Mr. R.) knew that Efeva had got the liquor, and that he had been forced to furnish him.

During my stay Hetty, Efeva's wife, came to Mr. Randolph, and he made inquiry after her husband, and sent him toddy. Before I left there either that night or the next morning, Efeva made his appearance again as usual, and the same exchange of salutations took place between him and his master as before. Excepting that instance, and some roughness towards him in his health, I had never known Mr. R. to treat Efeva with the slightest harshness until the day on which I visited Mr. R. in November 1831. Shortly after my arrival on that day Efeva made his appearance, when Mr. R. immediately flew into a passion, and cursed and abused him violently, ordering him off, and telling John not to let him come where he (Mr. R.) was, as the very sight of him put him into a passion. I did not know the cause of this conduct.

I think we dined by candle light on that occasion. About sunset our horses were brought, and we were requested by Mr. R. to ride before dinner. He had been informally accustomed to dine at the usual hour in the country, 2 or 3 o'clock. While Mr. R. was riding there was something singular in his appearance. His eyes had a striking and peculiar expression, indicative of pain about the head. He rode as if he did not choose to ride by the side of any one, and had but little to say for a considerable distance. When he did begin to talk he seemed dejected with every thing he saw. When we got near the Corn house and Stable at Ferry Quarter, he met one of his overseers whom he abused. Mr. Coalter's horse escaped from him near the same place, and that seemed to fret Mr. R. very much. After dinner in the night, Mr. Coalter wrote, which Mr. R. dictated, a letter intended to be addressed to Mr. Marx of London. I do not know that the letter was addressed to him. It gave an account of all Mr. R. had seen since he arrived in America, the tavern accommodations &c. on the road. Next morning he sent for me to go into his room, and asked me if I observed ^{how} "his" Judge Leigh looked when he was dictating the letter to Mr. Coalter. He said also that he did not mean to

and the letter. He spoke then of a filly of his which I had purchased of Judge Leigh shortly after Mr. R. left the country for Russia. Mr. R. had left, as I had been informed by Judge Leigh, a list of such mares and fillies as he would sell, and their prices which list was made out in consequence of Mr. R.'s proposition to purchase some of them. Mr. R. did not purchase any of them, and I bought one from Judge Leigh at the price fixed in the list. Mr. Randolph said that morning that he was very much hurt that Leigh should think he would take money of me for such a filly, and asked me to accept the money which I had given. I declined the offer, observing that the animal was paid for, and I preferred letting the affair remain as it was. I do not know that any thing further occurred at that time that could elucidate the state of Mr. Randolph's mind. I did not then hear him say any thing against any of his slaves besides Efeva. I saw him no more until late in the month of November. During the week of the Prince Edward Count which did on the 5th Monday of November, I received a note from him which I will read. The note, bearing date 24th November 1831, was thus read and fixed.

The Monday following was Halifax Court day, and I had intended to go up to Halifax to a dinner party on Saturday. On my way I called at Mr. Randolph's on Friday, the day after receiving the note. I had determined not to stay at Mr. R.'s knowing his dinner hour, but he insisted on my remaining to dinner, and to have my horse fed, saying that he would have ^{ready} dinner by 1 o'clock and I would not be detained longer than at a tavern. He then insisted that I should ride with him, and one of his horses was brought for me. We rode to a place called Middle Quarter. After we had got near the negro house we met a negro, and he asked him his name. I think the negro had forgotten it, but it was made out before we left him. He told me he intended to give all his negroes Eastern or Turkish names. I believe the name of the negro we met was Tugentha. We came to another negro, and Mr. Randolph abused him. He said the negro had furniture in his house good enough for any white ^{man}, and that he would drive him out, said he had long and short good enough for any gentleman's parlour, and that he had, or would take them from him. Mr. R. kept me much later than the hour he had fixed for dinner. When we returned Mr. Robert Cammings was there; and Mr. R. detained me for one thing and another till it was too late to go. He insisted that I should stay the night and order breakfast at my own house. I remained and about 3 o'clock he appeared to be sleepy, and I urged him to go to bed, as he said he had had no sleep for a long time. He did so,

and I took leave of him as I did not expect to see him in the morning. The next morning while I was eating my breakfast in a room next to his, I heard him in his Chamber, and was asked to go in as soon as I had done I went into his Chamber - he said he had had a good night's sleep, and one of the most agreeable dreams he ever had in his life - and that he would give his whole Crop of tobacco to have his dream true. He seemed very weak and relaxed. He told me when I took leave of him that he should never see me again. I asked him why. He said that Leigh would tell me all. On the day previous after our ride, just before we had reached the house, I mentioned to him that I had received his note proposing to cancel the purchase of the filly. I stated to him that he was mistaken in supposing she was sold at a subsequent sale, after he had fixed the price, and that she was purchased at the same sale, and shortly after he left the country. At first he said he was afraid it had hurt my feelings. I told him that it had not. He then offered to exchange with me, and give me some other of his fillys. He treated the subject with great delicacy, and seemed to think it had wounded my feelings. I next heard of him by a note ^{which} I received at Halifax Courthouse, during the week after the fourth Monday in November. The note is merely a request that I would call at his house on my return from Halifax Court. The note, dated Nov. 28th 1831 was then read and filed.

On my return during the same week I called at his house. When I arrived Judge Leigh was with him, a great many papers were spread on the floor, and John was taking them up. The rattling of the papers seemed to disturb him much, and he called John, and told him to make haste and be done with it. He seemed to be very nervous. I believe I left him on that evening. He did not mention any business to me while I remained. I saw him next on the December Court day at Charlotte Court House. He came to my house in the afternoon. I saw him and he wished his Dasher Street estate set up at auction. This request was made at my house. It was late in the day, and the people were leaving the Courthouse. He proposed to set up the land in parcels, reserving to himself a bid. The land could be divided into three unequal portions by a water course and a river. Mr. R. remained at my house, and I went to set up the estate for sale; but no one offered his price, and no sale was made. He staid at my house until the next afternoon, he occupied himself the next day, sitting up in his bed, and answering letters that had been directed to him. He had advertised his horses for sale, and directed that letters in regard to them should be addressed to me.

I know not what to say to the gentlemen who write me. He was very particular to get me to read his letters aloud to him - and said he could ^{not} trust himself to send a letter without having some one to read them. In one of them I missed a word. He asked me if that ^{word} was there. I corrected myself, and told him it was not. He said that if that word had been there, he should be satisfied of a thing in regard to which he had long been in doubt. He spoke of the clearness of his head, and said that it had been remarkable for its clearness, and that when that was gone, some consequences would follow, which I forget.

By Mr. Taylor. Had he given you any previous information that he was going to advertise to persons to correspond with you on the sale of his horses?

Ans. No. He had advertised them previous to his arrival at the Court house. But when he came first to the Court house, he stated to me that he had done so, and that he intended to go to Florida. He said it would give me little trouble as he referred purchasers to Mr. Craddock, his overseer. I believe that he had abandoned the project of going to Florida.

After he left my house I received a letter from him dated the 17th of December. I had written to Mr. R. between his visit to my house and the receipt of this letter. He had during that period directed his servants to inquire for a penknife which he supposed he had left in the Chamber, when he went home. The letter of Dec. 17th was then read and placed on fire.

The day after this letter was received, I went to Mr. R. At first he received me with cordiality, and seemed to be affected. He said to me, "Are you angry with me?" ^{Sanctimonious} ^{swagmole}. ^{So Mr. Marshall angry with me?} I said no. He then turned from me as if to conceal his feelings, and took up the letter I had written him a day or two before, and showed it to me, saying, "you see the seal has not been broken." When he threw it directly into the fire. "You see," said he, "that I am a man of honour," and remarked that he supposed it was a very angry letter. I said it was not so, but on the contrary, it was a very kind letter. He said he was sorry, if it was a kind letter, that he had burnt it, and asked me to repeat what was in it. I did ~~so~~ as well as I could, and he regretted that he had not seen it. That day Mr. R. was chiefly employed in writing letters, and I wrote several notes which he dictated to me. He said he could dictate to many writers at the same time. I observed that he was very abusive to his servants - and he had then got out of temper with Johnny.

By Mr. Taylor. please describe the abuse. Ans. He had a yellow boy whom he had just named Syphax, after his father's favourite servant. -

Mr. R. stated to me that this boy ^{had} lived at his Lower Quarters, where he had no companions; out of humanity he had taken him up to the house, and permitted him to sleep by his fire, and lie on the Carpet - that the boy had arisen early that morning and carried out his blankets. When Mr. R. perceived a large quantity of water on the spot where he had slept. He asked him what it was, and the boy said the purpries had done it. Mr. R. said it could not be so. Gascoigne or Janus could not have made so much. He made the boy bring back ^{his} blankets which were wet, and on examining his clothes they were found to be wet also. Mr. R. said that he had immediately named him Pif-a-bee, and swore he should never go by any other name. He threatened the negroes with the consequences if they ever called the boy by any other name. When I was there he directed Queen, who was in the room, to call the boy. She called him by the name of Siphax. Mr. R. abused her for it, and bade her call the name of Pif-a-bee aloud. She did so, and the name descending from the Chamber to the stables, when the boy shortly after made his appearance. I suppose it was the habit of the negroes, when one was called, to repeat the name until the person wanted came. I think this scene took place on the 15th Dec; but if I was there in the early part of January it was probably at that time. I am not certain. Mr. Randolph writes to General Jackson when I was with him on the 18th December. He read the letter to me, and the style seemed to be clear and proper. The notes which I wrote at his dictation were on business. I believe the letter to General Jackson was sent. I think he sent over two messengers to the Post Office on that day - that he sent part of his letters - and went on writing others, which he dispatched by another messenger. I do not recollect any further particulars of my visit, but that he was very much irritated by the servants who came about him. He said that he would rather have two hundred goats than two hundred Negroes. I laughed at the remark. "Why do you laugh?" said he, goats do not smelt as bad as negroes, and they are not as lecherous. They will destroy your trees & trees - but the negroes will steal all your fruit when it is getting ripe."

Questioned by the Court. I said I did not recollect whether I visited Mr. R. in the early part of January; but that if I did, the scene in relation to the yellow boy might have then taken place. I went to Lynchburg in January. I cannot say whether I visited him between the 18th December and the 10th January, but should suppose I had, if I did not go to Lynchburg before the

10th. I visited him frequently, although at that time it was often painful for me to be with him. I recollect that a letter was left at my house by Judge Leigh when on his way to the General Court, when I was at Campbell Court, which sat the 2nd Monday in December. The letter of Judge Leigh was on the subject of the filly ^{sent to Mr. R. at least twice after I received it, previous to his letter of the 17th December with Mr. R. who pointed out for the first time on the subject of the filly.} When I mentioned it to him he said in substance that he had done with that subject forever.

By Mr. Jones. Was the letter of Judge Leigh as to the filly written at the request of Mr. R.? Ans. When I went to Halifax November Court I carried a letter from Mr. R. to Judge Leigh. And I understood from both of them that Mr. R. had in that note requested Judge Leigh to intercede in order to get back the filly. I do not know what Mr. R. supposed had given me offence. He refused to mention, if it was not the affair of the penknife. Another reason for supposing I had ^{been} offended with him for a different cause had been mentioned as I will explain hereafter. I told him in relation to that, that I had often left papers, wrappers &c. at his house, and made enquiries for them without supposing I offered any offence. "Ah," said he, that would do for a gentleman, but not for a lady." He told me the object he had in getting back the filly was to give her to me in his will. He said he intended to mention me in his will, and it would be as well to give me the filly as any thing else. I do not know that I received any notes from him in January; I received a letter dated the 2nd January on business. He was in a very bad state of health about that period and complained of me when I visited him that ^{for} I did not come oftener. He said a married man was not fit to be a friend - that he was not able to discharge the duties of one - and that I could not come and stay with him, as his health required.

When I was at his house on the 18th December he sent a servant on horseback and told him to say to a gentleman that he saw no company, and that both Judge Leigh and myself had been directed not to visit him. He told the servant not to let it be known that I was there, and that all persons should be excluded. Several times when I went there I found the gates locked. Mr. R. had a cow with a Cuck. I do not remember when that happened - but recollect that once when I was there, he had a Cuck come into the room and drop his mutton chops by the fire. During the process she let a piece of the meat fall when he jumped at her with a fork, and probably a knife in his hands, and stabbed at her several times. I do not know that he hurt her.

62. on the 24th January when I was there, he was engaged in writing a contract between Mr. Hawley and himself. That was the time I think, when I spoke to him of the Misrepresentation of his Speech at the Court-house in November. I do not recollect what occurred on that occasion, with the exception of his writing a letter to Henry A. Watkins, and the contract between himself and his overseer (Mr. Hawley) - I was there several times during the month of February. He was generally in a rage with his negroes. Any negro who made his appearance put him in a passion. I do not know the time at which John disappeared from the house. On one occasion he was using a pole from six to eight feet long with a spike in the end, which I understand he had made use of in Switzerland to help him to get up and down the mountains. He was striking the negroes with it. At one time I thought he would commit violence with it, as he had raised it to strike a boy. I placed myself near him, and said "Come, Mr. Randolph." He looked me firmly and steadfastly in the eye for a moment, then threw away the pole, and flung himself upon a letter apparently exhausted. Immediately he was composed, his manner to me was kind and courteous. I had heard him abuse Essex very much, as far back as November, whenever Essex came into his presence he abused him. Saw him strike Essex with the pole on the top of the head; but he did not hurt him seriously or draw blood, and Essex got out of the way.

By the Court. His manner of using the pole was alarming. I did not see any injury inflicted with it; but I do not know what might have been the consequences if I had not interposed. I do not know the reason of his anger at the negroes. I heard him tell Essex at one time that he (Essex) had kept a tavern, which Essex denied. Mr. R. said he had entertained a pedlar whom he named, the individual mentioned died more than four years before.

By Mr. Taylor. Was there any other cause of anger towards the man which caused Mr. R.'s conduct? Answer. None that I know of. He called him a rogue in his abuse of him; but did not specify any thing that he had stolen. He said nothing more as to his having kept tavern than I have stated. Mr. R. was at that period often very obscene in his language, in talking to his servants, or of them - a peculiarity in his conversation which I had never noticed before. I remarked this from November to near the time he came

63. to the Court-house to live. He used this language often in the presence of his negro women. He charged two of his servants, a male and female, in my presence and in theirs, with having had sexual connexion: and frequently used the grossest terms in allusion to that subject. He told me I think in January, that when he arrived in New York, he could not have taken for John and Julia, or the smallest child either of them had two thousand guineas (or some large sum), but that now he would as soon sell them to a Negro-trader as not. He said he had set his slaves free on a ~~form~~ ^{form} will he had made, and pointed to a paper I think on the Chimney-piece as the will in question. He said he had cancelled that will. Witness the envelope of the will of 1821, says he presumes it is the same.

By Mr. Jones. Does this paper, having Mr. Alexander's endorsement on it appear to be the one to which Mr. Randolph alluded?

Ans. I think it probable it is the same; he then pointed out to me. I saw the same paper afterwards and recognized it. Mr. R. had asked me to search for some papers in a box, and in the course of my search I came to the same paper he had spoken of as his cancelled will. This might have been in February - I cannot say positively. The paper was about the size of this, and was folded like this in the form of a letter.

By the Court. I understood it was the cancelled will. I think it was the cancelled will in which he had emancipated his slaves. I believe he had advertised his slaves for sale about that time. In speaking of the cancelled will he pointed to a paper ^{being} the will he had cancelled. It resembled this, and I think had faded writing upon it. I believe the papers in the box which I searched were valuable papers, they were mixed together without order.

By Mr. Jones. I have no recollection where writing was on the back of the paper pointed out as the will, or whether it was Mr. R.'s handwriting or not.

By Mr. Steward. If you had seen the writing in an entirely different hand from Mr. Randolph's would it not have made an impression upon your mind and enabled you to recollect the fact? Ans. I do not know what impression it would have made upon my mind. In the month of March I was in Mr. Randolph's house, on that occasion Mr. R. drank wine, and it was the first time I had seen him drink it to excess since he returned from Russia. He said he would drink at the risk of his life, that he would have a royal dinner, and drink ~~with us~~ with us. He made a display of his plate and had

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his table set in handsome style. Before dinner, Judge Leigh came. Whether Mr. R. had drunk before dinner or not I do not know; but when we sat down he commenced a grace, stopping short before he had finished, from some cause or other, and abusing the servant and making use of the most profane language. He then composed himself and went on with the grace. I could not conceal my laughter, but by covering my face with my hands, which he observed, and charged me with hypocrisy - saying he did not expect such hypocrisy and grace from me. What happened afterwards may be attributed to the effects of the wine. Next morning he sent some idle message to me by a boy, which I cannot recollect, but which related to my drawing the Corks the day before. Mr. Anderson and myself left there before breakfast. The next time I called on him was on my way to Halifax March Court. I did not see him, His brother Judge Tucker was then with him. On my way home from Halifax Superior Court, on the Sunday following the first Monday in April, I called at Mr. R's house. He was there worse than I had ever seen him; and had very little to say. He did not propose to stay that time, but insisted on my coming back to breakfast the next morning. He said that Mr. Mason was there and had ridden down to the Lower Quarter. I left him, but had not been long at home when Johnny came for me, and said I must come early in the morning. I went up accordingly on Monday Morning after breakfast. He told me he did not expect to live, and that he believed he should die before morning. I thought he would myself. He told me that he had altered his will ^{the influence of} under ^{the influence of} inducive feelings, and that he could not favour God unless he had it changed. He called for paper, ink &c. and prepared with great care to commence writing. He sat up in his bed and put some ink in a glass, and examined it with attention. Before proceeding he said to me "you will say that I am deranged. I know you will. I see it in you." But said he, "I am under the influence of the Spirit of God, I have sent for ^{you} he is under the influence of the spirit also - and he can tell that I am in my senses." He first wrote a long preamble, perhaps setting his negroes free, and appointing St. George Tucker his sole executor. He also appointed Thomas A. Merton his sole executor - he then gave me the whole of his ^{estate} to be made that year, and said he should have no farther trouble about it. He then commenced in another place, deciding that his negroes should be set free. He said that if poor St. George Randolph was there, he would forgive him

65.
a will which nobody could see from his own hand writing. Then holding up the paper and looking through it he said "but poor St. George would be caught, for he never would think of looking for the date of the paper". He told me he wished me to stay until his property could be secured, if I did not look to John, he would escape with the plate to England, where he would marry a white woman, and come back minister Plenipotentiary. He said an inventory must be taken of his effects, inquired for such articles as socks, towels, table cloths &c. and began to take a list, but soon dropped it. He then made John dip a piece of paper in salt petre, and put it in the fire, saying that he would command it to burn or not to burn, and it would obey him. He then repeated the command "Burn, Burn," and again would say "stop" to prevent its burning. He said he would impart the same power to John. He said he could blow up the house at his own word of command. I told him I hoped he would not tell I had eaten my dinner and get out of it. He then immediately ordered dinner. After it was over he called me into his room, and said that I must not go home that night, as he should certainly die. He knew it was a great blow for me to stay in his sick room; but that I might go into the other room and amuse myself. I said I would go and see the horses at the middle Quarter, which seemed to please him. He said he wished I would, and tell him what I thought of it. I kept out of his way till towards evening. While at supper I thought I heard him making some inquiries for me, and went into his room. I found him in great distress sitting up in his bed. He had a great difficulty in breathing, and he said that he was full of phlegm, and had not strength enough to discharge it. He consulted me about using Stimulants, and asked me to feel his pulse, as he was apprehensive that he had so much fever, Stimulants would rather weaken than strengthen him. He said finally that it could not kill him to make the experiment; and that he should die if he was not relieved. He therefore resolved to take a small portion of wine. John poured some hot water upon sugar, and Mr. R. was very particular about the quantity of wine mixed with them. After drinking it, he threw up a great quantity of phlegm, and was much relieved. I then ascertained that he was drooping and unable to sleep, he insisted ~~that~~ I should leave him, saying he would send for me if he wanted me, and I left him and went to bed. I found him altogether better in the morning. Indeed I never saw such a change. His eyes, which on the previous day were turbid and discoloured, were clear and had a bright and healthy appearance. Baltimore November 1831. and March

66. 1832, I had probably seen Mr. R. take a glass of wine. He told me more than once that his liver was diseased and that Madeira wine and ardent spirits were poison to him - he frequently used bread and cider sweetened with brown sugar. I have spoken of a letter from Mr. R. to Judge Leigh sent by me in November, and of a letter from Judge Leigh to me, left on his way to the Court, requesting me to let Mr. R. have the filey, and I think informing me of the contents of Mr. R.'s letter aforesaid, and that on the receipt of Judge Leigh's letter I wrote to Mr. R. and of Mr. R.'s letter to me in answer. Mr. R.'s letter is not here. I find among the papers I brought the envelope of that letter with my endorsement "Dec^r 16th 1831" which I now produce. In that letter Mr. R. complained of Judge Leigh, for not mentioning the subject of the filey to me in Nov^r, as he had requested, and said that he took it for granted ^{that} he had done so, and as neither him nor I had mentioned the subject to him (Mr. R.) he had supposed until he received my letter that I had taken offence, and said he had never felt easy in my company since. I had a full conversation with Mr. R. at his house, and may have confounded what he then said with the contents of his letter which I have not read lately.

On one occasion when I was at his house, I think in December 1831, he showed me a ^{vial} ~~box~~ labelled "Poison", and perhaps some other words. It was filled with a liquid and well corked - he told me he had reached out his hand, being at the time in the bed, and taken the ^{vial} ~~box~~ intending to destroy himself, but was floored that the throat of his life was nearly broken, and that it was unnecessary to cut it. He stated that he had no scruples on the subject - that a man had a right to put an end to his life when he pleased, and requested ^{me} if he should die suddenly, to protect his negroes against the charge of destroying him. He said they would not injure him. Mr. R. was generally when I was with him much more calm and composed in the morning than in the latter part of the day. I have seen him in the ^{evening} ~~morning~~ get into a furious rage with any negro that approached him, and have known him to order them all out of the house and close the door, no other person in the house with him but myself. He could then become composed and converse agreeably until he wanted the service of a servant, and so soon as either one of them appeared, his rage would return. He spoke during the winter of the illicit intercourse which he said was carried on between married men and their own female slaves, charging all the men on a particular location as guilty. I heard him charge a Clergyman of high

67. standing with seducing many ladies, and used the most vulgar language. I think the charge on the Clergyman was in Dec^r 1831. The Clergyman is now dead, and perhaps ~~was~~ dead at that time.

After I was at his house in April 1832, I saw him no more till he came to my house one night about dark. This was between the 20th and the 25th April 1832. In a short time after he got there, he went to bed and remained in bed until I left home, which was from 2 to 4 days - while there he sent for me ^{very} often - when I came into his room he would frequently say "You are too late, it is all over," He sometimes had a small bell in his hand which he would ring slowly and say "it is all over." Sometimes he would make John sing. If I remained with him more than a few minutes he would use great address to get me away. He would say flattering things of my industry - apologize for taking me up my business, and say he could not think of detaining me. Frequently in less than 10 minutes after leaving him I would be sent for and the same conduct on Mr. R.'s part would be repeated. Sometimes he asked me if I would stand by him. He seemed from his manner and conversation to apprehend some harm, which he never explained to me. His asking me to stand by him was as I supposed from apprehension of some personal conflict. He ^{one day} asked me "where is Suba?" I happened to see Suba at that time near the stable where I could see him through the window. I told him that ^{Suba} was at that ~~the~~ stable: he said I was mistaken. I told him that he was certainly there. I could see him distinctly. He looked widely around the room, as if he saw ~~him~~ something and said he had no doubt I thought I saw him, but I was mistaken. I left him at my house when I went to Campbell's Circuit Court, which commenced its term 26th April - when I returned home he was at Mr. Cardwell's, where I visited him very frequently - his situation was very much like it was when I left him at my house, and so continued until about the middle of May, with this difference that his memory gave way almost entirely, and turned to labour under torpor and stupor. Sometimes he seemed to have the same fears of harm. One night he asked me to stay with him. I promised to do so, he said "Will you stand by me?" his manner as above described. After I had promised to stay with him he soon used his address to get me out of the room, but still insisted I should stay with him all night. I went into the adjoining room and met with John he advised me to go home, saying that his master would not sleep if I remained, and that he would forget that I had promised to stay with him. I went home, and visited him the next morning

68. He took no notice of my leaving him the night before. He frequently afterwards made me promise to stay with him, and I would go home as before stated, believing I should keep him awake if I remained, and being informed that he slept when alone. He never seemed to recollect my promise to stay with him. About the middle of May after being reduced almost to a skeleton, his mind began to clear away, his memory returned, and his feelings were calm and kind to every person of whom I heard him speak. In a very short time he seemed to be perfectly himself.

The first time I saw him when a change in his mind was distinctly marked I was in his room alone. He burst into tears and said, "Bear with me my friends, this is my only, but I am hard pressed." (He seemed to be in great bodily pain). He said "It is impossible (I speak it not insincerely), that the Almighty himself, consistent with his holy Council, can withhold this bitter cup. It is necessary to afflict me thus to subdue my stubborn will." He then prayed a few words audibly, then shut his eyes and seemed to pray in a low whisper. He had other conversations with me while in the room. I did not think him entirely himself, when the above took place, but clearly better. From about the middle of May for a month or more, although extremely reduced, his spirits were good, always appeared cheerful, and in good temper. Converses handsomely of news and things, whether his political enemies or others, in good humour; his appetite seemed to be good and he gradually gained flesh. As his feelings returned he became more and more easily excited.

Cross examination of Mr. Marshall. When Mr. Randolph was at Cardwell's he spoke to me more than once of the state of his mind when at Roanoke during the winter. He spoke of it at the time when he was ^{made} at Roanoke or something to that effect. On his first apprehension of a return of that state of mental and bodily malady, he writes me. I was at Halifax Court House & was read an extract of that letter, the witness then read the following.

Jan. 26th 1832. Charlotte Court House

My dear Marshall.

All my worst symptoms have returned. Swollen legs and feet - Swelling pained of the hands and all the horrors that I had (bodily & mental) the last the worst of all) before I left Roanoke. I believe he was ^{often} in a

69. liberally good ^{condition} state of mind from the middle of May 1832, until some time in June or July. From that time until he left for Philadelphia he was sometimes himself and at others in a morbid state of mind. I visited him in April until he got better at Cardwell's. I did not hear speak upon politics as far as I can recollect. At all the times when I heard him speak on that subject his mind seemed to concentrate upon it, and to be straight. On the 17th of July I received a letter from him about Whittlebury. Mr. Randolph had a conversation with me spoken of his having to send a servant to Mr. Maco's. I mentioned I had a mare (Whittlebury) in North Carolina with Tomson. He said he had a mare there also, and that his servant would care by and come home with my boy. I wrote to Mr. Moody, who kept Tomson, and gave Mr. R. the letter open for him to add a postscript. I was about to send the sum of ten dollars to Mr. Moody, to pay a small balance due, and for the expense of the mare home. Mr. R. said he would send the money, and I would pay him at any other time. In my absence from home the mare was brought back, and Mr. R.'s letter was received, containing \$500, which I sent back to him by Mr. Cardwell. He did not receive the money. His object in sending back the money was to get the mare back. When I saw him a few days ^{after} I mentioned the subject to him he said "My dear Marshall, or My good Marshall, don't mention that to me, at present. I have a particular reason for it. Mr. R. did not get the mare back, or receive the money during his life time. (The witness here read the letter and it was filed.) Mr. Randolph was I think sometimes under excitement, and sometimes perfectly calm, from July 1832 to the time of his death, whenever I saw him.

Questioned by Mr. Robertson, as to Mr. Randolph's advertisement of his horses after he returned from Rufina. Ans. I saw one advertisement before he arrived at Charlotte Court House. There was an inaccuracy in it as to the pedigree of one of the Colts mentioned in it, an error as to the age of that same Colt, and another error with regard to the age of another of the Colts. I recollect mentioning these errors to Mr. R. when he came to the Court house. I recollect these two Colts, which, before he set out for Rufina were two, certainly not more than three years old in 1830. They were in the hands of carpenter grooms to prepare them for training the next Spring. The last time I was at his house we saw these Colts in adjoining lots and he called my attention particularly to them as intended to be trained. This added in Court 10th July 1833] One of them was called Ryland and the other Peacock, and sometimes Heronman, in his advertisement he

called them 7 years old. The pedigree of one he gave right, the other he stated to be by Raunke out of young Sherry, instead of which he was out of Grant's care and of a different pedigree. I named those facts to him at the Court house. The pedigree could be made out from a printed list, a copy of which I had and which he also had with him. He found in the list one which answered to the age of Raunke out of young Sherry, but it was not the one in the advertisement. I know of no Station of that age and pedigree. He had a gelding in his Chaise, of which answered to the pedigree, but I do not know that it answered to the age. I think he afterwards corrected the age in the advertisement, but did not correct the pedigree, and probably at a later period he corrected that also.

Question. Was he not prior to that time remarkable for his accuracy in the pedigree of his horses? Answer. He was remarkable for the accuracy with which he examined such subjects, and had the means to aid his memory. He had a book on the subject. I don't know how far he depended on his memory alone. It was a subject to which he had paid great attention, and no doubt had his books with him in Paris. I recollect he gave me a list so far as printed before he left home, and sent me the remainder of the list from Richmond & Norfolk.

When he was at the Court House that night I observed he had several copies of the printed lists with him.

By Mr. Taylor. I do not recollect that you have mentioned the change of his body servants for hands that had not been accustomed to wait on him. Did you observe that change? Answer. I can state that the servants who were accustomed to wait on him were absent sometimes when I was there, and others were waiting on him. A fellow of the name of Morris or Aaron was one. The removal of his servants, and where they were, I only know by hearsay. This Morris or Aaron Mr. R. said, had the best intentions, but he went roving about like a boy. There is another witness who can no doubt give more information on that subject. I know that John was absent some part of the time; perhaps the time between the 18th Dec^r and the latter part of January covered a portion of the period during which his servants were absent.

Question. Were not his house servants of the first order? Answer. Yes, they were excellent servants. His cook must have been a very good one as I never ate meat better cooked than at his house. I saw very indifferent fare there sometimes, which I attributed to the change of servants.

By the Court. Did you ever dine with him after he returned from Cards

Answer. Yes. I presume I have often. He did not then dine by candle-light. He got home from Charlotte Court House about the month of July. The letter I have produced is dated ^{from} Raunke on the 11th July. I called at his house once in my way ^{from home} from Halifax and dined with him. It was on Sunday. He sent for a mare and foal from Story Quarter for me to see them. He said to me, if I pull fodder to-day you must defend me. I suppose that if he did it, he had better not let me know any thing about it, as I should have to prosecute him. He said something in a low voice to a negro man who was by, but what was done I do not know but by hearsay. The Grand Jury about that time made some ~~thing~~ ^{order} upon the subject, but they found that the fine was too small for the jurisdiction of the Court, and the Jury did not make a presentment. Mr. R. said to me that he could show that the Law prohibiting labour on the Sabbath was unconstitutional.

Questioned by the Court as to the traps of slaves drawn by Mr. R. in April. Answer. I believe they were laid aside. They were found after Mr. R.'s death in a leather trunk which came from Philadelphia at Mr. Cardwell's as I am informed.

Question. Were they finished or unfinished papers? Ans. I do not know.

By Mr. Taylor. Anterior to the excitement which you have spoken of what was his treatment of his slaves? Ans. It was kind and humane. I recollect his asking me my prisoner, who it was that had said he did want his negroes to be whipped and driven. He said, on the contrary, he wanted them driven ^{and} whipped night and day. At that occasion he looked at me as if ^{he would} accuse me of having said so. When Mr. R. was in the convention, one of his answers died, and he requested me to employ me in his place. I did so, and I remember that I told the new overseer that Mr. R. did not wish his negroes to be driven and abused - that he wished them to be kept at work constantly, but moderately. When he returned from the Convention, I told him of the directions I had given, and he said I was right. Mr. R. had formerly ^{an overseer} ~~an overseer~~ whose name was Curnby or Combo. Mr. R. told me that he gave him small crops to prevent his having an excuse for driving the negroes. Mr. R. and myself were riding out one day and we met Combo. It was a very hot day and Mr. R. told him he had better indulge the negroes in the heat of the day. He told him to keep out of the way in the heat of the day and the negroes would take care of themselves. Combo replied that he could work the whole day. "Yes," said Mr. Randolph, "you can probably whip any man in Charlotte County but that is no sign that my negroes can work all day, and I choose that they shall be favoured in the heat of it." His slaves were very much attached to

they almost worshipped him.

By Mr. Vayler. I cannot say that I ever heard him say in private before he went to Russia that he would never accept an executive office. I cannot say that I know more on that subject than the public at large. If there was any private declaration of the kind to me, it is so blended with his public declarations on that point that I am unable to say when or where I heard him say so. I have an impression as to Mr. R's feelings on that subject, and have often heard him say in his public addresses that he wished and expected nothing but to represent the district - and that, I suppose, was a common remark. I will add that his accepting the mission to Russia was at war with his sentiments as expressed often publicly, and no doubt I have heard him privately express like sentiments with his public declarations. I understood the question at first, I thought it was intended to ascertain whether I had not heard something confidential from him on that subject.

Question. Did you, or any other person in your absence express regret to Mr. R that he had accepted the mission to Russia? Ans. I have no recollection of any such expression having been made to him. I never made such.

By Mr. Johnson. I wish you to say ^{distinctly} whether you ^{can} designate the time of the conversation as to the cancelled writ, and fix it in the month of February or March. Can you say it took place in either of those months, or in any other given month in the winter or spring? Answer. My impression is that it was in January. But I have no memoranda or data in which any memory rests. I recollect no other time than the 24th at which I visited Mr. R in January. If that conversation took place in January it must have been on that day, or might have taken place there, but I cannot say with certainty. Question. Was Mr. Tucker's visit of which you ^{have} spoken, before or after you saw the writ?

Answer. After. Question. Did Mr. R say any thing farther of the alteration of the writ, than that he had altered it, when he pointed his finger to the paper? Answer. I cannot pretend to give any particular words that he made use of. He told me he had made a welcome cancellation. I think there were some of the Negroes about him when he made the remark. I think he spoke of that paper as the cancelled writ. [Witness shew the envelope having Mr. Anderson's endorsement on it.] Although I do not now recollect one word that was on the paper, I was satisfied that the paper which I afterwards found in the box, was the same at which he pointed when he spoke of the cancelled writ.

I do not recollect by what mark it was known to me, when I saw it a second time. Question. Did you state that the paper pointed at by Mr. Randolph was fuller than this? Ans. This paper had no other mark of it when I saw it on Friday. Question. Could you tell the difference in bulk if it had contained a single piece of paper? Ans. I do not know as I could have told the difference seeing it lay on a chimney piece, I do not recollect that I touched it.

By Mr. Starnard. When Mr. Randolph spoke to me at Cardwell's of the situation both bodily and mental which he had been in at Pennoke, he alluded to his condition during the winter and spring. I did not have any conversation with him upon it, but about the time when he was getting better, he frequently spoke of his condition at that period. I do not recollect to have heard him use the word insanity, nor did he fix a time at which he suffered in the manner alluded to. He conveyed the idea of his having been insane. I recollect one time when his feet swelled. I think it was in February. Mr. Morgan came there the same evening I think. I do not recollect whether his legs had been swollen before. At that time I thought it was a fit of the gout. One of his feet became suddenly swollen and inflamed, but it went off in a short time. I do not know that he was suffering from an affection of the kind on the day in January on which he addressed the letter to Henry & McLathins. He was subject to the heat in the palms of the hand from the time of his first returning to this country and to swollen legs.

By Mr. Johnson. Do you know that he was in the habit of using Morphine? Ans. I forget to mention the fact before. I have no recollection of seeing him take Morphine until he came to stay at Mr. Cardwell's. When he had got better, and his mind was cleared, he took it as openly as he could ^{drink} water, and he spoke often to his acquaintances upon the subject. That was when he had recovered his health and his senses, and was in his best condition. Sometimes he took it, I believe no nothing but water. I am not certain that he did not use Morphine at the time I have mentioned when he took brandy for a Spasmodic husband. His use of it certainly was open when at Cardwell's.

By Mr. Starnard. Did you perceive any peculiar difference in his situation of mind and body between the time of the carnival at his house, when he got very drunk in the month of April? Ans. I have stated that from the time I saw him in March, I did not see him until I was there in April. From the time I saw him in April until he got better, a change had taken place. When he was at Cardwell's he was not so irritable and fretted by the

servants. He then talked upon the subject of religion. At the Carousal as it is called, he drank freely. I did not say he was very drunk. He could walk and was up the next morning.

By the Court. I have stated that there was a change in Mr. R. from the time he returned to this County. It seemed to me that there was a gradual increase of excitement, and the violence towards his servants increased: his conversation became more and more out of character for him. The violence of his temper towards his slaves increased so far as I observed up to March. From the time I had spoken of in that month, I did not see him until April. There was then a marked difference in him; and he had much softened down, he has ceased to display his genius, and he could not converse as agreeably as formerly. His anxiety seemed also to have given way, although he could sometimes converse very handsomely. Did he show any apprehensions in November, December or before March, such as he displayed at your house? Ans. No. He told me in the County, in December that he thought for blood, and was apprehensive that he should lose some of his negroes, that he doubted whether they were the danger of being with us, or that they had souls; said he would as soon lose one of them as a snake; and that also he should be obliged entirely, if he were drawn to fight a duel. He had no fears then. I would remark that I never saw his hand tremble. When he took a pen he could always make a smooth stroke, as will be shown by his writings in April, which are as well written as usual. I think he said he would lose his negroes unless some of his friends stayed with him to keep him from it. He complains that those in whom he had the strongest claims, as married men ^{renders} were unfit to perform the offices of friends. This fierceness and irritability continued to increase until it began to wear down towards April. When he commenced thinking and talking on religious subjects. With regard to his supposition that I was offended at him when I was on my way to W. Calfax and staid the night with him, and he told me he had slept well, and had a very agreeable dream, I thought he would recover. But when I next saw him I found him much worse: I was distressed at his appearance, and no doubt he could see it in my countenance; but I have no doubt he took the expression of my countenance for that of anger.

By Mr. Taylor. From the time of his return at November Court, until he

came to Caldwell's, was he capable of making a sound and discreet disposition of his property? Ans. I resided the opinion that he was insane, with all my feelings for a long time, and my opinion fluctuated between March or April. At first, when I saw him at the Courthouse, I considered him under great excitement, and on the verge of insanity, so much so, that I thought the loss of a night's sleep or the exertion of making a speech, might be productive of the most dangerous consequences. He seemed most excited on the subject of his negroes; but when color, and his servants were not in the way, his conversations were so beautiful that I resided a fixed opinion of his insanity, until it was forced upon me in April, and then my belief was that he was mad, and that he had never been himself from the time of his return. I was well aware that he labored under some strange affection from the commencement. When I received his letter of the 24th of Nov. I thought he must be out of his right mind, for so far from contending with me about grapes, he blamed Judge Leigh for taking money from me for this filly. I should have been aware offering to purchase such a horse of Mr. R. as I did in his sane moments under the belief that he would have forced me to take it as a present.

By Mr. Robertson. While combusting my impressions, I had come to the conclusion that so far as regarded his slaves his mind was diseased. When he first came home he was kind to John. At one of my first visits I found John very much distressed. He had been handling something that would suit his father, and Mr. R. told him he wished him to do nothing but wait on him, and that he must make others do the drudging. It was not long before John was dressed in coarse clothes, and abused and charged with everything that was opprobrious whenever he made his appearance.

By Mr. Taylor. I suppose these charges against John arose from the indignation of Mr. R. I do not know; but on the 17th of December he wrote "John is as honest as you or I."

By the Court. Had he any doubt of John's honesty? Ans. I suppose he had. In December he would not trust him with the keys, although Moses or Aaron came he took the keys; but before that Mr. R. would hobble about after John or others when they took the keys. Old Betty would argue and remonstrate with Mr. R. and when she did so, he did not get into a greater passion than usual. He did not seem to resent her complaints of him, and she was the only one who dared attempt even to explain when he was in a passion. I will state

another fact. Judge Beverley Tucker shows me an Almanack with a memorandum on Mr R's hand writing, which he either read to me or I read myself, dated Dec-1831, in which there was some charge against me that I sold his horses, and had sold myself the best bargain.

I will explain what agency I had in the sale alluded to. I know that he had requested Judge Leigh to sell his horses without stint, and not to boggle at the price. A Gentleman from Culpeper was bargaining with Judge L. for some of them, and I was to fix the price of such as he selected; and if the gentleman chose to take them at the price I fixed, they were to be retained until he brought bonds and security to be approved by Judge Green. I fixed the price and he made his selection. These horses I considered were put at higher prices than on Mr R's list, and some of them were on that list. The gentleman had brought the bonds and taken the horse before Mr R's return. Mr R. thanked me for what I had done when he first came to the Court house. The gentleman came to Mr R. before I visited him, and proposed to exchange one of the horses, and before Mr R. quitted him he had got back all the horses. He told me that he had written to the gentleman, and stated that he wished to exchange one since the death of Peancke.

Questioned by Mr Robertson. As to the testamentary papers. They were drawn in April 1831. He states in one of them that he writes with his Son pen on English paper. I will state that I had constant hopes of Mr R's recovery. It was very much opposed to his getting the filing from me, from the belief that the very fact of his getting his hand under such circumstances and by such means as he proposed, would when he was restored to his sound mind be a source of annoyance to him.

By the Court. Were the papers written in script preserved, or were they thrown by as waste paper? They were put into papers were always taken care of in his house. I have been there since his death, and seen scraps of paper preserved by the servants. I believe Mr R told John to take them away. I have seen valuable papers lying about Mr R's house. Question. Did you read the paper? Ans. Yes and he read them to me. He was constantly conversing with me while writing, and I may have blended what he said with what he wrote. There was a clause in one of the papers which he wrote as clear as it could be written, stating that he had let his slaves free. I thought of that scrap having been signed should be dropped and found after his death it would be a difficult paper to contend against. I do not think it was signed.

By Mr Robertson. Was not the name of Mr Randolph first put to the paper? Ans. It was to the commencement of the first piece of paper I think, and a long flourish was made which seemed to me designed to show that he was in a clear state of mind. but believe the name was not put to the others. I don't recollect whether Mr Suffern was present when he was writing. I recollect to have seen the particular paper to which I allude as setting his slaves free among those that were found although there is one among them containing a like provision. I think there were three pieces of paper, and two only were found in the trunk.

By Mr Standa. Can you fix any precise date to the time when he commenced abusing Johnny? Ans. I think it was in December. Question. Having seen Mr R's letter of the 17th Decr in which he speaks of the honesty of John do you not think that if he had imputed dishonesty to John on the great day when he visited you, do you not think it would have made an impression on your mind? Ans. I cannot say there were so many inconsistencies in his conduct, that I can not say what effect it would have produced upon me. John had not on his good clothes that day. There was another circumstance that might have produced Mr R's displeasure. Mr R. told me that John's intercourse with females since his return had destroyed his memory, and mentioned ^{as a case} of his having forgot ^{ten} whether he had had a deer or not. He said John was as fat as a guinea pig when he left New-York, but that he had lost his flesh and ^{his} memory. If I was at Mr R's in ^{the early part of} January these circumstances might have taken place there. I remember that John's appearance was a good deal changed after his return home.

By the Court. Is there any reason that induces you to suppose he would not be liable to commit similar extravagancies in January to those spoken of by you as having been committed in December? Answer. I have before stated that I cannot recollect being there in the month of January until the 24th of course I cannot say what was his condition. On the 24th from the time I arrived there until bed time, he was occupied in writing a contract between himself and one of his overseers, and the letter produced in evidence ^{by Henry Adolations}. As the greater part of his time was thus occupied, there was much less display of his temper towards his negroes than at other times.

By Mr Taylor. At the time he requested you to set up at auction his Berkeley Forest estate, had there been an advertisement of the estate previously? Ans. I think it had been advertised. If it had been, it was on the Enquirer, and probably reference was made to me. The price ^{which} Mr R. directed as his reserved bid

was, I think, precisely double what he had at one time estimated the land at. Question by Mr. Robertson. What was Judge Leigh's standing as a Lawyer, and what is his standing as a Judge? Answer. He stood high as a Lawyer, and stands high as a Judge.

Question by Genl Jones. Had Mr. Rand and Mr. Beverley lived on terms of intimacy and fraternal affection, prior to the latter's removal from Charlotte to Missouri? Was not Mr. B. Tucker treated by Mr. R. as a favorite brother, for whom he entertained a very tender affection? Ans. So far as I saw they were affectionate to each other. Before Mr. Tucker moved away I had ^{heard} rumors of some difficulties between them. After Mr. T's removal I heard Mr. R. speak of him: he said he had given Beverly Tucker the only slaves he had unincumbered at the time, and a tract of land to enable him to support his family; those slaves were conveyed with Hansfield by Mr. R. It was understood between them at the time that so soon as Mr. R.'s slaves should be free of encumbrance, they would exchange so as to get the families together. He told me Mr. Tucker promised to do this before he removed his; but he has failed to do this. I always understood that Mr. B. Tucker had ^{been} a favorite brother of Mr. R.'s and that he had the tenderest affection for him.

Examined by Mr. Johnson. Said I have often no doubt heard Mr. R. speak of the subject mentioned in his letter to Mr. Waltham in terms of disapprobation as to the part acted by Mr. B. Tucker.

Questioned by Genl Jones. After Mr. B. Tucker returned from Missouri in 1832, was he received or treated by Mr. R. with demonstrations of warm affection, and did they not live together ever afterwards, in habits of great intimacy and affection? Ans. I was not present when Mr. Randolph received him - he treated him with great kindness and affection the first time I saw them together after Mr. T's return. Mr. R. expressed himself much gratified at his visit. They were on terms of great intimacy till Mr. T. returned to Missouri for his family, a short time before Mr. Randolph's death.

By Mr. Jones. Whether he had ever heard Mr. R. speak of the elder Judge Tucker, and what he had heard Mr. R. say of him; whether he spoke favorably or unfavorably of him? Said I heard Mr. R. speak of him after Mr. B. Tucker moved to Missouri, which I think was in the year 1816. He spoke of a conveyance made by Mr. B. T. of the land and slaves which Mr. R. had given him to Trustees. The elder Judge T. he said was one of the Trustees; he blamed him

for that conveyance being made. He afterwards told me he acquitted Judge T. of that charge. I heard him frequently speak of the elder Judge Tucker from 1816 till Mr. R. went to Russia, and now there ever after his return. Question. Did he speak favorably or unfavorably? Witness answers. He spoke unfavorably of him. I do not recollect a ^{distinct} specification such as I saw published in a letter since Mr. R.'s death purporting to be a letter from Mr. R. to his nephew; but his complaint related to slaves, and of his keeping back a part of the property which Judge T. had held for the life of Mr. R.'s mother, and which he alleged Judge T. held after Mr. R.'s ~~death~~ right to the possession as a remainder man had accrued. There was some family pique, perhaps a salt seller, which seemed to run in Mr. R. of Judge Tucker.

Question by Counsel. Did you ever hear Mr. R. speak favorably of him? Ans. Not that I recollect.

The witness being examined as to his acquaintance and intimacy with Mr. R. and the time when he commenced the practice of the Law &c. Answer. I commenced the practice of the Law in 1809, and practiced in the Courts of two of the Counties of Mr. R.'s district - Jones, Wake and Charlotte. I was acquainted with Mr. R. before that time. In the year 1814 I moved to Charlotte Court House, and in 1815 commenced attending the Wake County. My way to this Court was directly by Mr. R.'s estate, and not far from his house. From this time I was a visitor at his house until his death. My acquaintance with Mr. R. never amounted to what I should call intimacy until after 1815.

[Referred to in the foregoing deposition.]

Dear Marshall,

Leigh is here, can't you join us since you appear to accept of Whiteberg. I must request that the bargain be cancelled. I never intended to take any thing after the ensuing year, what I put them down at to Court - of course I was for keep, but we can arrange that on meeting. I hope to see you here on your way to Halifax at least.

Truly Yours

J. R. of Roanoke.

Thursday Nov: 24. 1831.

I shall leave here this morning, being in some measure compelled to go to Mr. Love's plantations.

Edw. Marshall Esq. - Charlotte C. H.

[*Referred to in the foregoing deposition.*]

My dear Sir,

I write thus fearing that you may return by Colie's conveyance and so disappoint me of seeing you before my exile shall commence. The state of the weather and of my health prevented my going to Cumberland Court. I beseech you call here on your return home. I have a special reason for this request.

Most faithfully Yours

J. P. of Roanoke

Nov: 28 - Monday 1831 at home

To John Marshall Esq; now at Halifax Court.

The Post Master at Halifax Court House will confer a favour on Mr Randolph by sending this letter to Mr Marshall at Stool, or in Court.

[*Referred to in the foregoing deposition.*]

Roanoke Saturday Dec: 11th

1831 half past 12.

Dear Marshall.

On taking out my Chariot this morning for the first time since I got home from your house to clean it and the harness [for this dreadful spell of weather has frozen us all up until to day.] the knife was found in the bottom of the carriage, where it must have been dropped from a shallow waistcoat pocket as I got in at your door, for I missed the knife soon afterwards. When I got home I had the pockets of the Chariot searched and every thing there taken out, and it was ^{not} until John had searched ^{thoroughly} into my portmanteau and bag, taking out every article therein, that I became perfectly convinced, of what I before suspected, that I had left the knife in my Chamber in your house on Tuesday the 6th; and when I heard it had not been seen I took it for granted that your little Yellow Boy having "found it" had, according to the negro Code of morality, appropriated it to himself. In this it seems I was mistaken, and I ask his pardon as the best amends I can make ^{him}; and at the same time to relieve you and Mr M. from the unpleasant feelings that such a suspicion would occasion, I dispatch this note by a special Messenger, although I have a certain conveyance to-morrow. I make no apology to yourself or Mr M. for the frank expression

of my opinion. because Truth is the Goddess at whose Shrine I worship, and no Heronard in France, or Morice in Spain, or Judasizing Christian in Portugal ever paid more severely for his heretical Schism than I have in leaving the established Church of Walschona & Grinnace. I am well aware that ladies are as delicate as they are charming Creatures, and that in our intercourse with them we must strain the Truth as far as possible. Brought up from their earliest infancy to disguise their real sentiments [for a woman would be a monster who did not practise this disguise] it is their privilege to be insincere and we should despise them and justly too, if they had that ^{manly} frankness and sincerity which constitutes the ornament of our Character as the very reverse does of theirs. We must therefore keep this in view in all our intercourse with them, and recollect that as our point of honour is courage and frankness - theirs is chastity and dissimulation, for as I said before a woman who does not disguise her real feelings is a monster of impudence. Now therefore it does to happen (as Mr Canning would say) that Truth is very offensive to the ears of a lady, when to those of a gentleman her husband (for instance) it would be not at all so. To illustrate Mr Randolph of Bizarré, my brother's widow, was beyond all all Comparisons, the most and best Housewife that I ever saw, not one drop of water was ever suffered ^{to stand} upon her sideboard, except what was in the pitchen. The house from cellar to Garret, and in every part, as clean as hands could make it and every thing as it should lie to last even my fastidious taste.

I lived there from after my brother's death from 1796 to 1810 inclusive, and never did I see or smell any thing to offend my senses or my imagination but none. The Chamber pots were as sweet and as clean as the Tea Cups, being constantly washed and scoured, and the necessary was as clean as the parlour, and except in Autumn I would defy you to find a leaf or a feather in the yard. No poultry were permitted to come into it, and we had no dirty children, white or negro, to make litter and filth. A strong enclosure of Sawn plank, eight feet high fenced in the kitchen, Smoke house, Ice house, Pigeon house, Veal house, Wood house, in which the wood for the use of the house was stacked away under lock and key - the Turkey and Hen houses were in the same enclosure, which had two doors one neat the dwelling house for the use of the mistress and house servants and large empty land in a waggon, on the back or North side beyond which was a

was built quarter with two brick chimneys, and two rooms with fire places and four without for servants. There was also what I had forgot a spinning and a weaving house. At night the doors of this enclosure were locked up and not a servant allowed to sleep within it. Altho' every one of them was in sound of the Lady's bell.

On one unhappy day in a very hot and damp spell of weather of long continuance, a piece of Cold Lamb was brought to the table, that was spoiled, the first and last instance in near fifteen years of the slightest neglect in household economy. I ordered the waiter to take it away it being spoiled.

M^{rs} R. resisted this, and fully contradicted me, and altho' the lamb ab-
solutely stunk, she ate a part of it to prove her words true, and was affronted with me almost past forgiveness. I dare say that if I had not noticed the lamb, she might have given a hint to the servant to take it away, but the honest naked truth was set to her bones. We had no company but Dudley and her younger son, then school boys, and an Englishman named Knowles who acted as Overseer or Steward, and dined with us until he took to drink.

M^{rs} R. stoutly denied that the Lamb could be spoiled, because it had been boiled only the day before, and had been in the Ice-house ever since. I admitted her fact, but denied her logic which was truly a coverture. I maintained that the highest evidence was that of the Ladies - that we must reason from facts, where we could get at them, and it was only where we could not, that it was fair ^{to argue} from probabilities. That the Lamb stunk, and therefore was not sound. This she denied and to prove her words, actually made a shift to swallow half a mouthful, which under other circumstances she would not have done for a thousand dollars. So much for the ladies, charming creatures, the salt of the earth, whom like uncle Toby and all other bachelors I never could thoroughly understand for want of the key of matrimony, which alone can unlock their secrets and make ^{plain} so many a husband can see) all the apparent contradictions in their character. So much for the fairer and part of creation. As for my soul I believe them to be, but who as the waverly ^{man} says of things are hither called to show behind, and do it ought to be, for it is their feet and almost only privilege to look, while we roam where we will, and they must sit still until they are asked. I therefore am for up-
holding them in all their ^{own} proper privileges, so long as they dont encroach upon those of men. A woman who conceals herself deserves to be treated, and will be

treated as a man.

As to the honesty of servants, I have always thought more indifferent than as Hamlet says, and yet I should have very long that the boy that bears this letter should find my knife, or either of the two little machines that you see here about the yard. I didnt take it master for a negro more than. I didnt take it Sir, I find ^{found} yet what virtue in being Caspual, Nym, a high professor and practitioner in the art of taking, and the same case it coming. See Shakespears I know but three uncallous whom I believe to be honest, and out of near 300 I have not a dozen slaves that will not take a penny. John is as honest as you & I ever so odd Kelly I know and some of the Chitiam I believe. Queen is very honest tho' too lazy to steal. Suba is so, so, but not strictly honest - he is a finder sometimes and can be trusted with any thing but money worth which he will buy whiskey. The letters sent herewith ought to have been sent yesterday, they were forgotten. I am freely sensible my dear Marshall, of the sincerity and activity of your friendship for me and shall not let a trifling stand between me and a man whose friendship has not been confined to speculation and opinion and sentiment (as Sir Peter Teazle's "Damn Sentiment") but has shewn itself in deeds not words (by mouth or on paper)

I send you 5 as a returner to Samuel Anderson in a suit against Robert Carrington. Order the suit instantly, for breaking up and rendering impossible my own road to Miss and stopping me from travelling on that which I use for his accommodation, and if you can without too much inconvenience, pray dine with me tomorrow, and spend the night also, You will confer a favour on me thereby. Send all the house letters to me - please not yourself with them I referred to you without your consent, and I shall cheerfully take and bear the blame. Pray come - - early - as early as you can I need expect to leave the ^{two} rooms on the lower floor of my own old house. My best regards to M^{rs} M. and kind remembrance to Rowland.

Truly yours

J. R. of Roanoke.

To John Marshall esq.

To John Marshall esquire Charlotte C. H. Virginia

Randolph of Roanoke

[Referred to in the foregoing deposition]

I am confined to my room, and never expect to leave the apartment, which

the first floor of this House contains (2 rooms)
 Violent enemies and lukewarm friends are enough to disgust a man of
 59 with life.
 I keep my apartments from 1/2 to 50° of Fahrenheit at the coldest hour of
 the night during which I consult my thermometers in doors and out. Last
 night the difference was as 69° to 70° to 61° this is the greatest difference
 yet occurring Twenty four degrees below freezing. I have not time to rest
 what I have written.

To
 John Marshall Esq.
 Charlotte C.H.

[Referred to in the foregoing deposition]
 July 17th 1832. Tuesday

My dear Marshall
 When I told you that I had a mare at Moody's, I meant
 Whittlebury from which I never parted, ^{my own consent} to part. I never saw
 the day since she was wanted that I would have taken three times the amount
 for which, through sheer mistake and confusion of ideas, she was marked
 to parson Hunt. Although during a part of that time I wanted money badly
 so this confusion of mind I find myself now and more subject as I grow
 older, e. g. I told my servant yesterday that if he did not have the dogs
 chained, ^{sup} they would be sure to go a shooting; and Confound Cardwell and
 Craddock, and Garsigne and Pinckney. I write this from Waltham's Store
 to which I have extended my vision as the dust is laid.

As I do not choose to subject myself to an indictment for horse stealing
 I send the mare and your boy under Edmund's charge who came with
 them from Moody's. Having appended a long Postscript to your letter to Moody
 I have taken care to open his letter to you in order to get my reasons. As I mention
 is gone to Cuba (or Cuby) as Mr. Moody writes it. I have no hope of relief
 from that quarter with best wishes and respects. I am Sincerely Your friend
 J. R. of Roanoke

as I am decreasing my
 Stock of horses you can have another mare as well best. I enclose what
 I think a just remuneration for the expense of the mare; Keep and Cover
 the \$2.50. sent by Moody was left at my house through inadvertency

it shall be forthcoming.
 I am dear Marshall truly yours
 J. R. of Roanoke
 To John Marshall Esq. Attorney and Counsellor
 at Law Charlotte C.H.

By Edmund using a grey gelding with a boy and man
 To John Marshall Esquire Charlotte C.H.
 The enclosed was forgotten on Tuesday last when Edm^d went with your boy &
 Whittlebury home. I write in much noise and confusion at Waltham's and
 Green's Store.

[Referred to in the foregoing deposition]
 I the aforesaid John Randolph of Roanoke, do constitute and appoint
 this instrument of writing written with my own hand to be my last will
 and testament, hereby revoking all other wills and testaments whatsoever,
 and do constitute and appoint my uterine brother Henry St. Leonards Tucker
 esquire to be my sole executor and feeling him to be my best friend, Thomas
 A. Martin of Farmville, who will yet be disgraced with the Stigma of God,
 I the aforesaid John Randolph do constitute and appoint John Marshall
 of Charlotte Court House Counsellor and attorney at Law to be my sole
 executor of this my last will and testament, hereby revoking and annulling
 all other wills and testaments whatsoever.

I leave my negroes their freedom as far as our ^{injust} illiberal laws will allow them
 to be free, and I leave a sum of \$10,000 to send them back to the Country
 where God planted the sons of Canaan such of them at least as he con-
 demned to be black. I mean the continent of Africa, as we improperly call
 that vast peninsula - and I do hereby constitute and appoint the aforesaid
 John Marshall of Charlotte Court House Counsellor and Attorney at Law my
 sole executor of this my last will and testament.

- Imprimis. I leave my Slaves their freedom. 2^d I leave ten thousand
 dollars chargeable on my estate to remove them to some place in Africa
 the native land of the black race.
 3. I leave the like sum to protect as many re. men as it will provide for.
 4. I leave the said John Marshall all the money that my present crop
 of Tobacco and Cotton shall see for not to be accounted for as part of the
 profits of my estate - to be his own private and peculiar property and not to

be accounted for in the inventory of my estate.

D. Inventory to be taken in three separate lists.

1st Plate and buttons distinguishing the french, American, English before the revolution and Linen and Sheffield plates, also the Sheffield plated Ware with silver edge and Solid pieces of Silver let in for the Coat of Arms. Viz. 1. pc. high Candlesticks with round bottoms, One Tea Tray, or tea board. NB. The Square bottoms are Sterling. Gold Chains to be made of Sterling Standard for Watch gears and my father's picture

2. Fine Linen English Manufacture that is Linen Cambricks
2. Irish Linen at half Guinea a yard of which my Shirts were made by Donovan in Bloomsbury Square and the the making half a guinea a shirt.

3. Fine Damask table cloths and Napkins various modern Russia
4. The same articles made in Holland and French Flanders and the Netherlands or Low Countries generally part of which now constitute the Kingdom of Belgium

To assist I do ordain the said John Marshall my Sole executor of this my last Will and Testament, hereby writing all others whatsoever. Firstly an inventory to be taken in three lists as ~~above~~ ^{already} described by the annexed paper

In the name of God! Amen! I John Randolph of Roanoke being of feeble and precarious health but of sound mind and memory and intending to survive this day do ordain this instrument of writing written with my own true pen on English paper. I the above named Randolph do constitute and ordain this to be my last Will and Testament. As nothing is held sacred in this land of fanatics and Pagans and Infidels and Jews of the Circumcision and ^{of the} uncircumcision (See St. Paul's Epistles) and "Jews and Infidels" See the Liturgy of our Church, that is the Church of England and not the Protestant Episcopal Church of the United States of America

Which not being guarded on the true rock, and not having been baptized with fire, which is the spirit of God sealing his own, for these reasons in the revelation 12,000 Jews and 12,000 of each denomination. God fore saw that they who were left free would not keep the faith, but he did not command the beasts not having reason to restrain them to prevent a famine of all

The bible Creation God put the ban on that their unnatural offspring should not breed

The foregoing thirty six pages is the evidence and copies of papers first to my last witness of my deposition given this day

John Marshall
10th Nov: 1838.

Charlotte County, to wit;
The above was subscribed and sworn to before me a Justice of the Peace in this County aforesaid, this 10th day of November 1838

Wm. G. Carr
All your Obedient Servant

John Norton sworn
Justice by defendants Counsel.

Was you acquainted with the late John Randolph of Roanoke during year 1821 and from that time until his departure for Russia if so state your impression of the state of his mind during that period

I was acquainted with Mr. Randolph from my earliest recollection down to his death and during the whole period embraced in the question, was intimately acquainted with him, altho' after the year 1821 I was but seldom at his house

Mr. Randolph was elected to Congress in the Spring of 1831 I voted for him if there had been anything unusual as to his state of mind at that time I should probably have remembered it. I have no particular recollection about his state of mind during the year 1821, or any other particular period prior to his going to Russia. I have never seen him when I did not think him capable of disposing of his property, or ^{doing} ~~committing~~ any thing else that might be done by a man of sound mind except in the winter of 1831 I think in the month of December he then appeared to me to be under very strong excitement. I thought bordering on insanity. I do not remember being again in Mr. Randolph's company until the morning previous to the adoption of his resolutions on the subject of the President's proclamation. he then appeared to be in a better state of mind than when I saw him in December 1831.

and further this deponent doth not
John Norton
Charlotte County, to wit.
The foregoing deposition of John Norton was this day

deposited subscribed and sworn to before me, a Justice of the Peace in the County aforesaid, between the hours and at the place mentioned in the Caption to the above depositions.

Given under my hand ~~and~~ this 10th day of November 1838.

W. G. C. Justice

Col. Clement Carrington sworn and examined.

Question by Justice Counsel: Were you acquainted with the late John Randolph of Roanoke during the year 1821, and from that year down to his retirement from Congress in 1829? If so, state your impressions as to the state of his mind during the whole of that period.

Answer: I was acquainted with Mr. R. during the time alluded to, and thought him the bravest man in this ^{district}, frequently had intercourse and conversations with him, and was invited and entertained by his society. I ~~was~~ always voted for him whenever he was a Candidate for Congress, had there been any indications of insanity I should not have done so. Although I cannot call my mind to any particular dates, yet I have no hesitation in giving it as my opinion that, during the period embraced in the question, he was entirely sane and capable of doing any act requiring sound judgment. And further this deponent doth not

Clement Carrington

Charlottesville County, to wit:

The foregoing deposition of Clement Carrington was this day duly taken, subscribed and sworn to before me, a Justice of the Peace for the County aforesaid, between the hours and at the place mentioned in the Caption to the above depositions.

Given under my hand this 10th day of November 1838.

W. G. C. Justice

Charlottesville County, to wit:

The foregoing deposition of Henry A. Matthews on above page from the 1st to the 11th inclusive, commenced on the 5th day of Nov. 1838 and continued to the 7th and the foregoing depositions of William M. ^{on further page} Matthews from the 12th to the 23rd inclusive, and of Winslow Robinson on above page from the 25th to the 28th inclusive were duly taken, subscribed and sworn to before me, a Justice of the Peace in and for the County aforesaid at the Tavern of W. G. C. Justice in the County of Charlottesville on the

1st day of November 1838 between the hours of 1 O'clock A.M. and 6 O'clock P.M. of that day and the foregoing depositions of William Smith on pages 29 and 30 of John Harsham from page 31 to page 39 inclusive of John Morton on page 40 and of Clement Carrington on page 72 were duly taken, subscribed and sworn to before me, a Justice of the Peace as aforesaid, on this 10th day of Nov. 1838 at the Tavern of W. G. C. Justice in the County of Charlottesville, between the hours of 1 O'clock A.M. and 6 O'clock P.M. all of which depositions were taken to be read ^{as evidence} in a Chancery Cause now pending in the Circuit Superior Court of Law and Chancery for the County of James City held at the City of Williamsburg in which Mathamie B. Tucker and St. George Tucker are plaintiffs and William Leigh executor of John Randolph deceased and others are defendants. Given under my hand this 10th day of November 1838.

W. G. C. Justice

(New Subpoena to the defendant Meade.)

At Rules held in the Clerk's Office of our said Court from the third to the eighth day of December (inclusive) in the year one thousand eight hundred and thirty eight aforesaid: On the motion of the plaintiffs by their counsel a New Subpoena is awarded them against the defendant William Meade.

(Deposition of Richard Logan filed December the 13th 1838.)

The deposition of Richard Logan taken before me, a Justice of the Peace for the County of Halifax at the Tavern of John S. Swallow in the County aforesaid and State of Virginia on the 27th day of November 1838 between the hours of 1 O'clock A.M. and 6 O'clock P.M. of that day to be read as evidence in a Chancery ^{now} pending in the Circuit Superior Court of Law and Chancery for the County of James City held at the City of Williamsburg in which Mathamie B. Tucker and St. George Tucker are plaintiffs, and William Leigh executor of John Randolph deceased and others are defendants. The deponent being first sworn.

Question by Justice Counsel: Were you acquainted with the late John Randolph of Roanoke during the year 1821, and from that time down to his departure for Russia in 1836? If so, state your impressions of the state of his mind during the whole of that period, but particularly on the latter part of the year 1821.

Answer: I saw Mr. Randolph frequently during the summer and autumn of 1821. I had not been acquainted with him previous to that time, altho

I had occasionally seen him before, but during that year and particularly in the summer and the early part of the Autumn I was sometimes with you two days together. And I have never seen any person who appears to be more fully in possession of his faculties. I did not ^{hear} that time any unusual excitement about him, but whenever I saw him he appeared entirely composed and collected. I have no distinct recollection of having seen him in that year within a very short time before his departure for Washington about the first of December. I occasionally saw Mr. Randolph after his first voyage to England which I believe was in the year 1822, but not frequently before 1829, in which latter year, I saw him at the several places of Session of Members of the Convention of that year and also during the time of the Session of the Convention; I do not recollect however that I saw him during the Convention except in the House. My opinion of the state of his mind at all times when I have seen him previous to his departure for Russia in 1830, is the same that I have before expressed during the year 1821.

Question by Plaintiff's Counsel. Do you not believe ^{that} frequently that between the years 1821 & 1831 Mr. Randolph was laboring under the influence of partial delusion, particularly on the subject of his inheritances, and the management of it by Judge Tucker the elder, and did he not frequently exhibit evidences of groundless doubts of his relations?

Answer. I have no reason to believe from my knowledge of Mr. Randolph previous to his return from Russia that he was under the influence of any delusion in relation to his inheritances and the management of it by Judge Tucker, or on any other subject. I have no recollection of having heard him speak on that subject. I have not heard him speak of many of his relations and never of any of them on terms of unkindness. The only time I saw him after he returned from Russia was at Charlotte November Court in 1831. I then heard him address the people of Charlotte and saw him afterwards at the tavern on the evening of the same day. At that time he was excited by greatly excited and I thought gave some evidences of alienation of mind. His speech was a rambling incoherent one, not confined to any particular subject, and his conversation was of the same character.

Question by Plaintiff's Counsel. Have you not seen Mr. R. exhibit great eccentricities of character? And had you known certainly that previously

to such exhibitions of eccentricity, he had been a decided Madman, would you not have attributed them to a return of his Madness?

Answer. I have not seen Mr. R. exhibit any such eccentricities of character as I should have supposed to be the result of Madness, except on the occasion alluded to in November 1831 - and further thus deponent saith not.

Richard Logan

Califas County to Wit;

The foregoing deposition of Richard Logan was this day duly taken subscribed and sworn to before me a Justice of the peace in and for the County of Califas, between the hours and at the place mentioned in the Caption thereto, to be read as evidence in the suit therein mentioned Given under my hand this the 27th day of November 1838.

J. S. Swollen

Depositions of Henry C. Watkins, John S. Fleming, Samuel Allen, Samuel G. Anderson, and Samuel Branch, given May 2nd 1839.

The depositions of Henry C. Watkins, John S. Fleming, William D. Dickey, Samuel Allen, Samuel G. Anderson, Samuel Branch and others taken before me a Justice of the peace in and for the County of Prince Edward, and State of Virginia on the 20th day of April 1839, between the hours of one o'clock A.M. and two o'clock P.M. to be read as evidence in a Chancery cause now pending in the Circuit Superior Court of Law and Chancery for the County of James City held at the City of Williamsburg wherein Nathaniel D. Tucker and St. George Tucker & others are plaintiffs and William Leigh & others of John Randolph & others are the defendants Henry C. Watkins being first duly sworn.

Question by Deft's Counsel. Were you acquainted with the late John Randolph of Kentucky during the year 1821 and from that year down to his return to Russia? If so, state what you know of the state of his mind during the whole of that period.

Answer. I knew Mr. Randolph long before and during the period referred to in the question now asked me. But as I saw him only occasionally, and not frequently, I do not know what was the state of his mind during the whole of that time. I have ^{no} recollection of having seen any thing in his conduct, or heard any thing from him ^{in conversation} which induced me to doubt the

92.)
scraps of his mind. And further this deponent saith not.

Henry C. Watkins

Taken and subscribed before me a Justice of the peace for the County of Prince
Edward at the place and between the hours mentioned in the caption.

April 26th 1839.

Wm. Trent (J.P.)

John S. Mowrey being first duly sworn.

Question by Judge Council. Were you acquainted with the late John Ran-
dolph of Roanoke during the year 1821, and from that year down to his
Mifflin to Russia? If so, state what you know of the state of his mind during
the whole of that period.

Answer. I was acquainted with Mr. Randolph in the year 1821, and for
some years before and down to the time of his Mifflin to Russia, and dur-
ing all that time I never saw him at any time, but I thought him en-
tirely sane. I frequently saw him, for he was sometimes at my house
and I was also occasionally at his house, and often heard him address
the People. I not only considered him Always sane, but one of the great
est men I ever saw.

And during the ^{whole of the} above period I supported him whenever he was a candi-
date. And further this deponent saith not.

John S. Mowrey

Taken and subscribed before me a Justice of the peace for the County
of Prince Edward at the place and between the hours and at the place
mentioned in the caption.

April 26th 1839.

Wm. Trent (J.P.)

Samuel Allen being first duly sworn.

Question by Judge Council. Were you acquainted with the late John Ran-
dolph of Roanoke during the year 1821, and from that year down to his
Mifflin to Russia? If so, state what you know of the state of his mind
during the whole of that period.

Answer. I was acquainted with John Randolph but my acquaintance
was only courtesie acquaintance. I never was in private, but two or
three times in my life with him, and I believe he was sane in the
year twenty one, and never believed he was otherwise, until his return
from Russia. And further this deponent saith not.

Sam. Allen

Taken and subscribed before me a Justice of the peace for the County of Prince
Edward at the place and between the hours mentioned in the caption.

Wm. Trent (J.P.)

Samuel C. Anderson being first duly sworn.

Question by Judge Council. Were you acquainted with the late John Randolph
of Roanoke during the year 1821, and from that year down to his Mifflin to
Russia? If so, state what you know of the state of his mind during the whole
of that period.

Answer. I know Mr. Randolph from about the year 1814 and from that
time lived in his district, ^{or the district} which he represented in Congress. I was in the
constant habit of hearing him make his publick exhibitions at Prince Ed-
ward Courthouse and frequently at the other Court-houses in his district from
1814 I was acquainted with him in 1821 and during his life and frequently
saw him during the period comprised in the above question. I considered
him sane, and a very great man at all times during that period. I was a
great ^{admirer} of him as a politician and during all the period spoken of had frequent
opportunities of converse with him and never failed to support him for any
office he sought or for which he was brought forward before the people by my
self and humble exertions, which surely I should not have done if I had
doubted his sanity. And further this deponent saith not.

Sam. C. Anderson

Taken and subscribed before me a Justice of the peace for the County of
Prince Edward at the place and between the hours mentioned in the caption.

April 26th 1839.

Wm. Trent (J.P.)

Samuel Branch being first duly sworn.

Question by Judge Council. Were you acquainted with the late John Ran-
dolph of Roanoke during the year 1821 and from that year down to his Mifflin
to Russia? If so, state what you know of the state of his mind during
the whole of that period.

Answer. I was acquainted with the late John Randolph of Roanoke during
the year 1821, and from that year down to his Mifflin to Russia, and during
the whole of the above period I do not remember to have seen him at any time
when he was not perfectly sane. Mr. Randolph was at my house several
times during the time above mentioned, and I frequently heard his publick

speeches, and I never saw him at any time when his mind was not in the condition above mentioned. And further this deponent doth not see Sam^r Branch

Prince Edward County, to wit:

The foregoing depositions of Henry C. Watkins, John James Fleming, Samuel Allen, Samuel C. Anderson and Sam^r Branch were duly taken and subscribed before me a Justice of the peace in and for the County of Prince Edward at the town of Waltham Lewis in the County of Prince Edward and State of Virginia on the 26th day of April 1839 between the hours of one o'clock A.M. and six o'clock P.M. to be read as evidence in a Chancery cause now pending in the Circuit Superior Court of Law and Chancery for the County of James City held at the City of Williamsburg, in which Nathaniel B. Tucker & St. George Tucker Coates are plaintiffs and William Leigh executor of John Randolph deceased and others are defendants.

Given under my hand and seal this 26th day of April 1839.

Wm. Hunt J.P. *[Signature]*

Answer of the defendants Meade and Key first

And at a Circuit Superior Court of Law and Chancery continued by adjournment and held for the County of James City and the City of Williamsburg, on Thursday the seventh day of May in the year One thousand eight hundred and thirty nine.

Nathaniel Beverley Tucker and St. George Tucker Coates vs. William Leigh executor of John Randolph deceased. William Meade and Francis Scott Key Trustees under the will of the said John Randolph deceased. Henry St. George Tucker, John Randolph Bryan and Elizabeth Tucker Bryan his wife.

On the motion of the defendants Meade and Key, leave is granted them to file their answers in this cause which is accordingly done to which the plaintiffs ^{by their counsel} instances respect generally.

Answer

The joint and several answers of Francis Scott Key and William Meade Trustees &c. under the last Will and Testament of John Randolph of

Randolph to the bill of complaint exhibited against them and William Leigh executor of the aforesaid John Randolph, and others in the Superior Court of James City County by Nathaniel B. Tucker and St. George Coates.

These defendants now and all times hereafter saving and reserving to themselves all and all manner of benefit and ^{advantages of} ~~exception~~ to the manifold errors, uncertainties and imperfections and insufficiencies in the Complainants bill of Complaint contained, for answers thereto, or unto so much and such parts thereof as they consider material, ^{for them} to answer unto, answering say that they admit that the complainants have correctly set forth the relationship of themselves and of the defendants Henry St. George Tucker and Elizabeth Tucker Bryan and of St. George Randolph to the said John Randolph of Randolph.

They admit also that the General Court of Virginia on the motion of William Meade, one of the Respondents, admitted on the 15th day of July 1836 to read the following instruments of writing executed by the said John Randolph in his last will and Testament of the said John Randolph, ^{namely} the instrument of writing attested by Richard Randolph from the Codicil which bears date the 5th day of December 1821, the Codicil bearing date as aforesaid the 5th day of December 1821; the Codicil bearing date the 31st day of December 1826; the first Codicil bearing date the 6th day of May 1823, and the Codicil bearing date the 20th day of August 1821; being the same papers as these Respondents presume exhibited by the plaintiffs with their Bill.

As to the proceedings had under that motion as to the parties defendants thereto and the final result thereof they beg leave to refer to so much of the answer of William Leigh first in this cause as relates thereto, which they believe to be correct and true as therein set forth, and pray that the same may be taken as their answer to so much of the Complainants Bill as it purports to respect to.

These Respondents further answering say that they believe and ^{have} ~~have~~ always ~~been~~ believed that the said John Randolph from the year 1824 and the 5th day of December in that year, when the first Codicil to the aforesaid will is dated to the 20th day of August 1821, the day of the date of the last Codicil thereto; was in a state of perfect intellectual sanity, and fully competent to make and execute a will. Between the 5th day of December 1821 and for several years before ^{until} ~~after~~ he went to Europe in 1830, these Respondents have often been in his company, and frequently conversed with him, and had no occasion from any thing that transpired between him

and them, or from any other cause whatever, to question the perfect vigour and health of his mind. - and they fully believe that during the above period he entertained a strong desire to wish some provision for the liberation of Comfortable Settlement of his House in some place out of the State of Virginia, and had formed deliberate intention so to do.

For further answer to the Complainants Bill of Complaint these respondents beg leave to refer your Honourable Court to the answer of the aforesaid William Leigh now on file in this cause (the Statements and allegations contained in which they believe to be true) and which they pray to be taken as a part of their answer.

And these defendants deny all and all manner of unlawful combination and confederacy. Without this that it is all which matters and things these defendants are ready and willing to aver, maintain and prove as this Honourable Court shall direct and hereby pray to be hereto directed with their reasonable costs and charges in their behalf most wrongfully sustained.

And this Defendant William Meade further States that he hath seen a journal or diary kept by the said John Randolph for nearly thirty years preceding his death, indicating he thinks entire sanity of mind, which journal or diary he believes is in the possession of said Henry St. George Tucker and which this Defendant prays may be produced and exhibited. He believes the said journal extended for nearly thirty years, and did not come down to the period of his death, but comprehended he thinks a period from about 1800 to about 1830.

H. S. Key
William Meade

District of Columbia
Washington County S.T.

On this 25th day of February eighteen hundred and thirty nine, William Meade and Francis Scott Key appeared personally before me the Subscriber a Justice of the peace, in and for the County aforesaid, and being first sworn according to law makes oath that the several matters within stated to be of their own knowledge are true (and that those which they state they believe to be true they do verily believe to be true as stated. - Sworn to before me
Clement J. Cortis

District of Columbia
Washington County to wit.

I William Brent Clerk of the Circuit Court of Columbia for the County of Washington do hereby testify that Clement J. Cortis Esquire before whom the within affidavits appear to have been made and who has also thereto subscribed his name was at the time of reading a Justice of the peace in and for the County aforesaid duly sworn and sworn.

Seal

In testimony whereof I have hereto subscribed my name and affixed the Seal of said Circuit Court for the County aforesaid this 26th day of February 1839.

W. Brent - Clerk

that at a Circuit Superior Court of Law and Chancery continued by adjournment and held for the County of James City and the City of Williamsburg, at the Courtroom on Friday the fifteenth day of November in the year one thousand eight hundred and thirty nine.

Nathaniel B. Tucker and St. George Tucker Coates
against
William Leigh ex. of John Randolph dec'd and others - Defs.

It is suggested to the Court this fifteenth day of November one thousand eight hundred and thirty nine that St. George Tucker Coates one of the Complainants in this cause hath departed this life and therefore was Carver Braxton executor of the said St. George Tucker Coates deceased by his Solicitor, and moves the Court that he may be permitted to prosecute this suit as a plaintiff, and in his character of executor of the said St. George Tucker Coates deceased, and it is accordingly ordered by the Court that the said Carver Braxton as executor of the said St. George Tucker Coates deceased be made a plaintiff and have leave to prosecute this suit as such: and thereupon came also, John Coates, Henry J. Coates, and T. B. Coates, Virginia B. Coates and St. George J. Coates, heirs and devisees of the said St. George Tucker Coates deceased, who are under the age of twenty one years, by Carver Braxton their next friend and moves the Court that they may be permitted to prosecute this suit as

plaintiffs, and in their character of heirs and devisees of the said
 St. George Tucker Coates dec'd, and it is accordingly ordered by
 the Court that the said John Coates, Henry J. Coates, Ann
 W. Coates, Virginia B. Coates and St. George J. Coates as heirs and
 devisees of the said St. George Tucker Coates dec'd, be made plaintiffs
 and have leave to present this suit as such by the said Goshen Braxton
 their next friend. And thereupon the plaintiffs in this cause suggest to
 the Court that though it appears in the bill exhibited in this cause that
 Frederick Webster Committee of John St. George Randolph is person of
 unsound mind ought to be a defendant in this cause, he the said John
 St. George Randolph being the son of Richard Randolph who was the
 son of the Father and Mother of the said John Randolph of Roanoke
 the draftsman of the bill, ^{and accordingly} omitted to name and make him a defendant
 in the prayer of the bill: and they move the Court to permit them to amend
 their bill by formally making him a defendant, and leave is accordingly
 given them so to amend their bill and it is done accordingly: and
 thereupon comes the said defendant Frederick Webster, Committee of
 John St. George Randolph, a person of unsound mind, as aforesaid, and
 by his solicitor moves the Court for leave to file his answer therewith, which
 is granted to him, and he accordingly files his answer, to which the plain-
 tiffs reply generally, and by consent of the said Frederick Webster, Commit-
 tee as aforesaid, the cause is set for hearing apto him: and the cause having
 been heretofore been regularly set for hearing as to all the other defendants
 comes irregularly to be heard this fifteenth day of November one thousand
 eight hundred and thirty nine, and the Court having duly considered the
 same, doth advise order and decree that a Jury shall be regularly sum-
 moned and impanelled on the Common Law side of this Court, who
 shall say on their oaths or solemn affirmations, as the case may be and
 on the evidence which shall be laid before them, whether the writings referred
 to in the bill as the exhibits A, B, C, and D, which were produced unto
 or any one or more of them are the will of the said John Randolph and
 Wife and devisees thereof of John Randolph dec'd. And it is ordered
 that the proceedings in this cause at the present term on this, the Chancery
 side of the Court, be certified to the Common Law side of this Court, and that
 the Issue this day directed shall be docketed on the Common Law side of
 this Court, on the issue docket, in order to the speedy trial thereof.

N. B. Tucker and others - - - - -
 against
 William Ligh executor of John Randolph dec'd and others. - - - - -
 To the Honourable A. P. Upshur Judge of the Circuit Superior Court of
 Law and Chancery for the County of James City and the City of Williamsburg
 sitting as Chancellor. M. B. Tucker Goshen Braxton executor of St. George J.
 Coates dec'd, and John Coates, Henry J. Coates, Ann W. Coates, Vir-
 ginia B. Coates and St. George J. Coates infant heirs and devisees of St.
 George J. Coates dec'd suing by their next friend Goshen Braxton respect-
 fully represente
 That having been permitted by an interlocutory made this 15th day of
 November 1839, by this Hon^{ble} Court in this cause, to amend the bill original-
 ly exhibited in this cause by making Frederick Webster Committee of
 John St. George Randolph, a defendant to said bill, they do now file their
 said amended bill, and pray that the said Frederick Webster, Committee as
 aforesaid, may be made a defendant to said bill, and may answer the same
 Geo: V. Southall
 for plaintiff Tucker
 Carter V. Davis
 for other plaintiffs
 Answer of the defendant Frederick Webster, Committee of John St. George
 Randolph. -
 The separate answer of Frederick Webster, Committee of John St. George
 Randolph, person of unsound mind, to a bill of complaint exhibited against
 him and others, on the Chancery side of the Circuit Superior Court of Law &
 Chancery held for James City County and the City of Williamsburg, by
 N. B. Tucker and St. George J. Coates.
 This respondent, saving all proper exceptions and denying all fraud,
 combination and collusion, and all participation in the constitution of the
 said suit, for answer to so much of the said bill as he is advised it is material
 for him to answer, saith that he is perfectly willing that an issue be directed
 for the trial of the question deviseavit vel non suggested by the bill
 and this respondent prays in due time to be dismissed. &c. &c.
 John R. Cooke counsel for
 respondent
 Fred. Webster.

Richmond County &c

I was to before me a justice of the peace in and for the County aforesaid by Frederick Hobson, ^{the} respondent therein named this 12th day of November 1839.

A. A. Goddin J.P.

And at a Circuit Superior Court of Law and Chancery continued by adjournment and held for the County of James City, and the City of Williamsburg, at the Court House, on Thursday the twenty eighth day of November in the year one thousand eight hundred and thirty nine, (being the day and year first herein mentioned)

Nathaniel Beverley Tucker and others Pls.

against

William Leigh exec. of John Randolph deceased and others. Dfs.

On the sixteenth day of November in the year one thousand eight hundred and thirty nine, the defendants William Leigh executor of John Randolph deceased, William Meade, Francis A. Key and John R. Bryan and wife appeared by their Counsel and moved the Court, first to dismiss the bill of the plaintiffs for want of jurisdiction in this Court, and if the said motion should be overruled, then, secondly, to remove the whole cause to some other Court, more convenient to the said defendants and ^{their} witnesses, and if both of said motions should be overruled, then, thirdly, to direct the issue heretofore directed, to be tried at the bar of some other Court, more convenient to the said defendants and their witnesses, and upon the said motion it was intimated that the plaintiff Nathaniel B. Tucker, resides in the City of Williamsburg, that the other plaintiff reside in the County of King William - that the defendant William Leigh resides in the County of Halifax - the defendant William Meade in the County of Clarke or Frederick, the defendant Francis A. Key in the District of Columbia, the defendants John R. Bryan and wife in the County of Gloucester, the defendant Henry St. George Tucker is President of the Court of Appeals and is a housekeeper in the City of Richmond during the Session of that Court in that City, but that his residence when not engaged in the discharge of his official duties, should be in ^{the County of} Lewisburg, and the defendant Hobson, Committee

in the City of Richmond, and the motions being fully argued, the Court took time to consider the same, until the twenty fifth day of November one thousand eight hundred and thirty nine, when the Court delivered its opinion, overruling all the said motions; and thereupon one of the Counsel for the said defendants, Leigh, Meade and Key moved the Court to suspend the entry of its Judgment overruling the said motions, until the arrival of this special Counsel, who was expected to be in Court during the day and to enable him to present the affidavit of the defendant Leigh touching the residence of certain witnesses whom he relies upon as material in the trial of ^{the} said issue; and when residence the plaintiffs Counsel did not admit, and intimated his intention to remove the said motions upon offering the said affidavit, and the entry of the Judgment of the Court was accordingly suspended, and on this day to wit; the twenty sixth day of November one thousand eight hundred and thirty nine, the said defendant William Leigh by his Counsel moved the Court to be allowed to file a Supplemental and amended answer, which was tendered, which motion was resisted by the Counsel for the plaintiffs, and the defendant, Hobson, Committee &c, and the same being argued, it is ordered that leave be granted to the said defendant to file the said Supplemental and amended answer, which was accordingly done, and therefore the plaintiffs replied generally to the said answer, and the said defendants, Leigh, Meade, Key and Bryan and wife moved the Court to set aside the order, entered in this cause on the fifteenth, instant, on the grounds now disclosed by the Supplemental and amended answer aforesaid, and the supposed immaturity of the cause in respect to parties and proofs, but the Court overruled said motion, and now proceeding to enter the Judgment pronounced on yesterday, overruling the other motions as aforesaid, the entry whereof was suspended, as aforesaid, doth adjudge, order and decree that all the said motions and that now submitted be and the same are hereby forever overruled, and on the motion of the plaintiff Counsel it is further ordered that the opinion of the Court overruling the said motions as aforesaid, be made a part of the record, which is done, and in the words and figures following to wit;

Langdolph's Will. Nov. 1839.

The Defendants Leigh, Bryan, Meade and Key moved the Court.
1. To dismiss the bill, for want of Jurisdiction; and if this fails,

2. To send the cause to some other Circuit Court to be tried: If this fails:

3. To send the cause to some other Court to be tried.

Before I enter into an examination of the question of jurisdiction arising out of the facts admitted to exist in the present case, it is necessary to determine whether or not that question is properly before me, is it presented by the record in such a form, as to authorize the Court to decide it at all?

It is not necessary in any case, that a defendant in order to waive himself of a want of jurisdiction in the Court, should either plead to the jurisdiction or demur to the bill. If it appear upon the face of the bill, that the subject matter is not proper for equity jurisdiction, the Court will dismiss it for that reason, whether the exception be taken by the defendant or not, as if it should seek damages for a tort. If the case be such that no evidence of things which the proof might disclose, would present a proper case for the jurisdiction of any Court of equity, the Court will not sustain it, even with the consent of all the parties. There is no such a case a want of judicial power in the Court, which no consent of the parties can supply. But if the case presented by the bill, be prima facie fit for the jurisdiction of a Court of equity, and if there be circumstances attending it, which render it not proper that the particular Court should take cognizance of it, such circumstances should be pleaded by the defendant, in some proper form, and if not so pleaded, they will not avail him. In the case before me, the want of jurisdiction is supposed to arise from the fact that neither of the defendants resided within the County of James City or City of Williamsburg, at the time of the issuing of the Subpoena. It is necessary therefore that this fact should be put in issue by the pleadings, or else the question of jurisdiction cannot arise.

There is not in this case any formal plea to the jurisdiction of the Court, were it necessary that there should be. The defendant may state the matter of the plea in his answer, and pray that the benefit thereof may be received to him in the same manner as if formally pleaded. But he must do this plainly and distinctly, so that it may appear to the Court, clearly and without doubt, that he means to rely on the exception. The answer of equity pleading, dispense with the form, but not with the substance of the plea. Every plea must be such as to direct the attention of the opposite

party distinctly to the point on which the party who suggests it intends to rely. If it be matter of law, it must be so presented as to enable ^{the Court} to decide the question of law; if it be matter of fact, it must be presented as to ^{afford} the opposite party an opportunity to deny its truth, and at the same time, to give him notice to what point his testimony is to be applied. These things being necessary in formal pleas, are equally necessary in an answer, where the answer professes to set out the matter of the plea, and prays that it may avail as a plea. Let us then, how far the defendant's bill, has observed these rules in the present case.

The following portions of the answer, are those which are supposed to be in substance a plea to the jurisdiction. "The plaintiffs too have instituted this suit in the Court of a County in which no one defendant was or nominally resides, and rely as he understands on the service of the Subpoena within the County, on the defendant John R. Bryan to give the said Court jurisdiction." This is the only clause of the answer, in which the non-residence of the defendants within the territorial jurisdiction of the Court is stated. Even here, it is not expressly affirmed.

It may well be doubted whether this would be a good plea, even if the matter of it were stated with all the necessary forms. The answer however speaks in the present tense, and relates to the time of the filing thereof. But it is no objection to the jurisdiction that the defendant did not reside within the County at the time the answer was filed, provided he resided there at the time the suit was instituted. It does not however, lay any stress upon this. The defendant goes on to state that the service of the Subpoena on the defendant Bryan, was by an arrangement between him and the plaintiffs, and thereupon an argument is offered to prove that such an arrangement ought not to be countenanced by a Court of equity, because it would enable the plaintiff with the aid of a merely nominal defendant, to select his own forum among the numerous Courts of the Commonwealth, either with the view of harassing the real defendants, or of obtaining some improper advantage in the proceedings, an example not only well calculated to act the views of the opposer, but to impair the fairness which ought always to prevail, in the administration of Justice. He therefore feels himself bound to resist, by all legal means, the establishment of such an example in the present case, not only on account of its general

dangerous consequences, but especially because he fears that it may operate to the injury of the slaves, the only real defendants, whose rights it is his duty to protect. These are the only passages in the answer, from which it is inferred that the defendant meant to except to the jurisdiction of the Court, and it is plain that no such intention is expressly avowed. The inference might possibly be avowed, if the language employed were susceptible of no other reasonable construction. But the language is susceptible of a different construction, and plainly discloses a different purpose. It is to be observed that the defendant in the passage first quoted, goes beyond the requisites of a good plea in anticipating the plaintiff's reply. He not only states that he resides defendant resides within the County of Barnes City, but he also states that the plaintiff rely on the fact that the Subpoena was served within the County, to avoid this objection it is obvious that the question of jurisdiction was on his mind, and if he had intended to except, he would have done so in explicit terms. Thus from doing this, he appears to acquiesce in the jurisdiction, for he goes on to show, by a laborious argument that the Court cannot proceed with the case, as it could not, if it had no jurisdiction, but that it ought yet to proceed with it, because of the mischievous consequences of the exercise of jurisdiction under such circumstances. This excludes as far as a strong implication can exclude the idea that he intended to rely on the want of jurisdiction. He adds that he feels it his duty to assist, by all legal means, what. The principle of Law by which alone the question of Jurisdiction can be decided certainly not, for if he considered the principles of law as against the jurisdiction, he had no motive to resist it, but the contrary. If he meant the assumption of jurisdiction contrary to the principles of law, then his language is inappropriate, for there is but one means of resisting such an assumption. His own language however, leaves us no room for doubt upon this point. He does not mean to resist by all legal means, the establishment of a principle by which the Court shall have jurisdiction in such cases, but the establishment of an example, dangerous in its consequences, and particularly injurious to the slaves in the present case. This example can be found only in the exercise of the jurisdiction, and not in the mere possession of it. He accordingly tells us

in what mode he means to resist the establishment of this example. He does not ask that the cause should be remitted, which is the only course the Court could take, if it had no jurisdiction to try it, but he considers himself bound back the Court to send the case to some more convenient tribunal. This is the natural and legitimate conclusion from the argument on ab inconvenienti, which he had just used, it is manifest that he did not intend to deny the jurisdiction of the Court, since the only purpose for which his argument is urged, is to induce the Court to reverse that jurisdiction in a particular mode. If the Court had no jurisdiction to try the case, it has no jurisdiction to send it to some convenient tribunal.

From this view of the subject, it is manifest to my mind, that however this Court might decide the question of jurisdiction if it were properly presented, it is compelled to answer it, in the present state of the pleadings. The case made by the bill is proper for the jurisdiction of a Court of equity, and of course it is proper for the jurisdiction of ^{this} Court unless some circumstance appears to be a proper form of pleading, showing that some other Court, can alone exercise that jurisdiction. No plea to that effect is on the record, neither in form nor in substance, but on the contrary the exception is plainly waived. A party who means to rely on special matter in her defence, must at least, express that intention, in plain, intelligible terms, not susceptible of a contrary construction.

The decision of this point relieves me from the necessity of investigating the question of jurisdiction. I will barely remark that it has been before me before in another cause on this Court, and that I then decided in favour of the jurisdiction. I have seen no reason to change the opinion then expressed, on the contrary it has been strengthened by subsequent reflection.

2. The ^{next} question is, shall the whole cause be sent to some other Court for decision; and involved in this is the previous enquiry have I power to do so, and if so, to what extent?

It is not a power inherent in a Court of equity as such, nor can it be derived from the various acts of Assembly on the subject of a change of venue, for these relate only to C. L. causes. If it exist at all, it must be by virtue of some special provision in our own laws, and must be exercised according to those laws and not otherwise.

By the 38th § of the act of 1831 it is provided (see the §). The first part of this § provides for the case of two or more defendants, and authorizes suits to be brought in the County or Corporation where either of them may reside. The next clause provides that when any such suit shall be brought the Court may, for ~~good~~ ^{good} cause remove it to the Circuit Court of the County or Corporation where the principal defendant resides. I understand it to be contended by the plaintiff's counsel that this act does not apply to the case before me, because neither of the defendants resides within the County or Corporation where it is brought. I think this construction quite too literal. The first object of the act was simply to define the jurisdiction of the Circuit Courts in reference to this point, and to give jurisdiction to the Court of any County or Corporation where any defendant might reside. Where there are more defendants than one residing in different jurisdictions the plaintiff is at liberty to select the jurisdiction which he may prefer. But as this might lead to inconvenience in many cases, a discretionary power is given to the Court to send the case to the jurisdiction within which the defendant or defendants principally interested may reside. This being the mischief intended to be remedied, I do not perceive why the act should not be extended to cases where the Court properly assumes jurisdiction whether any defendant actually resides within it or not. If, as I have supposed, the mere domicile of the Defendant within a County or a Corporation who does not reside there gives jurisdiction to the Court of such County it is because such domicile is equivalent to actual residence, i. e. it is part of its original jurisdiction which no positive law has taken away. It matters not by what means the Court obtains jurisdiction. The mischief of the provision of this act is intended to remedy, does not arise until the jurisdiction is actually opened, and that mischief is the inconvenience to which the defendant or defendants principally interested, ^(see margin) or chargeable reside. The law however is not as one of the Counsel seems to suppose, mandatory. The word "may" is not equivalent with "shall"; for the power to remove is only "for good cause shown by any defendant or defendants" or "for reasons appearing to the Court itself." Of the goodness of this cause shown, and of the sufficiency of these reasons appearing to the Court itself, the Court alone can Judge, and this gives it full judicial discretion over the subject. If the cause shown or the reasons appearing to the Court be sufficient, it ought to remove

In every case of removal in a Circuit Court, the plaintiff is bound to show that the defendant or defendants do not reside in the County or Corporation where the suit is brought.

therein it ought not.
 What then is the cause shown in the present case, and who are the principal defendants? It shall have occasion to advert to these points hereafter, at present let it be supposed that the slave are the principal defendants, and that they reside within the County of Charlotte. I may judicially take notice of the fact, that the defendant Leigh, ~~one~~ ^{one} of those by whom this notice is made, is himself the Judge of the Superior Court of Law and Chancery for that County. It is impossible therefore, that I can, in the exercise of a sound judicial discretion send the cause to him to be tried, and I have no power, under this act, to send it any where else.
 It is said however, that although the defendant Leigh ought not, and certainly would not try the cause himself, there is no reason why it should not be sent to him, upon the full assurance that he would send it to some other jurisdiction. It is a sufficient reply to this, that the law certainly never contemplated that a case should be sent from a Court authorized to try it, to another Court having no such authority; and this too, merely that such other Court might exercise a discretion which might just as well be exercised by the Court in which the cause depends, in selecting another tribunal. There is certainly no necessity for any such ^{intermediate} agency between the Court in which the suit is brought, and that by which it is to be finally tried. Such an agency would not only be productive of inconvenience, delay and expense, but would in the present case, be unjust in itself, because it would enable the defendant to select his own jurisdiction. The plaintiff has done no more than this, and by law he had a right to do it, and by his petition was compelled to do it. I do not perceive with what propriety the defendant can ask the Court to deprive the plaintiff of this right, in order to confer it on him.
 There are only two other laws known to me upon which the power of the Court to remove this cause, can be predicated. The first is that which authorizes the removal of any cause, which the Judge before whom it is brought, ought not, either in account of his interest in the subject, or for any other sufficient reason, to decide. As I am not conscious of the existence of any such reason in the present case, this law need not be further examined. The other law is the 55th § of the act of 1819, which provides that if either of the Judges of the General Court be interested in any suit which is the cause of any other

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person, would have been proper for the jurisdiction of such Judge, it shall
be lawful to institute such suit in any Court within an adjacent Circuit.
It is contended that this law also, is mandatory, and that the words 'it shall
be lawful'; are to be so construed as to require the suit to be brought in
some County of the adjoining Circuit, and not elsewhere. I cannot so inter-
pret it. If I were I should ^{give} the Judge an advantage, given over the other citi-
zens of the Commonwealth which the law certainly never contemplated.
It was the intention of the act, not to change the ^{general} law regulating the ju-
isdiction of the Courts, but simply to deprive the Judges of an immunity
by which they might otherwise derive from the fact that according to that
law they themselves would be called on to decide their own cases. As a
Judge cannot be sued in his own forum, and as the general law requires
that suit shall be brought only in the Court of the County in which the
defendant resides, a Judge might but for this act, not be suable at all.
The purpose of the law, ^{was} therefore, simply to give the ^{Judge of the} adjoining Circuit the same
jurisdiction over him, that the Judge of his own County would have if he
were not himself that Judge. If we give the act any other construction than
this, particularly, if we give it the broad construction contended for by the
defendants counsel, the effect will be to exempt the Judges from ju-
risdictions to which every other citizen is amenable; suppose for example
that the cause of action on the law side of the Court against the Judge
of Charlotte County, should arise within the County of James City, and
the Judge should be arrested in the County of James City, would not
this Court have jurisdiction in that case? It clearly would. Suppose
that Judge were interested as a defendant in a case in equity, in which
the principal defendant resided in the County of James City, would
he not be suable in this Court? There can be no doubt that he would be.
But if the construction of the act of 1819 contended for by the defendants
counsel, be correct, if the words 'it shall be lawful'; be construed to mean
it shall be necessary or indispensable, to sue him only in some County
of the adjacent Circuits, he would be exempt from this jurisdiction in both
the cases above supposed. The law certainly did not intend to give him
any such immunity. The object was to subject him, as near as possible,
to the same liabilities with other citizens, and not to exempt him from
any liability from which his position as a Judge did not necessarily exempt
him.

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But if the argument which the defendants counsel has built upon the supposed
mandatory character of the act of 1819, be worth anything, it goes to the jurisdiction
of this Court, and not to the ^{propriety of} removing this cause. If a Judge is suable in no case,
except in some County of the Circuit adjoining his own Circuit, then this Court has
no jurisdiction in this case. But I have already said that the question of jurisdic-
tion does not arise upon the present proceedings, and it is now too late in the progress
of the cause, to raise it.

If it be said that, even supposing this Court to have jurisdiction, the provisions of
the act of 1819, suggest the propriety of removing this cause, to some County of
the Circuit adjoining Judge Leigh's Circuit, Judge Sumner, the idea is entitled
to consideration. It will be duly considered, under the next head. At present
it appears to me that in the exercise of a sound judicial discretion, and as this
cause now stands before me, I cannot and ought not, to remove it to any
other Court.

3. The last subject of enquiry is, shall the issue at law, be sent to some
other Court to be tried?

On this point there is nothing in the record, nor in the positive law of
the State, to direct my judgment. I must decide it upon the facts stated at
the bar, and submitted to court, and from such other circumstances as ought
to influence me. As this Court has the undoubted power to send the issue
to any other law tribunal in the State, it is restrained in its selection, by no
consideration but those of justice and duty. There are few Judges I presume,
who would not gladly release themselves, if they could do so with propriety,
from the labour of such an investigation as this cause requires; but no Judge
who has a due sense of his ^{own} duty, would shrink from it, except for reasons
which ought to satisfy an impartial judgment.

It is true as a ^{general} proposition, that an issue devisavit vel non, can
be more properly tried before the Judge who orders it, than any where else.
Although the Jury are in fact the triers of the question, yet the Court has
the same control over the verdict that it has in other cases, and of course
the Court which conducts the investigation and hears the testimony, can best
tell whether the verdict be proper or not. For this and other reasons the issue
ought to be retained here, unless there be much stronger reasons for sending
it away. These reasons I proceed to examine.

The first is, that this is a remote and inconvenient jurisdiction to the principal

defendants. It is said that the Slaves are the principal defendants and that they reside within the County of Charlotte. It is true that as far as the Slaves are concerned, it is a question of liberty, and as far as the other defendants are concerned, it is a question of property. But is the presence of the Slaves at all necessary to the ^{affirmation} of their rights in this case? Can they personally have the least agency in the matter? Every one would at once perceive, that their rights must be entrusted to more competent guardians than themselves, and in point of fact, they have been entrusted to the most competent guardianship of Bishop Meade and Mr. King. If then, I am to consult only the convenience of the principal defendants, I must look not to the Slaves themselves, but to those ^{who} alone ~~can~~ manage this cause in their behalf. And as one of these gentlemen resides near Winchester, and the other in the D. of Columbia, I cannot select a forum convenient to them which will not be equally inconvenient to all the other parties. Thus I ought not to do, and I do not understand that it is ever asked.

The next reason is, that this forum is very inconvenient to the largest portion of the most important witnesses. This is not admitted by the other parties, to be true, and I have no means of determining whether it is so or not. Adventing to the Character of Mr. Randolph, to his habits, his pursuits, public and private, and the Character of his associates. I should suppose that so remarkable an event in the history of his life, as the failure of his intellect, would be apt to be observed abroad, as at home.

It is probable that witnesses competent to give important information upon this point, may be found in most parts of the United States, and not only here, but in Europe. Be that as it may, I ^{cannot} undertake to draw this motion upon a supposed state of facts not proved to be true, and deemed to be so, by those against whom the motion is made. Let the issue be tried where it may, the probability is that some difficulty will be experienced, in collecting the witnesses. They are so numerous and so dispersed, that no one point can possibly be most convenient to all of them. As I have no means of determining what point will be most convenient to the largest portion of the most important of them, no reason for removing the issue can be derived from the desire to accommodate them, or to facilitate their attendance upon the Court.

Even admitting however that the issue ought to be tried to some other bar

let us inquire to what bar it ^{ought} to be sent. It ought to be retained here, unless we can find some other tribunal less objectionable than this.

The defendant Leigh is the Judge of the Circuit in which Mr. Randolph resides and within which it is said, most of the witnesses now reside. Of course the issue cannot be sent to any one of his bars. When the Subject was first introduced, I was strongly inclined to select the County Court of Charlotte, but upon further reflection, it appears to me very clear, that I ought not to do so, even if I could expect to find, in any County Court of Virginia, at this day, the requisite intelligence and information for conducting such a trial as this, the very organization of these Courts unfit them for the task, in the present case the trial could not possibly be finished, in the longest term of a County Court. The probability is so that the members of that Court, would change almost from day to day, & I need not enlarge upon the difficulties and embarrassments to which this would necessarily give rise. Questions of law must be expected to arise in the progress of such a trial, which no County Court would be competent to decide. I need not pursue the enquiry any farther. If we reflect upon the nature of this issue; upon the great variety of important and difficult questions which it involves; upon the unusually large number of witnesses who are to be examined; upon the unavoidable long duration of the trial; upon the necessity which, will exist, for promptness and efficiency in conducting it; upon the demand which will every day be made, for the exercise of a vigorous and controlled authority, we shall not fail to perceive that the best County Court which could be found in the State would fall very far short of the requisite qualifications.

But would the County of Charlotte be a proper venue for this trial under any circumstances? When Randolph filled a large space in the eyes of that Community, for a long series of years, and held such relations to it, as necessarily to draw to him, the close attention of every one. It is probable, - almost certain - that the very question involved in this issue, has been discussed over and over again, at very respectable fires, in the County, and that almost every man, qualified to try it, in point of intelligence, information & Character has his opinion already formed. It is not probable that a jury could be obtained in that, or any neighbouring County with minds so free from all impressions of the Subject, as to fit them to try this important issue with impartial justice. And is there no danger that the question of sanity or insanity of John Randolph would, in that region of County particularly partake too much

of a political character. I know something of the consistency of political parties, something of the influence under which they are formed, something of the confidence with which political opinions are voted on the authority of John Randolph's name. I will not enlarge upon this topic, but I may be permitted to say this at least, that I should not feel free from blame, if I were to submit this question to the decision of men, who are already in all probability, committed upon it, with the full strength and assistance of political feeling.

Shall I send the case to the adjoining Circuit of Judge Danvers? The view of the subject last presented, appears to a great portion of this Circuit also. Besides the affidavit of the plaintiff, which shows that he thinks Judge Danvers personally hostile to him. If the fact be so, I ought not, without strong and conclusive reasons, to subject him to that jurisdiction. And even if the plaintiff be mistaken in his opinion, I ought nevertheless to respect it, for as well remarked by the defendants Counsel, a Court ought not only to be just, but also to appear to be so. It will cease to be respected if the doubts in it, for, although without reason, that it has not dealt justly with them.

Shall I send it to the Circuit of Judge Mason? He has already Judge the case. The same is true of Judges Leitch, Christian, and every other Judge on any respect convenient to the parties, except Judge Nicholas, whose I then send it to Richmond? Judge Nicholas is a witness in the cause, & would not as it is said, agree to try it as a Judge. Besides such is the facility of travelling between Richmond and this place, that the inconvenience to the parties is the same. It thus appears that no other tribunal can be found which is not liable to any strong objection.

How stands the case with respect to this tribunal? (The Judge has since sat in any one of the various proceedings ^{concerning the subject} which have been had. The people ^{from} among whom the Jury will be selected, are intelligent and moral, and as competent as any other people to do justice to the subject. They have never had such connexion with it, nor felt such interest in it, as would be likely to bias their Judgments. There is no part of the State in which an intelligent, honest and impartial Jury, could be more easily selected. The place is accessible by pleasant and daily public conveyances, and affords the requisite accommodations for the greatest number of persons

that the trial can be supposed to be possible. In what respect then is it objectionable? In point of convenience to the parties and witnesses, it is less objectionable than any other place, which is not much more objectionable for other reasons. The prospect of a speedy, fair and satisfactory trial here, is at least as good as it would be, if the issue were before any other Court in which it could properly be tried. The plaintiff has selected this tribunal, as by law he had a right to do. I cannot deprive him of that right, unless I find that in the exercise of it, he will impudently invade the rights of others. If he derives any advantage from it, it is the same advantage which those who seek to deprive him of it, claim for themselves. Shall this it may be added that the cause itself, instead of ~~being~~ necessarily, remain in this Court, and for that reason alone, the issue ought to be tried at this bar, unless there be reasons against it, of a much stronger and more controlling character than any which I have yet been able to find.

I am therefore compelled to overrule all the motions of the defendants. Nov^r 28th. Memorandum. After this opinion was written and before it was delivered, a rumour of the death of Judge Danvers, reached Williamsburg, which afterwards appeared to be true. For that reason and for the growing out of the affidavits filed, and the Supplemental and amended answer of ~~the~~ ^{the plaintiff} Leitch the Court, at the request of the defendants Counsel, suspended the entry of its decision on the foregoing motions. And at a subsequent day, the motions were renewed on the grounds above stated, in connexion with those originally urged. The Court did not consider the affidavits and amended answer as affording any ground for changing its opinion, nor did it consider the fact of Judge Danvers' death, as affording any such ground. The Court thought ^{that} as the case was already before a tribunal to which it saw no conclusive objection, it ought not to send it to a Circuit in which there was no Judge. The parties were told that they could renew the motion at a subsequent term of the Court, upon proof of the truth of the Supplemental answer, or because the Successor of Judge Danvers, who would then be appointed, would be ^{more} proper to try the case than the Judge of this Court; but that until such Successor should be appointed, it would be impossible for this Court to say whether or not, he would be more objectionable. And therefore it is ordered that the cause be continued until the next Term.

114. Supplemental and amended answer of William Leigh executor of John Randolph deceased.

The Supplemental and amended answer of William Leigh executor of John Randolph of Roanoke to the bill of Complaint exhibited against him and others in the Circuit Superior Court of Law and Chancery for the County of James City and the City of Williamsburg by W. B. Tucker and others.

This defendant says that since the filing of his former answer he has discovered that Frederick Hobson is not the Committee of St. George Randolph as is alleged in the plaintiffs bill. He has ascertained that Mr. Judith Randolph the Mother of the said St. George by her will gave certain property to the executors named in her will in trust for the said St. George, that if the executors named in the will of the said Judith, John Randolph alone qualified, and that upon his death the County Court of Prince Edward by a simple order without bill or answer or any other proceeding whatsoever, appointed the said Frederick Hobson Trustee in place of the trustees appointed by the will of the said Judith Randolph, as will appear by a copy of the order herewith filed.

And this defendant believes that the said Frederick Hobson claims to be the Committee of the said St. George under the aforesaid order, and under no other authority whatever. This defendant is advised that the aforesaid order does not confer on the said Frederick Hobson the powers of a Committee or authorize him to interfere with any estate real or personal, which the said St. George may have become entitled to, as one of the heirs and distributees of his testator and he asks that all proceedings in this cause may be suspended until the plaintiffs shall bring before the Court some legal representative of the said St. George Randolph. The said St. George Randolph is now in the Sematic Hospital in Baltimore, but he has real estate and personally personal property in the Counties of Prince Edward and Cumberland or one of them - that is the property left in trust for him by the said Judith Randolph.

James City County, to wit:
William Leigh personally appeared before me a Justice of the peace for the said County and made oath that the facts stated in the above answer, so far as they stated upon his own knowledge are true and so far as they are stated upon the information of others he believes them to be true. Given under my hand this the 26th day of November 1837. Richardson Henning J.P.

The following is a copy of the order referred to in the foregoing answer of William Leigh executor of John Randolph deceased.

At a Court held for Prince Edward County March the 17th 1835. Judith Randolph by Will having appointed John Randolph, Henry St. George Tucker, Edward Dilton, John St. Ric and James Herton her executors, and Trustees for her son John St. George Randolph, and John Randolph having qualified as executor, and departed this life, and it appearing to the satisfaction of the Court that the other executors and Trustees are either dead or decline to act: The Court doth therefore appoint Frederick Hobson Trustee in the place of the trustees appointed by said Will, to carry into execution the purposes of the Trust created by the said Will. Thereupon the said Frederick Hobson with Thomas A. Hester, James Madison, James D. Wood and Ruben Say his Co-trustees entered into and acknowledged their bond for the purpose in the penalty of Twenty four thousand dollars.

A Copy Teste
H. A. Weirham, C.C.

The following are the affidavits mentioned in the foregoing Deed, and opinion of the Judge.

Virginia. City of Williamsburg, District;
In the Superior Court of Law and Equity for the County of James City & the City of Williamsburg
Tucker & al. vs. Leigh & al. A Bill in Equity

Mathaniel Browley Tucker one of the Complainants in this cause makes oath that he has reason to believe, and does believe that William Daniel one of the Judges of the General Court of Virginia cherishes a feeling of hostility towards him this affiant.

N. Browley Tucker
Shewn to be sworn on this 21st November 1837
A. P. Upshur

Tucker & al
vs
Seigh & al

The plaintiff Tucker states, as to the residence of the witnesses who have been examined in the controversy in the General Court and in the Court of Appeals in regard to the will and Codicils in his bill mentions and who may be examined in the present controversy (but whether they will or no he cannot say) that, to the best of his knowledge and belief their residences are as follows, to wit; John Brockenbrough in Richmond; Richard Randolph Junr in Edsapper, B. Moody in Chesterfield; Richard Adams in Richmond; Isham Randolph in Henrico; George T. Kennerly in Henrico; John A. Chevalier (since dead) Richmond; Joseph Mass, Richmond; Thomas Minton, Cumberland; William S. Barksdale, Amelia; John Goddin, Richmond; Benjamin W. Seigh, Richmond; Frederick Porter, Prince Edward; Dr. Thomas Robinson, Petersburg; which was also the residence of his wife Ann Robinson (since dead) John Coalter (since dead) was of Stafford, and Mr. Selia Tucker (since dead) was of Williamsburg; The two Parishes and Francis West are of Philadelphia and so is Badger; Mark Alexander and John Nelson of Mecklenburg, Robert Carrington, Arkansas; Edward Morgan, Joseph Daniel, Wm. McCallkins, Henry A. Watkins, John Marshall, Thurney, Palmer, Guffin, Clay, Harvey, Gardwell, Patillo, Price and Hannah, Charlotte or Prince Edward, Samuel Anderson, Prince Edward; Dr. Dudley, Louisiana; Texas; Dr. Meery, Misserini; Richard Anderson, Richmond; Charles Botts, Richmond; Wm. H. Pomeroy, Henrico; Ph. A. Nicholas, Richmond; He cannot now say that all the said witnesses will be examined in this case or which for the plaintiffs which for the defendants, but declares that he has witnesses important to the trial of this case, in and about Williamsburg, and several out of the Commonwealth, and at different points in the Commonwealth as convenient (and in many instances more so) to Williamsburg as to the County of Charlotte; and that he has important witnesses on the waters of James River, who, by reason of the communication by Steam Boats can reach Williamsburg more readily than many other and less distant places. He also states that William Seigh Judge of the Circuit which embraces the County of Charlotte is the same William Seigh who is a defendant in this case; that Judge Mason the Judge of the Petersburg Circuit, is the same, who as a member of the Special Court of Appeals

sustained the decision of the General Court admitting to Probate the will and Codicils in the Bill mentioned; that Judge Daniel of the Circuit embracing the Counties of ^{Cumberland} Buckingham and Campbell is said to be recently dead; that Judge Nicholas was examined as a witness in the General Court, sitting as a Court of Probate on the will and Codicils in the bill mentioned and is said to object for that reason to sitting in this case; and the said plaintiff further refers to the record of the proceedings of the General Court and Court of Appeals, for the names of those Judges of the General Court, who have pronounced opinions on the very question presented by this bill, and he therefore respectfully invites that there is no other Tribunal to which so little objection can be raised as the very one, which, in view of all these considerations, he selected as affording the best hope of a speedy and impartial decision of this case.

City of Williamsburg, to wit;
This day personally appeared before me Robert Saunders a Justice of Peace for the Commonwealth in the Corporation aforesaid Beverly Tucker who made oath to the truth of the facts set forth in this paper. Given under my hand and Seal this 26th Nov^r 1839.
R. Saunders (Seal)

Tucker & al
against
Seigh & al

William Seigh personally appeared before me a Justice of the Peace for James City County and made oath that he is the qualified executor of John Randolph of Roanoke deceased and as such a defendant in the above suit. That he verily believes that Mark Alexander, Winslow Robinson, Richard Randolph Jr, Joseph M. Daniel, Wm. McCallkins, Henry A. Watkins, John Marshall, John J. Thurney, Wm. Berkeley, John Nelson, Saml Branch, Richard Logan, Saml Allen, Saml C. Anderson, Henry C. Watkins, Clement Carrington, William S. Barksdale, Thomas P. Richardson, Benjamin W. Seigh, and Wm. Smith are material witnesses on behalf of the defendants supporting the will and Codicils mentioned in the above ^{named} suit, and which the plaintiffs seek to set aside. That of the above named witnesses Mark Alexander and John Nelson reside in the County of Mecklenburg; Winslow Robinson, Joseph M. Daniel, Wm. McCallkins, Henry A. Watkins, John Marshall, Clement Carrington, Thomas P.

118 Richardson and William Smith reside in the County of Charlotte in which the said John Randolph resided for many years previous to the date of the will and codicils aforesaid and up to the period of his death; John I. Flourmy, William Berkeley, Samuel Allen, Saml. G. Anderson, and Henry E. Watkins reside in the adjoining County of Prince Edward, Saml. Branch in the County of Campbell which is adjacent to the two last mentioned Counties Richard Logan in the County of Halifax adjoining the County of Charlotte, Wm. J. Barkdale in the County of Amelia & W. M. Leigh in the City of Richmond. That in addition to these witnesses, who in the opinion of this affiant are probably the most material for the parties aforesaid supporting the said Will and Codicils and without whose testimony or that of the much greater part of them, they in his opinion could not safely go to trial of the issue proposed by the Will of the plaintiffs, should such issue be divided, there are numerous other witnesses resident in the Counties before mentioned and in the Counties of Buckingham and Cumberland and other places very distant from the City of Williamsburg, whose testimony he believes may be material in the trial of such issue. From the distance of these witnesses from the City of Williamsburg he apprehends and truly believes that the parties aforesaid will never be able to procure their attendance or the attendance of such and so many of them at the place at any one term as will be essential to a just and fair trial, believing as he does that it will be important to have the personal attendance of the said witnesses or as many of them as can possibly be procured, and this affiant does believe that their attendance can be more readily procured should the trial of the said issue be ordered to be had in some Court nearer the residences of the greater part of the ^{said} witnesses. And in the opinion of this defendant a fair trial of such issue cannot be reasonably expected at a point so distant from the places of residence of the said witnesses as the City of Williamsburg, the nearest of them to the said City at present recollectd by the affiant being those who reside in the City of Richmond, or the Country above it or immediately round it, this affiant has no pecuniary interest in the matter in controversy and is in no other way concerned therein, than as he is made a defendant in his Character of executor under the Wills and Codicils aforesaid, and is desirous of discharging his duty as such executor. Shewn before me this the 26th November 1839.
Richardson Henley J. P.

Dear Sir,

The meeting of Congress here has given us an opportunity of having a conference with Genl. Jones and Mr. Robinson, to whom Bishop Meade and myself referred your propositions to us.

I now therefore am enabled to say that you may take all evidence you may desire on notice to Judge Leigh - we will consider notice to him as notice to us.

Having now for the first time, a copy of your Bill, we will put in an answer to it and authorize an appearance - and this we will do as soon as possible - I have just written to Bishop Meade, and by the time he replies to my letter, I expect to be ready with the brief answer we shall put in.

I am Sir

Respectfully Yours

J. S. Key

Beverly Tucker Esq.

Williamsburg
Virginia.

The following are the entries on the Law side of this Court
Virginia.

At a Circuit Superior Court of Law and Chancery for the County of James City and City of Williamsburg, ^{continued by adjournment & held} at the Courthouse in the said City, on Friday the fifteenth day of November in the year One thousand eight hundred and thirty nine.

Nathaniel B. Tucker and others - - - - - Plt. & Spce
against
William Leigh executor of John Randolph deceased - - - - - Def. & Spce
and others - - - - - Defs. & Spce of this Court

An motion of the plaintiffs, by their Counsel, this fifteenth day of November One thousand eight hundred and thirty nine it is ordered that the issue this day sent to this, the Common-law side of the Court, be docketed on the issue docket of this Court, in conformity to the order of the Court on the Chancery side thereof.

And at a Circuit Superior Court of Law and Chancery continued by adjournment and held for the County of James City and City of Williamsburg

at the Courthouse in the said City, on Friday the fifteenth day of November in the year One thousand eight hundred and thirty nine.

Nathaniel B. Tucker and others

Pls: & Spec

against

William Leigh executor of John Randolph deceased and others

from the Chan: every side of the Court

Defls: }

An motion of the plaintiffs by their Counsel, it is ordered that a Subpoena be issued by the Clerk of this Court directed to the Clerk of the General Court of this Commonwealth, commanding him to attend this Court at the next regular term thereof and to bring with him all the testamentary papers of John Randolph deceased which were on the fourth day of December A.D. 1820, and admitted to probate as the will of the said John Randolph deceased, and also the envelope of the paper called in the proceedings "the will of 1821" - and also the paper produced in said General Court purporting to be the will of ~~the said~~ John Randolph deceased bearing date 1819: and also the paper first produced in said Court, purporting to be the will of John Randolph deceased, bearing date January 1st 1832, which was adjudged by the said Court not to be the will of the said John Randolph deceased, and also the paper filed in the original case of Meade &c. vs. Bryan &c. purporting to be a contract between the said John Randolph and a certain Rundley: and also all the original papers referred to by the several witnesses in both of the suits which were depending in the General Court, respecting the testamentary papers of John Randolph deceased, which were referred to by the witnesses in those causes and made a part of their evidence: and also the paper filed in the last of the two suits called the Morris - Correspondence: and lastly, all other original papers filed as evidence in the last controversy depending in that Court respecting the testamentary dispositions of the said John Randolph deceased.

A Copy
Teste

J. O. Cogbee C.

[Signature]

W. B. Tucker Jr.

Copy Record.

John Randolph's exor Jr.

First Williamsburg case.
Transmitted by clerk,
& received just at the
close of the argument
in the court of appeals.