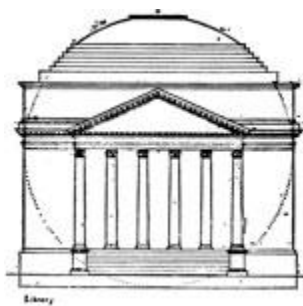




Judge William Leigh

Author(s): William Leigh

Source: *The Virginia Law Register*, Vol. 2, No. 5 (Sep., 1896), pp. 317-322

Published by: Virginia Law Review

Stable URL: <https://www.jstor.org/stable/1099063>

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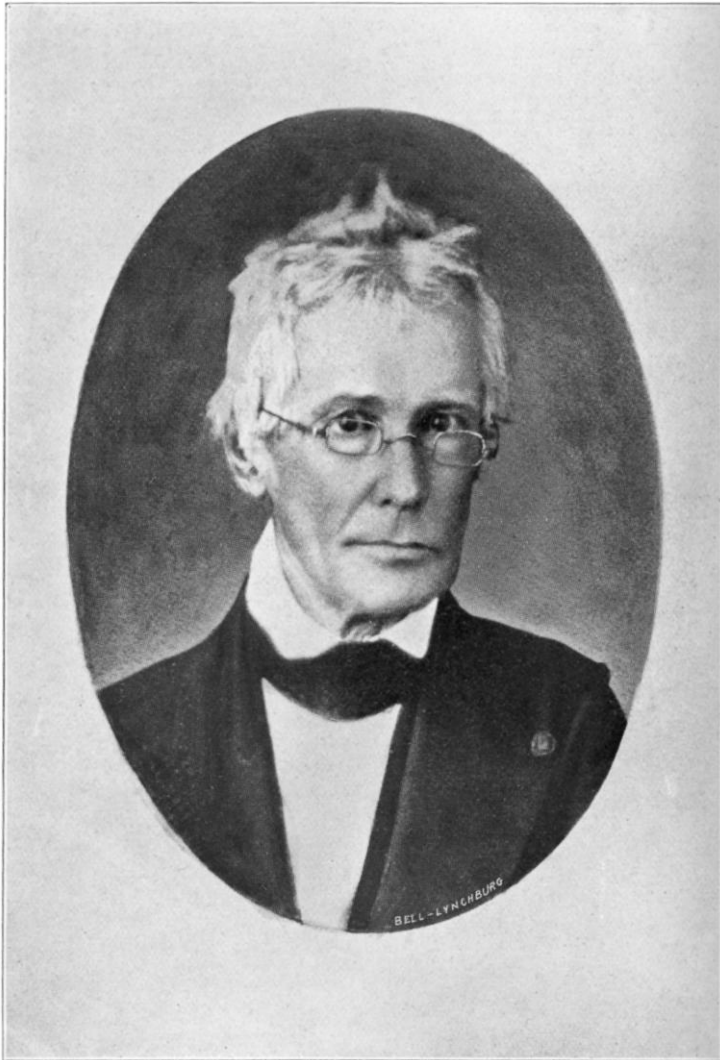
VOL. II.]

SEPTEMBER, 1896.

[No. 5.]

JUDGE WILLIAM LEIGH.

WILLIAM LEIGH, the son of the Rev. William Leigh and Elizabeth Watkins, was born in Chesterfield county, Virginia, May, 1783. The exact day of his birth is unknown. His father was a minister of the Episcopal Church, and little is known of him. Bishop Meade, in writing of the clergy in Virginia, mentions him as a man of learning and piety. His mother was the daughter of Benjamin Watkins, of Chesterfield, the first clerk of that county, which office he held to the time of his death. The Rev. William Leigh died when quite a young man, leaving his widow and young children in very moderate circumstances, and the care of his children in a great measure devolved upon their maternal uncle, Thomas Watkins, the then clerk of Chesterfield county, a man of large means and generous heart. The subject of this sketch was placed when quite young at the grammar-school of the Rev. Needlar Robinson, where it seemed he remained several years, and in which he was taught Latin, a little French, some arithmetic, and but little else. The accounts given of the discipline in this school by Judge Leigh in after years would sound strange indeed to young gentlemen who have everything entrusted to their honor, and to whom the rod, as an aid to instruction, is unknown. When quite a lad he was placed in the store of a worthy and highly respected merchant of Petersburg, a Mr. Bell, who then was one of the principal merchants of that town; and it was to the business training received under Mr. Bell that Judge Leigh in after years ascribed in great part his success in life; and he always spoke of his early employer with affection and respect. When approaching manhood he was enabled, through the assistance of his elder brother, the Honorable Benjamin Watkins Leigh, who was then a practising attorney in the city of Petersburg, to attend William and Mary College for one year, but his limited means would not allow him to pursue his studies further, and he left college without graduating in any of his classes. Upon leaving col-



JUDGE WM. LEIGH.

lege he returned to Chesterfield county and acted as deputy for his uncle, Thomas Watkins, the clerk of that county, for several years, and it was while performing these duties that he read law and prepared himself for the bar. Who was his preceptor in these studies is not known, but it is presumed that he had the aid and guidance of his distinguished brother. He at least had the benefit of the training of the clerk's office, and he there, no doubt, acquired a familiarity with forms and practice which must have been invaluable to him in after years. Upon his admission to the bar he settled in Halifax county and commenced the practice of his profession, and the records of the county court of that county at the May term, 1805, show that "William Leigh, Gentleman, who had been duly licensed to practise law in this Commonwealth, on his motion, was admitted to practise law in this court, which is ordered to be certified." It is not believed that his success as a practitioner was at first phenomenal, but that his practice was built up by close application and untiring energy. When asked what he did during the first years of his professional career, he replied, "I made myself a lawyer." The foundation of his success was safe and sure, however, and at the time of his elevation to the bench his practice was probably the largest and most remunerative in Halifax and the adjoining counties. Judge Leigh was never but once a candidate for political honors, and then he was elected to the Constitutional Convention of 1829-30, and represented the county of Halifax in that body, the ablest and most distinguished body of men who have ever assembled in Virginia. In 1830 he was elected by the legislature of the State Judge of the "Circuit Superior Court of Law and Chancery" for the Third Judicial District of Virginia, which office he held by successive elections by the people and the legislature for more than a quarter of a century, resigning his trust in the fall or winter of 1857. During the time of his office he was a member of the General Court, then the highest court of appeal in all criminal cases, and was several times a member of the Special Court of Appeals, and was also a member of the District Court of Appeals after that court was created. After his resignation, Judge Leigh retired to his residence in Halifax county and devoted himself to the care of his estate and to the study of English literature and the Latin classics, until July 19th, 1871, when, at the residence of his son, B. W. Leigh, Esq., of Mecklenburg county, Va., he died, in the eighty-ninth year of his age.

Not long since a distinguished member of the Virginia bar, in speaking with the writer of this sketch of Judge Leigh, remarked that he

began the practice of the law in the courts over which Judge Leigh presided, and that no one since his day had seemed to him quite "the Judge." When asked what he considered the distinctive feature of Judge Leigh's character, he replied, "His high sense of justice." As a judge his life was "consecrated to duty and stainless to the end;" and in the discharge of that duty he was ever

—"firm and steady to his trust,
Inflexible to ill and obstinately just."

He was never an orator, nor did he perhaps possess those brilliant parts that so distinguished his learned and gifted brother, Benjamin Watkins Leigh. He was a man of a strong, clear mind, untiring industry, and the highest integrity, with a large share of that rare quality known as "common sense." During the whole of his professional and judicial life he was a systematic and diligent student, and thus acquired great learning. His was undoubtedly the genius of labor. If reputation and tradition are not false, as a judge he had few equals and no superiors. In a notice of him, written shortly after his death, by one who had known him well and who had practised in his courts, it is said: "His opinions were matured and able. His clear statement of the facts and the merits of a case could not be surpassed. To ascertain the 'very right of the cause' was his high aim. With him 'equality before the law' was no mere sentimentalism, but a practical reality. The poor man felt assured that in his court his every right would be protected; the rich man knew that not one dime of his wealth would be taken from him except by due course of law; for the Judge recognized fully that one of the objects of a well-ordered government is the protection of property."

But, great as was his learning, industry and labor, diligent in business as he was, ever faithful and able in discharging the high trusts confided to him, Judge Leigh's crowning excellence in administering justice was his clear perception of right and wrong, and his unswerving and fearless maintenance of right and justice.

As an attorney he was always diligent and careful of the interests entrusted to his care; as an advocate, while without the gift of oratory, he was a clear, strong reasoner, who carried conviction to both court and jury; as a man, his personal integrity was the chief corner-stone on which was reared the superstructure of his character. His features were delicate and chiseled; scarcely measuring up to the average height of man, he never weighed over one hundred and twenty pounds, but although small and apparently delicate, he was possessed of a strong

constitution and endowed with an indomitable will and a wonderful capacity for both physical and mental labor. His whole life is but an illustration that honesty, fidelity and industry are the qualities which most surely bring success and honors in the profession of the law.

I append a clipping from the *Washington Telegraph*, published not long after the final decision of the controversy over the wills of John Randolph of Roanoke, as showing most conspicuously the true character of Judge Leigh as a *man*. In this connection, see report of *Coalter v. Bryan*, 1 Gratt. 18, *et seq.* The clipping was among Judge Leigh's papers, and came to my hands. On the margin, in Judge Leigh's handwriting, is the following: "Written by Mr. Gurley, from facts furnished by my most excellent friend, Judge John T. Lomax." There is a slight gap of a sentence or so, indicated by stars, in the copy of the *Telegraph's* article, caused by some accident, which cannot now be filled, but it is not deemed very material, when the whole article is read.

WM. LEIGH.

Houston, Va.

[From the *Washington Telegraph*.]

JUDGE WILLIAM LEIGH, OF VIRGINIA.

No higher duty pertains to the press of a free country than that of rendering homage to the fame of the just, the upright, and the humane among her citizens. When the honor and integrity of an individual are tried by the severest tests and found not only unimpaired but untarnished, when they are maintained at a great sacrifice and by conduct the opposite of which would have exposed their possessor to censure, they may be deemed inherent qualities of character, ornaments which must secure to it both confidence and admiration. Virginians are justly proud of many great illustrious names among their citizens, both dead and living, but there is, perhaps, no one more clearly entitled to public confidence and esteem than the gentleman whose name is placed at the head of this article.

In December, 1821, the late eccentric but distinguished John Randolph wrote a will, in which he made provision for the emancipation of all his slaves (some three hundred) and their settlement in some free State where they might be permitted to reside, and left the most of his remaining large estate to his long-tried friend, Judge Leigh, whom he constituted his executor, relying fully upon his fidelity in the execution of his benevolent designs towards his slaves. In 1831 Mr. Randolph returned from his mission to Russia, to which he had been appointed by General Andrew Jackson. His health, always feeble, had become greatly impaired, and it was painfully manifest to his friends that both in body and mind he was much disordered. * * * * *

Mr. Randolph died in 1833; and when the last written testamentary paper was offered tending powerfully to prove that, at the time that instrument was written and the will of 1821 was cancelled, the testator was utterly incompetent to any testamentary act whatever—either to make or revoke a will. The last will itself

gave evidence of mental derangement. If this instrument was rejected, the consequence would be that the will of 1821 would be offered for probate, and if that should be admitted, the disposition it contained for the benefit of Judge Leigh, and in favor of the slaves, would inevitably be consummated.

No one knew as well as Judge Leigh the state of Mr. Randolph's mind. No one had been more intimately acquainted with him, or had more closely observed the changes and disorders which had afflicted it. He only was with him about the hours of midnight, when the last testamentary acts were attempted to be performed by Mr. Randolph. He knew, from the conduct of the testator before and at that time, up almost to the very moments when these acts were performed, that Mr. Randolph was destitute of testamentary capacity.

In the posture of the case upon the proofs (without any testimony of Judge Leigh), as it was presented before the court of probate, it was not at all an unreasonable calculation that the instrument propounded would be denied probate by the court. Besides, there was no rule of evidence, as it would seem, that would have rendered Judge Leigh incompetent to testify in the pending controversy against that instrument; and, if competent, what imputations of contingent interest could, at the bar of any tribunal before which he could be sworn, shake the credit in any fact that he would state? But Judge Leigh had the rights of more than three hundred slaves, entitled, as he knew, to their freedom, resting upon his conscience. These rights would be utterly defeated, if the revocation of the will of 1821 should be established by the establishment of an instrument entitled to no validity. The duty which he owed to the slaves could not be compromised by any calculations of probability of success, or by any selfish remissness in performing everything in his power, that could in any way contribute to secure the emancipation and provision for the slaves. He would not allow their case to be submitted upon the proofs, strong as they were, without the aid of his own testimony. He would not, for their sakes, in offering his own testimony, unnecessary though it might be, allow it to be weakened by any supposable imputations upon its credit. Justice and humanity pleaded alike in behalf of the slaves, in the contest that was waging, that they should have the full benefit of his evidence, without the shadow of a suspicion to dim the light it might shed upon the case. Under these considerations he voluntarily came forward, and, by a release executed by him, renounced the wealth which Mr. Randolph, in his will of 1821, had devised to him—reserving only the right to qualify as the executor of Mr. Randolph under his will, which might be proved. Judge Leigh's testimony, with the imposing sanctions which his disinterested magnanimity threw around it, was offered and heard.

The paper that was propounded was ultimately denied probate, and the will of 1821 has since been established. Judge Leigh's release has given to Mr. Randolph's heirs, as in case of intestacy, the large property which the preference of the testator had designed for him. It was important in the renunciation made by Judge Leigh of his testamentary rights, that his right to the executorship should be retained. The connexion thereby preserved between him, as executor, and the slaves, as the beneficiaries under the will, has enabled him, by his own agency, to which the testator looked, and on which he relied, to fulfill to the utmost every purpose of the testator's bounty to them. Few persons know with what fidelity and labor and trouble, and with what sacrifices, this executor has finally effected

their removal and settlement in the State of Ohio, and the care which he has taken to secure to them the provisions for their comfort and welfare, according to the will. It is pleasant to contemplate, in the present generation, that there even yet remain men who have retained the magnanimity undiminished which was left by our ancestors as an example for their posterity.

This distinguished and noble conduct of Judge Leigh is deserving, in our view, of the highest commendation, and justly entitles him to universal confidence and respect. Men of his high, humane, and rigidly virtuous character are the brightest ornaments and most precious treasures of the community in which they reside; their examples are the most powerful of all influences for good; they shine out enduringly like the lights of heaven over the selfishness and degeneracy of the times, alone, immortal, amid our changes, decay, and death.

FRAUD BY MISREPRESENTATION OF A MATERIAL FACT.

“A false representation of a material fact, constituting an inducement to the contract, on which the purchaser has the right to rely, is a ground for a rescission by a court of equity, although the party making the representation was ignorant as to whether it was true or false.” These are the words of Judge Staples in the leading case of *Grimm v. Byrd*, 32 Gratt. 300, and have often been quoted in the Virginia decisions in subsequent cases when equitable questions involving fraudulent representations have been under consideration.

The law is undisputed, but what is a representation of a fact, as contradistinguished from an expression of opinion, has been a source of trouble to many members of the bar. This is shown not so much by the number of cases that have gone to the Court of Appeals on the point, as by the numerous cases that have been determined in the Circuit Courts, and, for various reasons, have not been appealed.

The confusion in mind has been added to, I think, by a misapprehension of another expression used in the opinion rendered in the case just referred to, where the learned judge says: “Now, it may be conceded that in all this class of cases the representations must, as a general rule, be of a fact, as distinguished from a mere matter of opinion, which ordinarily is not presumed to deceive or mislead. But even a matter of opinion may amount to an affirmation, and be the inducement to a contract, especially where the parties are not dealing on equal terms and one of them has or is presumed to have means of information not equally open to the other.”