

FOR GOVERNOR, JONATHAN WORTH, OF RANDOLPH.

DISCOURSE

In Memory of the Life and Character OF THE

Hon. Geo. E. Badger, Delivered, by Request of the Bar of Wake County, at Raleigh, July 10th, 1866.

BY WILLIAM A. GRAHAM, OF ORANGE.

[CONCLUDED.]

On the other hand, there had been for years as the North a party organization, not numerous at first, but which at this period had swollen into a formidable power, whose avowed object was the extinction of slavery; who had denounced the constitution, so far as it upheld or tolerated it, as a covenant with the infernal powers; had absolved themselves from its maintenance in this particular, and avowed their preference for a disruption of the Union unless slavery should be abolished; in the territories and States as well. More moderate men in that section, while not agreeing with these extremists, denied emphatically either that the Constitution gave to slavery a footing in the territories or bound Congress to maintain or not interfere with its existence there; and that in the exercise of a legislative discretion they might encourage, tolerate or forbid it; the great majority favoring its prohibition in the territories, while they held themselves bound to non-interference in the States. In this conflict a third party arose which affirmed that Congress had no power over the question in the territories; that the people who settled in those distant regions were entitled, (not only when applying for admission to the Union as a State, but whenever organized into a territory or at any time thereafter) to determine on the establishment or rejection of slavery as well as all other questions of domestic policy; and by consequence, that the whole history of the Government in the regulation of its territories had been an error.

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

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

Between these contending parties, Mr. Badger stood unswayed by neither. As far back as the Mexican war, perceiving, as he thought, the dangers to flow from the adjustment of the interests of slavery, provided conquests should be made and new territories acquired, he had repeatedly endeavored to bring the war to a close and to bar out those dangers to the Union, by obtaining from the acquisitions of new domains, while the fierce contestants were both eager for extensive conquests, the one with the flattering, but delusive hope of expanding the area of slavery, the other with the settled purpose to apply to all such conquests the Wilnot proviso and to exclude slavery.

When peace came with those splendid acquisitions of territory so gratifying to the national pride, he was not disappointed in discovering in them an apple of discord which was to prove fatal to tranquility at home. In the contention which was thus inaugurated, he steadily supported the rights of his own section, maintaining the justice and expediency of opening the territories to all emigrants without restriction as to any species of property. In an argument, replete with scriptural learning, he defied the servitude existing in the South, under the name of slavery, as not inconsistent with the divine law, more than justified by Jewish precedents, and not forbidden by the benignant teachings of the Saviour of the world, who found in the Roman Empire, at his coming, and left without condemnation, a system far greater severity. He reminded Northern Senators of the responsibility of their ancestors for the introduction and establishment of slavery in this country, ours being but purchasers from them, at second hand, for a consideration vastly greater than they had paid; the profits being the foundation of much of their wealth which their consciences did not forbid them to retain. He brought home to their sense of duty and of honor the obligation to maintain the Constitution, so long as it remained the Constitution, in all its parts; as well those

which as individuals they disapproved, as those in which they assented. If any representative of the South urged any or all of these considerations in favor of the rights of his section, in the subject of dispute, with more earnestness and ability than Mr. Badger, it is some one whose argument has not fallen under my observation. But he refused to go further. He refused to argue that Congress had no Constitutional power to legislate on the subject of slavery in the territories. He discussed the question with boldness and addressed a decision of the Supreme Court, announced in an opinion of Judge Marshall, to the effect, that the power did exist; and therefore he addressed his appeals to the legislative discretion of Congress. For this he incurred the disapprobation of the extreme advocates of Southern interests. But his opinion on the question had been deliberately formed, and though he maintained that the exclusion of the Southern emigrant with his peculiar property from these territories would be an unjust exercise and abuse of power, he declined to make what he believed to be a false issue, in pronouncing it unconstitutional. He dealt with the whole subject in the interest of peace, in subordination to the Constitution, in the hope of allaying excitement and with an earnest desire for continued Union. He therefore gladly co-operated with his old political associates Clay, Webster, Pearce of Maryland, Bell, Mangum, Berrien, Dawson, as well as his Democratic opponents Cass, Douglas, Dickinson, Foote and other compromisers of both parties in the well remembered measures of compromise of 1850, which calmed the waves of agitation, and promised a lasting repose from this disturbing element. An effect which was fully realized, with the occasional exception of resistance to the law in the surrender of fugitive slaves, until the unfortunate revival of the quarrel by the repeal, in 1854, in the law for the organization of the territories of Kansas and Nebraska, of the provision of the Missouri compromise, as it was called, by which slavery was restricted from extending north of thirty-six degrees, thirty minutes, the Northern boundary of that State. His participation in this measure of repeal Mr. Badger regarded as the most serious error of his public life. He lived to see consequences flow from it, which he had not contemplated, and publicly expressed his regret that he had given it his support. Not on the ground of any breach of faith; for, as he amply demonstrated in his speech on the passage of the measure, the representatives of the North in Congress had, in the Oregon territorial bill, as well as in other instances, demonstrated that they attached to it no sanctity. Yet many good men among their constituents did, and politicians who had, since the settlement of 1850, found "their occupation gone," eagerly welcomed the new theme for agitation. The experience of climate, labor and production had shown that African slavery could not be attended with profit north of this parallel, and the repeal was regarded as a flout, defiance and aggression which provoked the resentment of thousands who had never before co-operated with the extreme faction which inspired the destruction of slavery in despite of the Constitution. Followed up as this measure was the important attempt to enforce protection to the institution in Kansas, when it neither did nor could exist without unreasonable aid, which was brot forward after Mr. Badger left the Senate and in which there is no reason to believe he would have concurred, it aroused an opposition, which, when embodied in the organization of party, was previsible.— He was no propagandist of slave truth, though all the affections of his home and heart seconded the efforts of his great mind in defending it as an institution of the country recognized and guaranteed by the Constitution of the United States. He was too sagacious to believe it could be benefitted in any way, provoking the shock of civil war, and too truthful and patriotic to trifle with it, as a means of rallying parties or to subvert any of the interests of society. In voting for the repeal of the Missouri restriction, he looked upon it as having been over-valued in its practical importance at first, abandoned by the North as effete, if not disregarded from the beginning, and its removal out of the way as but conforming the system of territorial law, to that part of the compromise of 1850, pertaining to the territories, which left the adoption or rejection of slavery to be decided by the inhabitants when framing a Constitution, preparatory to their admission as a State of the Union, not anticipating the recoil in public sentiment, which was the first step in the overthrow of slavery itself.

He had been thus tedious in review of the history of this period, because it was upon topics arising out of this great subject of controversy, ever uppermost in the public mind, that Mr. Badger made his most frequent and probably most elaborate efforts in the Senate, and for the further reason that in the heated atmosphere of the time his opinions expressed and the moderation of his course were, by some, supposed to imply indifference to the interests of his section. Time and disaster are not unfrequently necessary to vindicate true wisdom.

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

He delighted in repeating the rule for the construction of the Constitution, which

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

After ceasing to be a Senator, he held, until the commencement of the late calamitous war, the place of one of the Regents of the Smithsonian Institution. In his professional visits to Washington, until the interruption of intercourse by that dire event, and in all his correspondence with public men, he never departed from that course of moderation and peace on the exciting subject of the times, which had characterized him as a Senator; joined heartily in the movement of his old Whig friends for the organization of a Constitutional Union party to abate the violence of faction which was too surely tending to disunion, and to make an appeal to the people to rescue the country from the impending peril. The result of this movement was the nomination for the first offices of the Government of Bell and Everett; and Mr. Badger accepted the candidacy as one of the electors on this ticket, and visited various parts of North Carolina addressing the people in its support. In these addresses, with the frankness which belonged to his nature, he freely admitted that there was a strong probability of Mr. Lincoln, not merely from a division of votes among three other candidates, but from the strength of his party in the Northern States, founded on the principle of opposition to slavery; that in that event it was the design of a large portion of the supporters of Mr. Breckinridge to attempt to destroy the Union by the secession of the Southern States, and that there was reason to believe his defeat and the election of Mr. Lincoln was desired by this latter class, because of the opportunity it would afford for a dissolution of the Union, a purpose which they had long cherished. While, therefore, he advocated the election of Mr. Bell, he conjured the people, no matter who might be elected, to acquiesce in the decision and give no countenance to secession. Although, with the exception a small fraction, the people were averse to disunion, the majority were persuaded, that this was an overstatement of the case, and cast their votes for Mr. Breckinridge as their usual party nominee. When the election was past and the proceedings which immediately followed in other States verified Mr. Badger's anticipations, the people began to turn to him, and those of like opinions, for guidance in the future.— And to persons in distant parts of the Union it is, no doubt, a matter of mystery how he, with all his antecedents in favor of Union, became involved in war against the government of the United States. The case of Mr. Badger, in this particular, is the case of at least three-fourths of the people of the State, who rely upon his counsels for their action, quite as much as upon those of any other individual, and requires a word of explanation. Notwithstanding the long and acrimonious disputations which had been carried on in Congress, and at the hustings, and the sentiments declared in opposition to slavery by Mr. Lincoln and his supporters, Mr. Badger maintained, that his election afforded no sufficient cause for a resort to revolution; [as to the right claimed, of a State to secede, he had never for a moment believed in it or given it the least countenance;] that the secession of such a party to power would require increased vigilance over the rights and interests of the South, but the majority in Congress was not lost to us, if the members from all the Southern States would remain and be faithful, and that the judiciary was open to any just complaint, even if the Executive should attempt aggression. And after every State South of North Carolina, and the confine of Mexico, had adopted ordinances of secession, the people of the State rejected a proposition to call a Convention to consider the question. But when Virginia, neighbor on the Northern frontier, withdrew, and Tennessee on the West, taken measure for the same object, there was had been actually begun, no matter by whose hands, or fully, and the only alternative proposed, was in the choice of the side we should espouse, considerations of national or State interest, safety and necessity, such as are not infrequently forced upon the decision of neutrals, by the conduct of belligerents not concerned under the same government, at once occurred, and we were obliged to be weighed with the obligations of Constitutional duty. Our borders were surrounded on all sides, except that washed by the ocean, by seceded States. Our youth must go forth to battle with or against these States. The Union, we had so long and so sincerely cherished as a Union to its integrity, and next to that, and as a part of it, a Union with neighboring States, in which were our kindred, and most intimate friends, and ideal institutions. Slavery, whatever may be thought of it elsewhere or now, constituted more than one half of all our individual and public wealth. It had paid our taxes, built our railroads, reared our Seminars of education and charity, and was intimately connected with the order and repose of our society. Withal, in the acrimony of a long and bitter maintenance had become a point of honor. In the actual

state of affairs which presented to us, while the war lasted, no small of Union States in which slavery existed, whose representatives were to maintain a common interest in the halls of Congress, there were to be but three or at most four, and all those, except our own, with a minor interest in the system. A civil war which threatened to be sanguinary and protracted bloodshed, for the protection of slavery, was not likely to end in defeat of the insurgent States, without the destruction of the institution in them, and after no long time, in the adhering States also.— Though far from approving the course of the seceding States, victory on the side of those who held the reins of Government could not insure its benefit, nor without serious disaster, to us.

These ties of blood, vicinity, institutions and interests, the desire to avoid internecine strife among our own people, which must have been immediately precipitated by a zealous minority with the local Government, Legislative and Executive, in their hands, impelled Mr. Badger and those who acted with him, to decline to take arms against their own section, in favor of the distant authority of the National Government and as a consequence to unite with those whose actions they had deprecated and endeavored to prevent, and with whom they had little sympathy or co-operation in the politics of the past. The support of the undertaking, if concurred in by all the slaveholding States, which was confidently represented to be certain, appeared to afford hope of a safer and better future than its suppression by force.— The determination of the question, as I know, occasioned him pain and embarrassment. But when made, it was firmly maintained. He accepted a seat in the Convention which passed the ordinance declaring the separation of the State from the Federal Union, and gave to this ordinance his sanction, not however without a distinct declaration of his disbelief in the doctrine of secession as a Constitutional right. He also sustained measures for the prosecution of vigorous war, as in his conception the surest and shortest road to peace, but was ever vigilant of the dignity and just rights of the State, the encroachments of the military authority, the jurisdiction of the civil tribunals and the protection and liberty of the citizen. He sought no patronage or favor for himself or his. His sons served in the ranks of the army and bore their part in the perils and adventures of war.

While it yet raged he was stricken by the hand of disease which partially obscured his faculties and withdrew him from public view. He survived, however, until after the return of peace, and in the twilight of mind, with which he was yet favored, rejoiced in the deliverance of the Country from the calamities of war, and very sincerely acquiesced in a return to his allegiance to the Government of the United States. These observations on the professional and public life of the subject of our memoir have been so prolonged, that the occasion will permit but a few further remarks upon his general attainments, his intellectual and moral character, and usefulness as a citizen. It was the remark of Lord Bacon that "reading makes a full man, conversation a ready man, and writing an accurate man." Mr. Badger's reading was confined, with the exception of that knowledge of the dead languages, which he had acquired in his youthful studies, to the literature of our own language. With the most approved authors in this he had a familiar acquaintance, and, as already remarked, excelled in his accomplishments as a critic. The field of learning, which next to jurisprudence, he most affected, and perhaps even preferred to that, was moral science. Upon the sublime truths of the science in the conversations of his friends, his remarks and illustrations were often as worthy of Alexander or Wayland, Butler or Whately. "In it" (says one of the most intimate of his friends and cotemporaries) "the rapidity of his perceptions and the accuracy of his deductions were marvelous.—Place before his mind any proposition of moral science, and instantly he carried it out, either to its most beautiful end, or to its most absurd; or reduced it to its kindred topics of didactic theology, or theology as a science, only a professional theologian can do justice. An earnest member of the Protestant Episcopal church, though but a layman, he ventured on more than one occasion to discuss matters of discipline and doctrine in the character of a Pamphleteer, in opposition to Clergymen of note; and in a memorable instance with the head of the diocese, himself with such signal success, that although the Bishop ultimately expelled himself with the Romish church, Mr. Badger charged that he was expelled, not another member of his denomination left his communion. He was averse to the labor of writing, and beyond an address before the literary societies of the University, the reports, by his own hand, of some of his speeches in Congress, and other pamphlets, on subjects political or religious, has left few written performances. But he had the accuracy, in thought and speech, of a practiced writer. In conversation, he realized, in the fullest extent, Bacon's idea of "readiness," and shone with a lustre rarely equalled. The activity and playfulness of his thoughts, and the gaiety of his disposition, inclined him to parody and repartee to such a degree that his conversation was oftentimes but amusing levity. But in a moment it rose to the profoundest reflection and most fascinating eloquence. His knowledge was ever at instantaneous command, as it was far more the result of his own meditations than of acquisitions from others, and fancy lent her aid in giving a grandeur to his conceptions on all the subjects of his grave discourse. After all the public displays in which he was chained the attention of judges, jurors, senators, or promiscuous assemblies with equal admiration and delight, it is a matter of doubt, among those who knew him well, whether his

talents, the versatility of his powers, and the range of his contemplations, were not often witnessed in his home and social hours, in the converse of friends, around his own hospitable board, or at a village inn, or on a public highway, all without pedantry or apparent effort, "as if he stooped to touch the loftiest thought," than in these elaborate and studied exhibitions. He affected no mystery, and wore no mask, and stood ready, in familiar colloquy, to make good, by new and apt illustrations, any sentiment advanced in formal argument, or to abandon it as untenable if satisfied of error.

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

The fruits of this were seen in the crowning virtues of his character; a christian of ardent and intelligent piety, without intolerance towards others, a lawyer without chicanery or artifice, a statesman without being a factionist, a party man above the low arts of the demagogue, a gentleman and citizen enlightened, social, charitable, liberal, impressing his character upon the manners and morals of his times; ready to render aid in every good and noble work, and prompt to resist and repel any evil influence, no matter by what array of numbers, power or vitiated public opinion supported. I have known no man to whose moral courage may be more fitly applied the ideal of the Latin poet, as rendered in free translation:

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

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

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

He was thrice married, first, as before mentioned, to the daughter of Governor Turner, second, to the daughter of Col. Wm. Polk, and third to Mrs. Delia B Williams, daughter of Sherwood Haywood, Esq., in each instance forming an alliance with an old family of the State, distinguished by public service and great personal worth from an early period. The last named lady, the worthy companion of his life for thirty years, who survives him as his widow, receives in her bereavement the condolence and sympathy, not merely of this community and State, but there are those in distant lands and in other States of the Union whom, not the lapse of years nor the excitement of intervening events, nor the fiery gulf of civil war, shall separate from a friendship accorded to her, and her departed husband, as representatives of the personal character, the society and domestic virtues of their native State in better days of the Republic.

By the two latter marriages he left numerous descendants. Taking his accustomed walk at an early hour in the morning of January 6th, 1863, he was prostrated by a paralytic stroke near the mineral spring in the environs of the city of Raleigh.—And although retaining his self possession and ability to converse until assistance was kindly furnished, on the way home his mind wandered and before reaching his residence, his faculty of continuous speech deserted him, never again to return. His mental powers after a brief interval rallied; inasmuch, that he took pleasure in reading, and in listening to the conversations of friends, whose visits afforded him much satisfaction, as if with assistance could walk for exercise in the open air, but was never afterwards able to command language, except for brief sentences, falling often in these to convey his full meaning.

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

MY BROTHERS OF THE WAKE BAR.— My task is done. I have endeavored but "to hold the mirror up to nature." If the image reflected appears, in any of its features, magnified, it was not so intended. Yet the memory of a friendship, dating back to kind offices and notice in my student life, and extending through all my active manhood, may not have been without its influence in giving color to the picture. But the character in our contemplation was of no ordinary proportions. At the bar of the State he wore the mantle of Gaston and Archibald Henderson, for a much longer period than either, worthily and well, with no diminution of its honors. In the highest court of the Union, he was the acknowledged compeer of Webster, Critt-

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