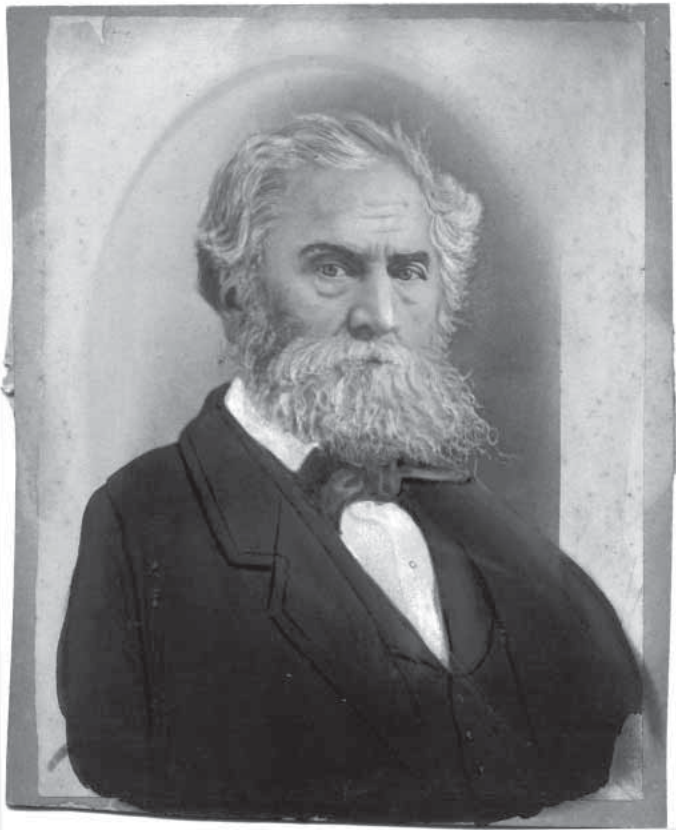


Chapter 12

CLEMSON'S LAST WILL AND TESTAMENT

Clayton D. Steadman



Thomas Green Clemson, ca. 1880. This tinted photograph hangs in the Clemson bedroom at Fort Hill. Fort Hill Collection, Clemson University.

Thomas Green Clemson died on April 6, 1888, leaving his Last Will and Testament to direct the disposition of his worldly assets. These consisted primarily of the approximately 800 acres of land and his estate at Fort Hill, South Carolina, valued at \$80,000, plus numerous personal and household

items of minimal value. Certainly there was nothing particularly unusual about a relatively prosperous individual like Clemson leaving a will; the probate records of Oconee County, South Carolina, contain many such documents from the last two decades of the nineteenth century. But Clemson's Last Will and Testament is not like the typical will of its time.¹ It is a unique document in many ways, but it is most unique in two major respects: the nature of his bequests and the manner in which those bequests are to be managed. This iconoclastic document is a reflection of its author and benefactor and the unusual, sometimes competing, amalgam of his own peculiar personality. Finally, the Last Will and Testament is the foundation for Clemson University, an institution whose creation and continued existence as a result of the will has had a profound and lasting effect on the people of the State of South Carolina.

The Long Evolution of a Dream

It is impossible to state when Clemson first formulated the concept of donating the bulk of his estate for the establishment of a college primarily focused upon providing education for the benefit of "farmers and mechanics," but it was a natural outgrowth of an interest in scientific education and especially agricultural education that spanned most of his professional career.

In 1856, while a resident of Prince George's County in Maryland, Clemson was an early and outspoken advocate of the establishment of an agricultural college in that state. He wrote numerous letters and articles supporting the creation of what was to become the University of Maryland and actively solicited donations to the endowment that was a necessary condition of legislative appropriations for the college's operations.² Later, as the superintendent of agricultural affairs, Clemson supported the concept of donating federal lands to the various states for the purpose of establishing colleges for the study of agriculture and the mechanical arts. As discussed fully in Chapters 5 and 7, this idea was eventually embodied in the Morrill Act which created the federal land-grant college system, and which was passed into law in July 1862 after the onset of the Civil War and Clemson's resignation as the first United States Superintendent of Agricultural Affairs. Upon his return to South Carolina, he resumed his advocacy of agricultural education, urging the establishment of a department of agriculture within the Confederate government and the sponsorship of agricultural education within the Confederacy as a whole and South Carolina in particular.³

After the end of the Civil War, Clemson's interest in fostering agricultural education seems to have intensified. It took on the added dimension of being a possible panacea for South Carolina's dire economic condition. In 1866, Clemson was elected president of the Pendleton Farmers' Society and undertook to establish a school for the education of South Carolinians in science and specifically in the scientific study of agriculture. This plan seems to incorporate the intent of

establishing a land-grant college that would qualify for federal largesse under the terms of the Morrill Act. A formal resolution adopted by the society in November of 1869 memorializes this intention and is another reflection of Clemson's long-standing and abiding interest in agricultural education.

It is about this time that two other themes begin to emerge that relate to Clemson's desire to found an agricultural college. One was his increasingly frustrated, critical, and sometimes hostile attitude toward South Carolina's elected officials. His writings refer to the failure of the legislature to appreciate the need for better education of its citizens and its "indifference" and "stolid apathy" in rejecting proposals to create an agricultural college in the state.⁴ Clemson bemoaned the fact that the legislature habitually would "meet in conventions, pass resolutions, disperse and things remain in status quo...to the exclusion of that kind of information, for the want of which, the people are fast sinking in despair."⁵ Some of his hostility and mistrust is typical of the recently dispossessed southern gentry's (a category into which Clemson does not necessarily fit, in all respects) attitude toward the Reconstruction governments imposed by federal law. For instance, his cynical references to Governor Daniel H. Chamberlain and H. H. Kimpton, the New York financier whose bond deals nearly wrecked the state treasury,⁶ are consistent with the anti-carpetbagger sentiments of his contemporaries. But these kinds of comments continue to appear in Clemson's correspondence and writings long after the end of the Reconstruction governments in 1876. This fundamental mistrust of governmental officials to recognize the value of practical, mechanical, and agricultural education, and his perception of a legislative penchant for acting more for the benefit of the "well born" than of the majority of South Carolina's citizens will be reflected in Clemson's will and the governance structure of the institution thereby created.

The second theme to emerge from Clemson's writings at this time is an appreciation that the benefits of scientific education are not just theoretical, but functional as well. He notes in numerous passages that education, and scientific education in particular, is the surest means to economic prosperity.⁷ This concept of education as a driver in economic development is another theme that will be played out in more detail in Clemson's will.

The earliest indication we have of Clemson's idea of donating Fort Hill to the State of South Carolina for the purpose of establishing an agricultural college was sometime in 1871, when he and his wife executed mutual wills with the intent of having the Fort Hill property go to the state upon the death of the surviving partner. No copies of these wills exist, but they are referred to in testimony contained in the record of the later lawsuit contesting Clemson's Last Will and Testament.⁸ These references make it clear that the primary purpose of this bequest was to further Clemson's interest in agricultural education and to engender the economic benefits for the region that he believed would flow from the creation of such an

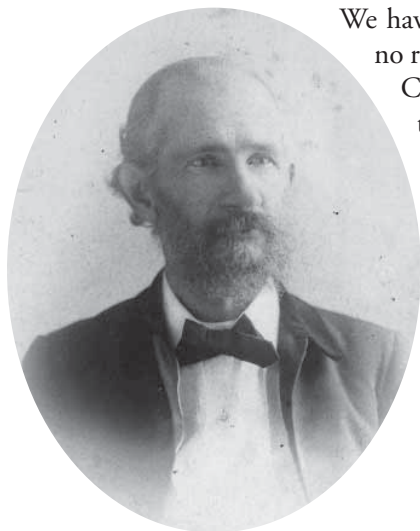
institution. But it also is clear that a secondary purpose of such a bequest was to honor the memory of his father-in-law, John C. Calhoun. Clemson had always shown great admiration for Calhoun on several levels: first, as the father of his wife, Anna Calhoun Clemson, to whom both Calhoun and Clemson were devoted; second, as a thinker to whose political philosophy and intellectual curiosity Clemson responded avidly; and finally, as the mentor responsible for promoting Clemson's own diplomatic and governmental career. One does not get the sense that Clemson was beholden to Calhoun, but rather had a deep and sincere affection for the man which he sought to demonstrate through some lasting tribute.⁹

When Anna Calhoun Clemson died in 1875, Clemson became the sole owner of Fort Hill. All of his and Anna's children had predeceased them, and the only surviving heir was his granddaughter, Floride Isabella Lee. His and Anna's shared vision of creating an agricultural college at Fort Hill remained with him, and in 1878 he wrote to W. W. Corcoran, his old acquaintance from Washington, D.C., and outlined his plans for such an institution. He notes that creating a purely private college would be ideal—since as such it would be “untrammeled” by legislative interference—and seems to be making a thinly veiled pitch to Corcoran (whom Clemson acknowledges as “among the foremost philanthropists of the world”) to determine his interest in contributing to such a project.

We have no record of Corcoran's reply, and there is no record that he ever responded with a donation.

Clemson goes on in the letter to note that, in the absence of private donations sufficient to establish and operate a college, it could be more inexpensive and expeditious to donate the land to the state in exchange for the state's making an appropriation sufficient “to carry the project into execution.”¹⁰

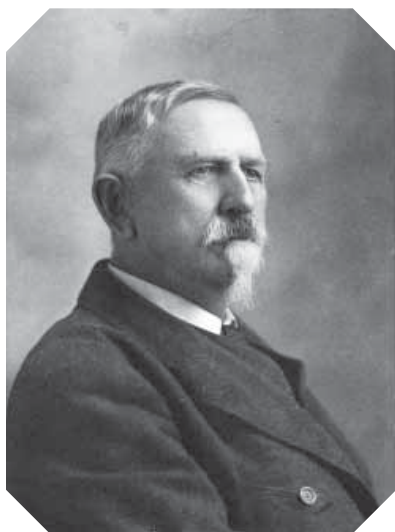
Sometime prior to 1883, Clemson instructed James H. Rion to draw up a will which included a provision for the donation of the bulk of his estate to the creation of an agricultural college. Rion, Clemson's attorney and a resident of Winnsboro, South Carolina, was born in Montreal, Canada, but grew up in Pendleton, South Carolina, where he attended school and actually lived for a time at Fort Hill. He graduated from South Carolina College in 1850; four years later he began practicing law in Winnsboro, where he remained until his death.¹¹ No



**James Henry Rion (1828–1886),
Thomas Clemson's attorney, advisor,
and a resident of Winnsboro,
South Carolina, ca. 1885.**

**George Valentine, photographer.
South Caroliniana Library,
University of South Carolina.**

copy of that original will exists, but we can ascertain the main components based upon a letter Clemson wrote to Rion on April 27 of 1883, suggesting changes to the draft he had prepared and forwarded to Clemson. In his letter, Clemson outlines his desire to create an institution that will instruct students in mathematics, geology and mineralogy, chemistry, and modern languages. He specifies that all of the Fort Hill property, consisting of over 800 acres of cultivated land, will be donated to this purpose and states that he hopes he does not “underestimate the intelligence of the legislature of a State ever distinguished for its liberality in assuming that such appropriations will be made as may be necessary” to operate the college he proposes.¹² He also notes that he intends to give the legislature a deadline—he proposes seven years in this letter and that time frame is shortened over subsequent drafts to five years and ultimately to three years—for accepting and funding his bequest or he directs that his estate should go to the establishment of a trust to preserve Fort Hill in much the same manner as George Washington’s estate at Mount Vernon was preserved.

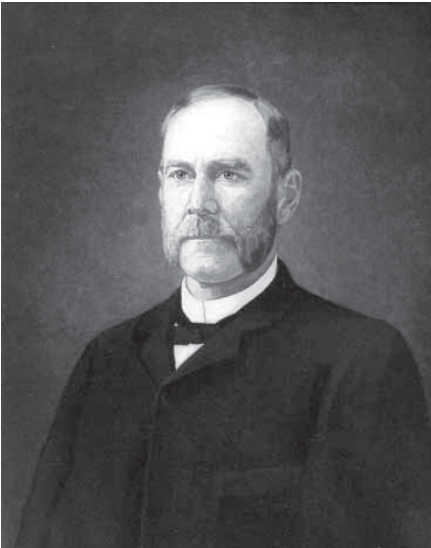


Col. Richard Wright Simpson (1840–1912), who served as a member and first president of the original Board of Trustees of Clemson College, was a longtime friend, advisor, attorney, and executor of the estate of Thomas Clemson. Photograph from the 1907 TAPS yearbook, Clemson College.

There is anecdotal evidence that Clemson originally proposed the name of “Calhoun-Clemson College” and that the original 1883 will referred to it as “Fort Hill Scientific Institute.”¹³ R. W. Simpson states in his testimony in the lawsuit over the probate of Clemson’s will that he convinced Clemson to name the college “The Clemson Agricultural College of South Carolina.”¹⁴ Apparently, Clemson agreed with Simpson’s recommendation, since the will states that the proposed school shall be known by that name.

Clemson appears to have been very thoughtful in drafting his will. In addition to Rion’s input, he sought the advice of numerous other friends regarding his plans.¹⁵ In the fall of 1886, Clemson invited South Carolina political leader B. R. Tillman, along with D. K. Norris and Clemson’s attorney friend R. W. Simpson, to his home at Fort Hill to seek their counsel on his project. By this time, Simpson had eclipsed Rion as Clemson’s primary legal counselor, due apparently to Rion’s advanced age and declining health (he was to pass away on December

12, 1886). Simpson was a longtime friend and advisor to Clemson and a close neighbor, living in Pendleton, South Carolina, just a few miles from Fort Hill. Simpson was born in Pendleton in 1840 and graduated from Wofford College in Spartanburg before returning to the Pendleton area to pursue the practice of law and a legislative career. He also devoted himself to agricultural pursuits, and it was in this capacity that he and Clemson became friends. Simpson was the executor of Clemson's estate and was the named defendant in the lawsuit brought by Clemson's son-in-law, Gideon Lee, in an attempt to invalidate the will. Simpson also served as a member of the original board of trustees of Clemson College and was elected as its first president. He died on July 11, 1912.



Daniel Keating Norris (1845–1905), a member of Clemson College's Board of Trustees from 1889 to 1905, was a friend and advisor to Thomas Clemson. This portrait hangs in Sikes Hall, Clemson University. Clemson University Artwork Photographs, Special Collections, Clemson University Libraries.



Benjamin Ryan Tillman (1847–1918), a populist politician, governor of South Carolina, and U.S. senator, championed the founding of Clemson College and served on its original Board of Trustees. Clemson University Photographs, Special Collections, Clemson University Libraries.

At this convocation at Fort Hill in 1886, Clemson sought the advice and best thinking of this group of trusted advisors regarding the structure and tactics for fulfilling his dream of an agricultural college for South Carolina's youth. The exact details of that discussion are unknown since there are no contemporaneous notes

of the meeting. Clemson makes no direct reference to it in any extant papers. The only accounts to have survived are an interview Ben Tillman gave in 1909,¹⁶ the testimony R. W. Simpson gave during the Lee v. Simpson trial in 1889, and a newspaper interview Simpson gave in 1891.¹⁷ Not only are these accounts recorded a number of years after the fact, but they are also inconsistent. All that is known for certain is that these four gentlemen—Rion, Simpson, Norris, and Tillman—met for the express purpose of discussing Clemson's plans for a bequest to create an agricultural college at Fort Hill. As a result of this meeting, Clemson gave Simpson a copy of the original will drafted by Rion (which Simpson was unaware of until that moment) and asked him to make certain changes based upon the comments he had received from his advisors. Simpson incorporated those changes, and a revised will was executed by Clemson on November 6, 1886. This is the final version of the will, although Clemson added a "codicil" dated April 20, 1887. The will¹⁸ outlines the creation, purpose, and governance of Clemson College.

No Ordinary Last Will and Testament

There are a number of specific provisions in the will that bear directly on the governance and operation of Clemson University, and it may be helpful to summarize the more notable of them. For example, Item 1 of the will contains the basic devise of Clemson's estate to the State of South Carolina for the express purpose of establishing an agricultural college at that location. The gift is conditioned upon the South Carolina Legislature affirmatively accepting the gift, including all terms and conditions stated in the will, within a period of three years from the probate of the will. This section also specifies that the property is to be held by the state "so long as it, in good faith, devotes said property to the purposes of the donation."

Item 2 describes the selection and duties of the board of trustees that is to govern the affairs of the institution created by the will. Seven initial trustees are named by Clemson, and these "life trustees" are expressly empowered to fill all vacancies among their members. Additionally, the will allows the S.C. Legislature to appoint up to six additional trustees in the event it accepts the gift in the manner prescribed in the will. Item 2 clearly states that the board of trustees shall never increase to a number greater than thirteen, making it clear that the life trustees are always to be in the majority, thereby allowing the legislature to influence but not control the governance of the college. This particular provision renders Clemson University's current governance structure unique among public universities and created the first "public-private" governing body for a public university with the added distinction of ensuring that the "private" life trustees would always be in the majority. This fact was to engender some opposition in the South Carolina Legislature and in the press during the debate over the acceptance of the will.



Photograph of the first Board of Trustees of Clemson Agricultural College of South Carolina, ca. 1890. *Inset row at top:* Mauldin, Craighead, Wanamaker, Stackhouse. *Middle row:* Donaldson, Sloan, Simpson, Bradley, Redfern, Tindall, Bowen. *Front row:* Jefferies, Norris, Tillman, Hardin. Clemson University Photographs, Special Collections, Clemson University Libraries.



Clemson University Board of Trustees gathers in 2007 under the Trustee Oak on the Fort Hill lawn to commemorate the bicentennial anniversary of the birth of Thomas Green Clemson. *From left to right:* E. Smyth McKissick III, Louis B. Lynn, Thomas B. McTeer Jr., David H. Wilkins, Joseph D. Swann, John J. Britton, Thomas C. Lynch Jr., Leon J. Hendrix Jr., Leslie G. McCraw, Patricia Herring McAbee, Robert L. Peeler, William C. Smith Jr. (Bill L. Amick not pictured). Clemson University Department of Creative Services.

Item 2 also states that the rights of the board of trustees shall never be “taken away or conferred upon any other man or body of men.” The preamble to the will confers on the board “the full authority and power to regulate all matters pertaining to said institution.” The will goes on to enumerate some of these specific powers as the right to “fix the course of studies, to make rules for the government” of the institution and to change the rules “as in their judgment, experience may prove necessary.” The power thus delegated to the board is without limitation or exception.

Finally, in Item 3, the will provides for an alternative disposition of Clemson’s estate in the event that the legislature fails to accept his donation in the manner mandated in the will. In the event of such a default, his land and other property—exclusive of some minor bequests to friends and family—would go to a trust for the establishment and operation of a school for the youth of South Carolina. The details of this alternative bequest are of limited interest given the fact that the legislature did in fact accept Clemson’s bequest. However, the fact that an alternative was explicitly included in the will is important in analyzing the seriousness with which he considered the conditions his will places upon the state’s acceptance of his proposed gift.

It is perhaps also useful to consider the legal implications of the will’s form and structure, beginning with the fact that it created a charitable trust. To qualify as a charitable trust, it must be established that the donor’s intent was charitable and that the beneficiaries are an indefinite group composed of society as a whole or a reasonably large segment of society as a whole. Clemson clearly expresses the charitable intent of his gift when he states in the will that his “purpose is to establish an agricultural college which will afford useful information to the farmers and mechanics” of the State of South Carolina. Similarly, the “farmers and mechanics” of South Carolina would meet the test of an indefinite group composed of a reasonably large segment of society as a whole. Thus, the will conforms to the accepted legal definition of a charitable trust.

Charitable trusts are accorded particular favor, and courts will construe them, if at all possible, so as to carry out the general intent of the donor. Generally, once a charitable trust is created, it cannot be modified. However, South Carolina courts have recognized a concept known as administrative or equitable deviation which authorizes a court to make changes in the administration of the trust provided certain, very narrow criteria are met.

For a court to apply equitable deviation, it must first be proven that the intent of the trust is impractical or illegal to enforce. Second, it must be established that the provision which is alleged to be impractical or illegal is due to circumstances not known or anticipated by the donor at the time the gift was made. In the case of the will, the intent is very simply to establish a college to be governed by a board of trustees with full authority and power to regulate all matters pertaining

to its governance. The fact that Clemson University has existed and thrived for over one hundred years pursuant to this form of governance would seem to offer conclusive evidence that it is not “impractical” to continue enforcing the terms of the will as it is written. Furthermore, there is currently no law which would make it “illegal” for Clemson University to be governed by a board of trustees as provided in the will.

At the time of the will’s drafting, and at the time it was probated and its terms accepted by the state, the possibility of the state governing the administration of the proposed college to be created was fully known to Clemson. His reference in the will to the governing structure of the “Agricultural College of Mississippi” (now Mississippi State University), his specific direction that the authority of the board never be taken away or abridged by the legislature, and the stipulation for an alternative bequest in the event that the legislature did not accept his gift with all of its conditions demonstrate Clemson’s knowledge of the possibility of some form of governance which would usurp the power he specifically delegates to the board in his will.

Based upon an analysis of the terms and their probable construction in the event of a legal challenge, it seems virtually certain that the will would be deemed to be a charitable trust, duly established according to the laws of South Carolina. Furthermore, any challenge to the application of the will, insofar as the power and authority of the board of trustees to govern in all matters pertaining to the university, would not likely succeed on the basis of equitable deviation.

As noted at the outset, the will conditioned the gift of Clemson’s property to the State of South Carolina upon several specific occurrences. These include the establishment of an agricultural college on the real property conveyed by the will, the application of all other assets (essentially cash) for the creation and operation of the college, and the governance of the college entrusted to a board of trustees appointed and perpetuated according to the terms contained therein. Finally, the creation of the trust was contingent upon the S.C. Legislature formally accepting the gift and all of its conditions no later than three years after the death of Clemson.

The language of the will is so clear and unambiguous as to leave no doubt of the validity of the trust thereby created. However, it is much less clear what legally enforceable obligations the state has assumed by virtue of its acceptance of the will. The only reference in the will to an ongoing obligation of the state to support the university is a reference in the preamble where Clemson says that he hopes he does not “overrate the intelligence of the legislature of South Carolina...in assuming that such appropriations will be made as are necessary to supplement the fund resulting from the bequest herein made.” The will does not contain any requirement that the state provide any specific financial or other support for the creation or operation of the school. It is possible that an argument could be made that the

language in Item 1 (e.g., “the State of South Carolina may accept said property as a donation from me, for the purpose of thereupon founding an agricultural college” and that the gift is to be held by the state “so long as it, in good faith, devotes said property to the purposes of the donation”) implies an obligation on the part of the state to provide financial support for the college. It is also possible that an argument could be made that there is an implied obligation of the state to provide some minimal level of funding and other support by virtue of its acceptance of the gift. This issue has never arisen, other than as a hypothetical question, as the level of state funding since the establishment of Clemson College has always exceeded an amount that could be fairly characterized as “minimal.”

Although the board has unlimited authority relative to the governance of Clemson University, it is not necessarily compelled to exercise that power. Again, the will is very clear that the board shall have “full power and authority” regarding all matters pertaining to the institution. They are expressly authorized to make decisions and to change them, bound only by their own collective judgment. Implicit in this authority is the right to not exercise their authority or to delegate it to some other person or body. The board has delegated many of the routine, administrative tasks of the university to the president and others, including the faculty. These delegations neither diminish nor abridge the powers of the board, nor are they irrevocable. The board may at any time revoke or amend any such delegation of authority “as in their judgment, experience may prove necessary.”



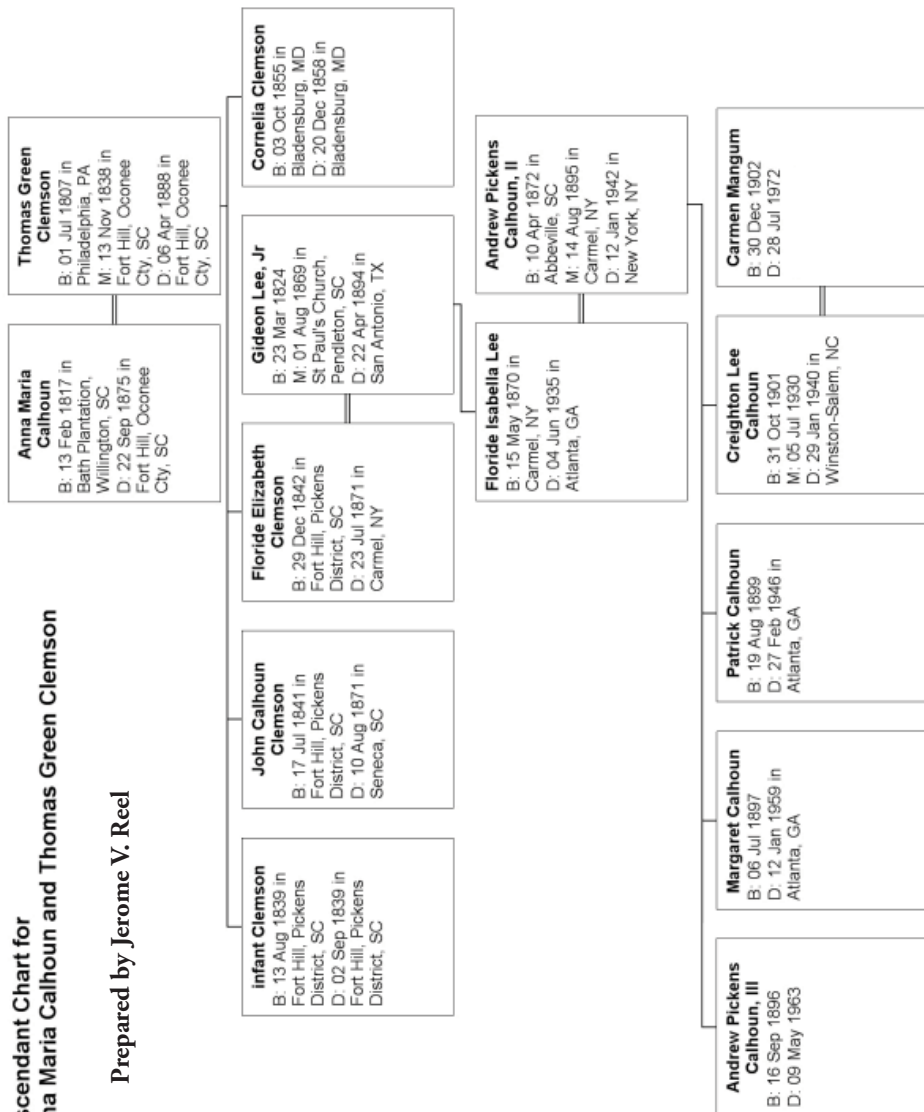
Thomas Green Clemson's signet ring, used for embossing his seal on documents. The antique ring features an intaglio equestrian image of Marcus Aurelius Antoninus, Roman emperor and Stoic philosopher. Fort Hill Collection, Clemson University. Gift of J. G. Simpson, grandson of Col. R. W. Simpson.

The Furor Erupts

Clemson's concerns about the South Carolina Legislature's lack of enthusiasm for his project proved to be well-founded. On April 20, 1888, the will was submitted to probate by Simpson, and the three-year deadline specified by Clemson added urgency to the will's supporters to maneuver quickly through the legislative and legal maze necessary for the will's terms to be ratified. Almost immediately, opposition to Clemson's plan arose, and the objections coalesced around two main themes. There were those who opposed the concept of a new, public college

Descendant Chart for
Anna Maria Calhoun and Thomas Green Clemson

Prepared by Jerome V. Reel

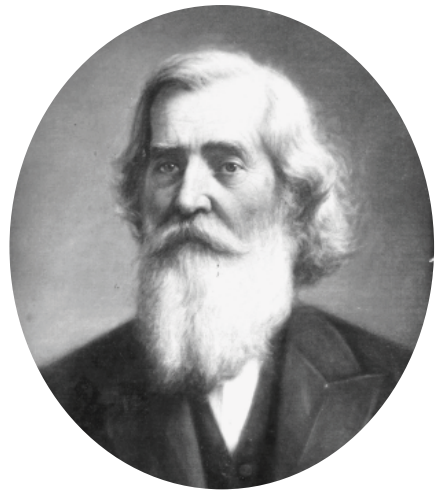


in South Carolina devoted to agriculture and practical applications of scientific knowledge. Their argument was that there were already agriculture departments at the University of South Carolina and at Claflin College (for African American students). These opponents, in the press and the legislature, argued that creation of a new college for the primary purpose of agricultural education would be a duplication of effort and would drain scarce resources from the other public colleges.¹⁹

The second major objection seized upon by opponents to the college relate to a legal challenge filed by Gideon Lee on behalf of his daughter, Floride Isabella Lee, the only child of Clemson's deceased daughter, Floride Elizabeth, and Clemson's only surviving heir. Clemson had made provision for a bequest of certain personal effects and the sum of fifteen thousand dollars. Apparently, Clemson foresaw such a challenge in his codicil to the will, dated March 26, 1887, and he added two separate items dealing with this bequest. The first item cataloged the other bequests that Isabella had already received directly through her mother's (i.e., Floride Elizabeth Clemson Lee) estate, and the second specified in very unambiguous terms that, in the event of any legal challenge to the validity of the will and to the establishment of an agricultural college in particular, her bequest would be revoked. These provisions obviously belie some feelings of ill will or, at the least, mistrust with regard to Gideon Lee, Clemson's son-in-law. True to form, Lee began to agitate against the will almost immediately.



Floride Isabella Lee Calhoun (1870–1935), Clemson's granddaughter, who married a cousin, Andrew Pickens Calhoun II. Fort Hill Collection, Clemson University. Gift of Mr. and Mrs. Creighton Lee Calhoun Jr.



A late photograph of Gideon Lee Jr. (1824–1894), father of Floride Isabella Lee and son-in-law of Thomas Clemson. Fort Hill Collection, Clemson University. Gift of Mr. and Mrs. Creighton Lee Calhoun Jr.

Gideon Lee's first salvoes were in the press and not in the courts. He penned two letters, both of which were published in the Charleston *News and Courier*, and both of which challenged the legality of the will, excoriated Clemson as vainglorious and demented, and alleged that the State of South Carolina was abetting Clemson in cheating John C. Calhoun's great-granddaughter out of her rightful inheritance.²⁰ On November 26, 1888, concerned that there might be sufficient legislative support to gain acceptance of the will, Gideon Lee filed a lawsuit against Simpson, as executor of Clemson's will, in the U.S. District Court for the District of South Carolina.²¹ Lee's contentions found favor with some legislators and members of the press who seized upon the possible delay and expense associated with a prolonged legal battle, not to mention what was seen by some as an unseemly position for the state to take in fighting over ownership of a child's family home, as reason to reject Clemson's gift. However, opinion was not one-sided, and other elected officials and statewide newspapers ridiculed Lee's position. They pointed out that, with a \$15,000 bequest plus the inheritance she had already received from her mother's death, Isabella was hardly left destitute. Supporters of the will also noted that it is a long-recognized and accepted right that an individual is free to dispose of his or her assets upon death in the manner he or she chooses. Clemson's will was very clear as to his intent in bequeathing the bulk of his estate for the establishment of an agricultural college, and it was pointed out that it would dishonor him and the Calhoun family to ignore those wishes.²²

It is interesting that the debate over Clemson's will divided fairly predictably along geographic and socioeconomic lines, with the newspapers and legislators of the Lowcountry generally in opposition, while those in the Upstate supported it. In many ways, the establishment of an agricultural school, primarily for the benefit of the poorer, less genteel yeomanry of the Upstate and in competition with the established colleges in Charleston and Columbia, prompted a rehashing of sectional and social conflicts that had played out over the previous course of South Carolina history. The key legislative supporter of the creation of a college at Fort Hill was Ben Tillman, the Populist politician from rural Edgefield County who, perhaps more than any other contemporary South Carolina political figure, represented the rural poor of the state. His outspoken advocacy of the will was to some extent a two-edged sword in that his association with the project galvanized some of the opposition to its acceptance.

Ultimately, Lee's legal challenge to the will's validity was unsuccessful, and the Circuit Court dealt with his arguments in a fairly perfunctory way. Lee's appeal to the public in the form of letters to various South Carolina papers was primarily one of sympathy for the financial security of Calhoun's great-granddaughter which, he argued, would be fatally compromised if the bulk of the Fort Hill estate went to the proposed agricultural school. Since such

an argument has no real legal merit, it did not figure prominently in his legal pleadings. Those documents staked his position on the more technical argument that Clemson's Last Will and Testament and the subsequent codicil were void, due to preemption of earlier bequests by Calhoun's widow and by Anna Calhoun Clemson.²³ More specifically, Lee argued that the Fort Hill property did not belong to Clemson at all and that title to the property had passed from Calhoun's widow to her only surviving heir, Anna Clemson, and later to her only living heir, Isabella, Mr. Lee's daughter and ward. It was a tenuous argument dependent upon the courts' ignoring a series of previous decisions by probate courts (settling the estates of Mrs. Calhoun and Mrs. Clemson), as well as other miscellaneous transactions regarding the payment of taxes and liens on the property by Clemson. Ultimately, the Circuit Court (Fourth District) was not persuaded and issued its opinion on May 21, 1889, dismissing Lee's claims and affirming the terms of the will.²⁴

With the final decision of the courts regarding the validity of the will, the legislative debate over its acceptance was reinvigorated. W. C. Benet, a member of the House of Representatives from Abbeville, led the fight for acceptance, and the opposition was spearheaded by J. C. Haskell and B. L. Abney from Richland County, along with W. H. Brawley from Charleston County. In the Senate, the chief supporter was B. W. Edwards of Darlington County. A bill to accept the bequest had been introduced in the House by Benet on December 6, 1888, and was approved on December 15 of that same session by a vote of 67 to 48, with the majority of votes against coming from the Lowcountry districts and Richland County (home to the University of South Carolina).²⁵ The House vote came prior to the resolution of Lee's lawsuit, and the Senate fight over acceptance was fueled by continuing speculation as to the outcome of the case. The case was still not resolved when the Senate took up the proposed bill, and opposition in the Senate was more spirited than in the House. The legislative debate and the concurrent court case invigorated the public debate, and the state newspapers, particularly the *Charleston News and Courier*, enthusiastically reported the legislative skirmishing and frequently published editorials on the issue, as well. The Senate vote on acceptance of the will was a dead heat, and Lieutenant Governor W. L. Mauldin of Greenville was called upon to cast the deciding vote for acceptance.²⁶

Despite the victories in the House and Senate, acceptance of the will was not complete. The Bill of Acceptance was sent to Governor Richardson for signature, but Richardson exercised his right to employ a "pocket veto" and declined to act on the bill until the next legislative session.²⁷ Richardson's stated reason was to allow Gideon Lee's lawsuit to have been decided by the courts, thereby obviating the possibility of the state becoming embroiled in a potentially protracted and expensive legal imbroglio. But it should be noted that others questioned Rich-

ardson's true motives in not signing the bill, citing his lack of enthusiasm for Clemson's proposed college from the time it was first proposed.²⁸

The decision of the Circuit Court in May of 1889 removed the rationale for Governor Richardson's hesitation in signing the Bill of Acceptance, and upon the convening of the 1889 session of the General Assembly, Richardson acquiesced and formally approved the Act of Acceptance on November 27 of that year.

The Dream Becomes a Posthumous Reality

There was still one final step before Clemson's bequest was complete and that was for the chief justice of the South Carolina Supreme Court to issue an opinion confirming that the legislature and the governor had taken all steps necessary for the state to accept the terms of the will. That formality of ratification was satisfied on December 6, 1889, upon the issuance of an "Opinion of Chief Justice" by S.C. Supreme Court Chief Justice W. D. Simpson (no relation to R. W. Simpson) which stated simply that the legislature and the governor had acted appropriately to accept Clemson's bequest, subject to all of the terms and conditions set forth in the will. It seems fair to say that, with all legal and political prerequisites having been satisfied, this was the moment at which Clemson College came into being.

The promotion of scientific inquiry, the application of scientific principles to all aspects of human existence, and most especially, the establishment of an agricultural college for the benefit of the people of the State of South Carolina had long been Thomas Green Clemson's dream. It evolved into almost an obsession in his later years, consuming the bulk of his time and energy, as reflected in his surviving correspondence. One cannot help but wonder what Clemson believed was the likelihood that his dream of a college at Fort Hill would ever become a reality. Given his long record of failure and frustration in convincing the people and politicians of South Carolina of the educational and economic benefits of such an institution, only a true optimist could have had faith in the ultimate success of his dream. And it is a sad irony that by providing for the establishment of the college in his Last Will and Testament, he ensured that he would never live to see the ultimate outcome. It is a tribute to his persistence, foresight, and generosity, reflected in the instrument of its creation, that the institution now titled Clemson University came into being.

Notes

1. The standard last will and testament recorded in the probate records of Upstate South Carolina counties was usually not longer than a standard paragraph and consisted of a few basic elements: the name of the executor; a bequest of real estate, almost always to the surviving spouse

- and children; and an occasional, specific gift of one or two particularly cherished or valuable items of personal property.
2. TGC to W. W. Corcoran, 3 January 1857, Corcoran Papers VI, MSS 61440, Library of Congress, Washington, DC; *American Farmer* 12 (1856): 69.
 3. *De Bows Review* 7 (1862): 87ff. Given the themes of patriotism—for one's state, of course—individuality, and that peculiar form of democracy adored by the adherents of the Confederacy and which dominated the rhetoric of those heady, early weeks of Secession, it is probably not surprising that Clemson's rallying cry of agricultural education went largely unnoticed.
 4. C. L. Newmann and J. C. Stribling, *Pendleton Farmers' Society* (Atlanta, GA: Foote & Dawes, 1908), 72; *Rural Carolinian* 1 (1870): 492.
 5. *Rural Carolinian* 2, no. 1 (1870): 1.
 6. TGC to W. W. Corcoran, 29 October 1878, Clemson Papers, Special Collections, Clemson University Libraries, Clemson, SC (hereafter cited as SCCUL).
 7. See "The Minutes of the South Carolina Agricultural and Mechanical Society" (1869): 37.
 8. 39 *Federal Reporter* 235, 1890; and District Court of South Carolina, Fourth Circuit, *Lee v. Simpson*, "Exhibits and Statements of Fact," testimony of R. W. Simpson.
 9. Thomas Clemson eventually became embroiled in the statewide dispute over disposition of the final remains of John C. Calhoun. The statesman was interred in Charleston, the traditional locus of South Carolina political, economic, and social power, and Clemson allied himself with proponents of having Calhoun's remains removed to Fort Hill. Like many of Clemson's other passionately held positions, he found himself on the less popular and ultimately losing side of the argument. See Alester G. Holmes and George R. Sherrill, *Thomas Green Clemson, His Life and Work* (Richmond, VA: Garrett and Massie, 1937), 154–155.
 10. TGC to W. W. Corcoran, 29 October 1878, Clemson Papers, SCCUL. Interestingly, at this point Clemson is willing to donate the property immediately, as opposed to a testamentary bequest to take effect upon his death. He offers to donate the property and to capture all or a portion of the interest on the principal for his living expenses until his own demise. He also states that he would be willing to place himself at the disposal of the governing body of any college thereby created, should they find his services to be useful.
 11. *News and Herald* (Winnsboro, SC), 25 May 1910.
 12. TGC to J. H. Rion, 27 April 1883, Clemson Papers, SCCUL. It is difficult not to detect the sarcasm in this reference, especially in light of Clemson's two decades of futilely imploring South Carolina's elected officials to fund such an institution. Interestingly, this language appears almost verbatim in the final version of the will. It may have been a sarcastic comment, but Clemson was utterly sincere in his concern about the legislature's commitment to provide adequate funding for his college.
 13. Holmes and Sherrill, *Thomas Green Clemson*, 157.
 14. District of South Carolina, Fourth Circuit, *Lee v. Simpson*, "Exhibits and Statements of Fact," testimony of R. W. Simpson.
 15. Holmes and Sherrill, *Thomas Green Clemson*, 157.
 16. *The State* (Columbia, SC), 21 June 1909.
 17. Circuit Court of South Carolina, Fourth Circuit, *Lee v. Simpson*, "Testimony and Statements of Fact," testimony of R. W. Simpson.
 18. Hereafter, the term "will" shall include the Last Will and Testament of Thomas Green Clemson, dated 6 November 1886, and the Codicil, dated 20 April 1887, unless otherwise specified.
 19. See comments of Governor John Peter Richardson III, in *Journal of the House of Representatives of the General Assembly of the State of South Carolina* (1888): 40; also quoted in *News and Courier* (Charleston, SC), 8 September 1888.
 20. *News and Courier* (Charleston, SC), 26 April 1888, and 2 May 1888.
 21. Probate matters are generally within the jurisdiction of state courts; however, in this case, Gideon Lee and his daughter, Isabella, were both residents of the State of New York. This provided them the option of bringing the lawsuit in federal court based on diversity of jurisdiction, i.e., the fact that the adversarial parties were residents of different states. It is also likely that Lee chose federal court as his forum in the assumption that his arguments would receive a more impartial hearing than in a local, South Carolina court.

22. *Greenville News* (Greenville, SC), 3 May 1888.
23. Circuit Court of South Carolina, Fourth Circuit, *Lee v. Simpson*, "Exhibits and Statements of Fact," petition of Gideon Lee.
24. 39 *Federal Reporter* 235, 1890. Gideon Lee appealed the Circuit Court decision to the U.S. Supreme Court, which affirmed the decision of the lower court in a decision issued on 7 April 1890, thus ending the legal challenge to the will. See 134 U. S. 572, 1890.
25. Holmes and Sherrill, *Thomas Green Clemson*, 181–184; *Journal of the South Carolina House of Representatives* (1888), 250. Unfortunately, the House Journal is very sparse for this session and merely records the text of the Act of Acceptance and the vote. None of the legislative debate surrounding the legislation was captured, and we must rely solely on newspaper accounts for what little knowledge of the discourse we have.
26. *Ibid.*, 263.
27. *Constitution of the State of South Carolina* (1868), Article III, Section 22.
28. *News and Courier* (Charleston, SC), 24 December 1888, and 27 December 1888; *Greenville News* (Greenville, SC), 30 December 1888.

State of South Carolina
County of Clemson

I, Thomas G. Lee & Gideon Lee, of the County & State aforesaid, did on the 6th day of August 1886 execute my last will and testament, wherein I sought to provide for the establishment of a scientific institution upon the Fort Hill place, and therein provided what sciences should be taught in said institution, and wherein I am now satisfied that my intention & purpose therein may be misunderstood as intending that no other studies or sciences should be taught in said institution than those mentioned in said will, which was not my purpose or intention. Now desiring to make my purpose plain, as well as to make some other changes in the disposition of my property then made in said will, I do now make, publish & declare this instrument as and for my last will and testament, hereby revoking all previous wills and codicils by me made, especially the will above referred to, dated my 6th day of August 1886. Feeling a great sympathy for the farmers of this State and their discontent with which they have had to contend in their efforts to establish the business of agriculture upon a proper basis, and believing that there can be no permanent improvement in agriculture without a knowledge of those sciences which pertain thereto, I am now determined to devote the bulk of my property to the establishment of an agricultural college upon the Fort Hill place. This institution I desire to be under the control & management of a Board of Trustees, a part of whom are hereinafter appointed, and to be modeled after the Agricultural College of Mississippi as far as practicable. My purpose is to establish an agricultural college which will afford careful instruction to the farmer and mechanic, therefore it should afford thorough instruction in agriculture and the natural sciences connected therewith. It should combine of practical physics with intellectual education, and should be a high seminary of learning in which the graduates of the common schools can commence their and finish a course of studies terminating in thorough theoretic and practical instruction in those sciences and arts which bear directly

Opening of Thomas Green Clemson's Last Will and Testament, November 6, 1886. Probate Court Records of Walhalla, S.C. Will Book: 234-244.