

YALE LAW JOURNAL

VOL. VII

MAY, 1898

No. 8

THE BAR OF THE CITY OF NEW YORK.

The New York City Bar was a strong one even before the Revolution, but it was not until after the achievement of independence that Alexander Hamilton and Aaron Burr became conspicuous in this island for their genius as advocates and their power and learning as lawyers. Both had been liberally educated and both had been thoroughly grounded in the common law. Probably Hamilton had the wider and more comprehensive intellect; Burr the more perceptive and subtle. True it is, that they were pitted against each other in almost every great cause before the courts in the State of New York for many years after the evacuation of the city by the British armies.

Hamilton, I have been told, was born in the West Indies. He came to America when quite a youth and became the military Secretary and Aid-de-camp of General Washington. It was while in attendance upon the "Father of his country" that he became acquainted with Miss Elizabeth Schuyler of Albany, the daughter of General Schuyler. Miss Schuyler became Mrs. General Hamilton.

These two rivals—Hamilton and Burr—cordially hated each other and however exalted the character of Hamilton he was capable of the feeling of vindictiveness. It is claimed, and with some force of authority, that Hamilton had secretly slandered Burr in the columns of a Federalist newspaper for many years; that he had secretly, insidiously and yet effectively thwarted Burr's ambition, and when the secret was revealed that his supposed friend had been his concealed foe and had been more or less the architect of his political ruin, then, undoubtedly, rose in the soul of Burr a determination to destroy his adversary.

Their meeting at Weehawken is historical; it is known of all men and I fail to see that any greater moral guilt justly attaches

to the name of Burr than to that of Hamilton growing out of the circumstances of this duel. However, public impressions aided by the death of Hamilton, who was immensely strong in popular sentiment, turned the scale against Burr and he became a wanderer and fugitive on the face of the earth.

As a lawyer, probably Hamilton comprehended general principles with more tenacity of grasp than did Burr; probably Burr was the superior case-lawyer and his knowledge of precedents was more comprehensive and accurate. Certainly in the conduct of a *nisi prius* cause Burr was the better cross-examiner and was better enabled by his nature, character and disposition to make effective appeals to the jury. In his examination of witnesses his knowledge of human nature came greatly to his aid. Burr's knowledge of real property was varied, comprehensive and accurate; he won great distinction in ejectment suits and probably no man ever lived in this country who was his superior in the trial and argument of actions which involved title to real property.

Hamilton was a constitutional lawyer. He drank in the philosophy, the history and reason of the law at the fountain head of their origin and it was before the court in banc that his decided superiority to Burr was manifest. What might have been the future of Hamilton at the bar had he lived, or that of Burr if he had not been driven into exile, can only be left to conjecture. That they were confessedly the two great men of their generation at the bar, not only in the State of New York but in the entire country, is made manifest by history.

It must be remembered that at the meridian of their glory Daniel Webster, Jeremiah Mason and Rufus Choate had not appeared.

Mr. Webster was *sui generis*. No man who has appeared in the legal or political history of this country can be compared to him.

Probably Jeremiah Mason was, take him all in all, his greatest antagonist.

As an advocate Rufus Choate has never had a peer in any country or in any age. Ogden Hoffman approaches him more closely than any other.

Mr. Hoffman was born in the City of New York on the 3d day of May, 1793. His father was Josiah Ogden Hoffman at times the associate and often the opponent of such lawyers as Hamilton, Kent, Ambrose Spencer, Thomas Addis Emmet and men of that calibre, jurists of whom it has been said "that a

profound and high order of eloquence raised them to the sphere of the Pitts, Burkes, Sheridans and Currans." Mr. Hoffman as a boy entered the service of the United States as a midshipman on board the Frigate "President" and he was with Commodore Decatur when that great sailor hoisted the flag of his country in the Eastern seas. Mr. Hoffman was present at many of the engagements with the Algerine Pirates and was especially noticed by his commander for his personal gallantry and loyalty to duty. He left the Navy and studied for the bar. He was encouraged in his acquisition of general information by the advice of his eminent father who said, "that no man can be thoroughly acquainted with any one branch of knowledge without having some skill in others; also, that to no department is general knowledge so necessary as in the science of Jurisprudence which pushes its roots into all the grounds of science, and spreads its branches into every object that concerns mankind. He who expects to be eminent at the Bar depending simply on a knowledge of law, is like a general with an army consisting entirely of infantry without artillery or cavalry. Language is the armory of the human mind and at once contains the trophies of the past and the weapons of its future conquerors."

On his entry into practice Mr. Hoffman confronted a formidable bar, and among its members were James W. Gerard, Hugh Maxwell, Hiram Ketchum, Henry Wheaton and others of the same mental grade. The general impression has come down to this generation that Mr. Hoffman was simply a criminal lawyer. No greater error can be conceived. He appeared as leading counsel in some of the most difficult cases involving the most intricate legal questions ever tried at the New York Bar. As to his abilities before the Court in banc the reported cases in which he appeared as counsel and which were adjudicated in the Supreme Court, Court of Errors, and Court of Appeals, bear ample testimony. Still, it was Mr. Hoffman who gave to Mr. Evarts, then a rising star at the bar, the following counsel: "Take my advice, adhere to civil business and let the Criminal Courts alone." Mr. Evarts puts the speaking chisel into the marble of Mr. Hoffman's character when he describes him: "A very able lawyer, and I mean it in the sense that every lawyer is able if he be able at all. He was able to the time, the occasion and effect. He had embodied, digested and assimilated to himself the great principles of the law and reasoning that make up the character of the lawyer."

Mr. Hoffman himself, in speaking of Thomas Addis Emmet,

one of his greatest adversaries, paid him the following beautiful tribute: "Listening to him you were struck with his power. He seems like a piece of immense machinery moving with the greatest regularity and smoothness, and yet as if restraining its gigantic power."

Probably in the history of criminal jurisprudence no more miraculous triumph was ever achieved by any advocate than was won by Mr. Hoffman in what is known as the "Helen Jewett case." Helen Jewett was one of an unfortunate sisterhood. Her true name was Dorcas Doyen, and she was born in the State of Maine. She was a woman of marvelous personal beauty; of some intellectual culture and of the most consummate fascination. At the time of the tragedy which invoked the powers of Hoffman in defense of the criminal, she resided at the house of Mrs. Townsend in the Fifth Ward in the City of New York. At this place Robinson often resorted for the purpose of meeting the woman whose charms had fascinated his life and blighted his career.

It was contended by the prosecution in its opening that early on the morning of April 10, 1836, the body of the fair cyprian was discovered in a terribly mangled condition in her room at the residence of Mrs. Townsend; that between eight and nine o'clock in the evening previous Robinson came to Mrs. Townsend's and requested to see Miss Jewett. He wore a cloak which at the time was a fashionable one, and while inquiring for Miss Jewett he leaned against the wall in the hall so that the servant who came to the door in answer to his ring had a perfect view of his face.

The unfortunate woman, Helen Jewett, was at this time in the back parlor of the house but, hearing her name mentioned came out into the hall. As she reached the hall the man was then ascending the stairs which led to the upper part of the house and to her room; she closely followed him and, as she approached the visitor, exclaimed: "My dear Frank! How glad I am that you have come." That both then went up stairs and retired and were not seen again until eleven o'clock.

At that hour Miss Jewett came to Mrs. Townsend and asked for a bottle of champagne. After some little delay the wine was taken to Miss Jewett's apartment and the attendant who conveyed it again saw Robinson, who was holding a candle and reading a book. From that moment until the discovery of the homicide, no person outside of the assassin ever saw Helen Jewett alive.

It appeared that this temple of the passions was closed at a little after twelve o'clock. In the course of the night some one called out to Mrs. Townsend to be let out. She made no response and the demand was not repeated, but very early in the morning on going to Helen Jewett's room and opening it Mrs. Townsend perceived a great quantity of smoke which poured out of the room. The alarm was given and a policeman entered, extinguished the fire and discovered the body of the unfortunate woman, Miss Jewett, terribly mangled as if with some sharp instrument. A search in the back yard of the house, revealed a hatchet covered with blood and in the yard adjoining that of Mrs. Townsend, Robinson's cloak was found. A piece of twine was attached to the hatchet and another piece, corresponding with that on the hatchet, was found tied to the cloak. The theory of the prosecution was that the hatchet had been tied to the inside of the cloak by the twine and thus concealed. It was conspicuously clear that the man who left the cloak and hatchet must have escaped over the fence between the two yards. The fence was covered with a heavy coat of whitewash.

A search was made for Robinson. He was found at his lodging and it was discovered that his pantaloons were marked with lime, indicating, as the prosecution contended, his contact with the fence in the rear of Mrs. Townsend's residence.

Robinson was a young man of good family antecedents, and until his unfortunate connection with the murdered courtesan had always sustained a good character in the community. His age was only twenty-two years; his business that of a clerk in a wholesale dry-goods house. There was no controversy that his relations with Miss Jewett had been of the most intimate character, and the motive for the murder, that the prosecution sought to establish, was that the unfortunate Helen Jewett was jealous of the attentions of Robinson to a young lady to whom, it was said, Robinson was about to be married, and that this sentiment of jealousy engendered contradictions and quarrels between the two, and that Robinson resolved to remove from his path the obstacle which he seemed to think existed in it, in the person of Helen Jewett.

It can be clearly understood from this summary of facts that the excitement in the community was all-pervading and the greatest interest was centered in the trial of Robinson, who was defended by Mr. Hoffman and Mr. Price.

It was in this great trial that Mr. Hoffman's indomitable genius and eloquence burst forth once more in all their brill-

iancy. He made the leading argument for the defense and during its progress the jury became captives to his wit, logic and pathos. Although he assailed a fabric of proof most powerful in its character and of the strongest circumstantial nature, he pounded it to pieces with the artillery of his great abilities and the jury acquitted his client in the face of what must ever seem to be a record of the most convincing guilt.

Mr. Hoffman was gifted with a most remarkable voice. It was as sweet as music, and in one trial in which he was engaged after he had spoken for about an hour, he closed his argument to the jury, and thereupon one of the panel, almost unconsciously, rose in his place and requested "Mr. Hoffman to speak a little longer." This is one of the most conspicuous tributes ever paid to the influence of an orator over a jury.

The case which most resembles that of Robinson, who was charged with the murder of Helen Jewett, was that of the "Commonwealth of Massachusetts *v.* Albert J. Tyrrell." The accused was defended by Rufus Choate. He was charged, as I remembered to have read, with the murder of Maria Bickford in a maison de joie. In that case, as in the Helen Jewett murder, the dual crime of homicide and arson was committed. Tyrrell after assassinating the unfortunate victim of his passion, set fire to the room in which her dead body lay, for the purpose, undoubtedly, of concealing the character of the crime which had been committed. In his case also, if I recollect correctly, one means of detection and identification was his cloak which was found in and about the premises where the homicide had been committed.

Mr. Choate conceded that the accused was guilty of both murder and arson, but contended that at the time the crime was consummated he was in a somnambulistic state and was therefore legally and morally irresponsible for his offense and such was his controlling power over the jury that he convinced them of the truth of his theory and they brought in a verdict of "not guilty."

It is said that the presiding Judge was so taken by surprise at the result that, momentarily forgetting his judicial reticence and caution, he put the question to the jury: "Gentlemen, how could you find such a verdict as that?" The foreman's reply was: "Mr. Choate said that it was all right."

I presume none will question the assertion that for the last quarter of a century Mr. Evarts has been the leader of the American bar. He has now substantially retired from active

practice and his place is fully filled by Joseph H. Choate. Mr. Evarts is a New Englander by birth, born in Boston, I believe, and is a descendant of that original family stock which has produced such lawyers as Roger Sherman, Roger S. Baldwin and the Hoars of Massachusetts. General Sherman was also, I believe, a near connection. In appearance Mr. Evarts is one of Plutarch's men. In physiognomy and phrenology he presents a strong resemblance to Cæsar, the great Roman. Possibly, if not quite equal to Webster, Mason and Luther Martin, he is certainly in their class and that class is the first. He is a more learned man than was Jeremiah Mason. He is a more sagacious and conservative man than was Luther Martin, although the latter, from all that we can glean of his professional history, but for the unfortunate infirmity of drink, would have been the first among lawyers. His defense of Aaron Burr was a mighty tribute to the genius, the learning, eloquence and literature of the bar. And how sad is the reflection that one so greatly gifted by the Almighty as Martin, chartered by the Deity to achieve all that intellect and genius could conquer, made so woeful a misuse of his mental treasures and miserably ended in the last steps of his journey.

Mr. Evarts settled in New York, and it can be truly said that from the commencement he was the Titan of our bar. His learning seems exhaustless; his mind is enriched by the widest and most varied reading, and his intellect is the arsenal which holds the most effective mental weapons. I have been told by distinguished men who know him well, that it is very difficult to distinguish where his powers are best developed; whether before a jury, the court, or as a statesman and a popular speaker. His sentences, as long as those of Rufus Choate, do not burn with the fervid fire and oriental imagination which made the great Massachusetts lawyer the wizard of all time.

A trial that invoked all of Mr. Evarts great powers, was that of *Tilton v. Beecher*. Beecher was known over the habitable globe. He had enriched the English language with thought and expression. His heart beat for the slave and he had aided in his emancipation. He was a character of power, gentleness and beauty, and his influence as a man and a minister of the gospel was positive and controlling; and still this man was involved in a litigation and subjected to the analysis of charges which compel us to realize the felicity and truth of the language of Hugo: "Our joys are shaded. The perfect smile belongs to God alone."

My own inquiry, based upon what I have read of the evidence in this case, has caused me to believe that the evidence in favor of Mr. Beecher's guilt is not so strong as the testimony tending to establish his innocence.

There can be little doubt that the plaintiff, Tilton, was not only anxious to realize in a material sense from the result of the trial, but that his wish was to destroy a great character. Tilton, though a man of ability in some directions, was in comparison to Beecher a mental Lilliputian. He undoubtedly envied the abilities, position, success and grand career of the Brooklyn minister. He realizes the truth of what is so aptly said in the Holy Scriptures: "Wrath is cruel, anger is outrageous, but who can stand before envy." This sentiment has probably contributed more than any other to the moral destruction of the race.

There were but two real supports to the charge that was made against Mr. Beecher—of immoral behavior with Mrs. Tilton—and those were the testimony of Moulton, and the evidence contained in certain letters of Mr. Beecher's which were considered by the friends of Mr. Tilton as conceding away the former's case.

Whether Moulton, the "mutual friend," was in any way, through the channel of ancestry or otherwise, connected as General Tracy charged, with a certain Judas Iscariot, who betrayed on a memorable occasion the Holy Redeemer, it is not necessary to inquire; one thing appears clear in the proof that while pretending to be the friend of both Mr. Beecher and Mr. Tilton, his acts were those of a foe to Mr. Beecher and his testimony was that of a strong friend and ally of Mr. Tilton, and therefore, except as corroborated, his testimony ought to have had little weight, and probably that was the view taken by the majority of the jury.

In one of Mr. Beecher's written effusions he says in substance to Tilton: "I bow before you as I do before my God." Those were substantially the words as I recollect them now; at any rate, they embodied the sentiment of a statement contained in a letter from Mr. Beecher to Mr. Tilton. Mr. Beecher had a very reasonable explanation and it was substantially that, he felt that as a friend of Tilton, and as a minister of Christ, it was his duty to have labored for the reconciliation of the husband and the wife who were estranged, and he recognized that in that respect he had substantially omitted to do his duty.

Considering the character of the man, his position, his min-

istry, and his relations with Mr. and Mrs. Tilton, this is by no means an argument without force, but it will ever be considered an undecided question, the guilt or innocence of Mr. Beecher. Probably the real fact will never be known in this world, but it is conceded by the profession that Mr. Evarts' effort in behalf of Mr. Beecher was a masterly, scholarly and eloquent one and that it had very much to do with the division of sentiment of the jury who were greatly impressed by the powerful address of W. A. Beach, which, on behalf of Mr. Tilton, followed the argument of Mr. Evarts.

Mr. Evarts' life has been one of unremitting professional and public toil. At the age of fifteen he entered the Freshman class of Yale College and four years later graduated with honors at the early age of nineteen. He pursued the study of the law in the Law School of Harvard University after which he entered the law office of Daniel Lord, one of the leaders of the New York Bar, and it was under his supervision that he prepared himself for admission to practice. Mr. Evarts has often acknowledged his indebtedness to the system pursued by Mr. Lord in his own education and to the discipline that eminent advocate insisted upon, and the sound principles of law which he instilled into his mind.

Mr. Evarts was admitted to practice in 1841, and from the moment of his admission, as has been stated, he at once went to the front in his profession and remained there ever afterwards.

His first public political office was that of Assistant United States District Attorney for the Southern District of New York, which he held for four years, and it was while in this position that his great capacity as a lawyer was first made manifest. During the second year of his official term an expedition was fitted out against the Island of Cuba; one of those revolutionary marauding adventures which at this time were quite common. The particular enterprise which attracted the adverse criticism and professional action of Mr. Evarts, was the one known as the "Cleopatra Expedition." There were a great many principles of international law involved in the controversy, but they were presented, surmounted and utilized in such a way that conviction of the principal offenders was inevitable and Mr. Evarts' reputation was very greatly enhanced.

He also argued the question of the constitutionality of the "Metropolitan-Police Act," so-called, passed in 1857, and he succeeded in upholding the law.

In 1860 he was retained by Mr. Chester A. Arthur, afterwards President of the United States, to argue what was called the "Lemmon Slave case."

It appears that Lemmon was the owner of a number of negro slaves and that he was en route from the State of Virginia, where he had a residence and where he claimed his domicile, to Texas. He intended to ship the slaves from the City of New York by boat to the "Lone Star State." At once, on their entering the jurisdiction of the State of New York, the friends of the slaves claimed that they were free and that their freedom could not be impaired by the provisions of any law of Congress relative to the rendition of slaves who were fugitives from bondage. In this important case the State of Virginia retained Charles O'Connor; the State of New York selected as its champion Mr. Evarts, and it is not too much to say, on the authority of those who heard the argument, that in this case Mr. Evarts demonstrated his mental, logical and legal superiority in no uncertain way.

It will not be forgotten that in 1865 the position was taken by several of the States of the Union that they had the right to tax the securities of the United States included in the investments of the National Banks. The banks resisted this contention and Mr. Evarts, as their counsel, presented the issue upon the unconstitutionality of the States' taxation. The judicial decision was in favor of the banks and of the position assumed by Mr. Evarts.

If Jefferson Davis had ever been brought to trial, which undoubtedly he ought to have been, Mr. Evarts would have conducted the prosecution on the part of the United States as leader. He was retained by the Attorney-General to conduct the case for the Government but the general amnesty of December 25, 1869, was conclusive of this prosecution.

It was in the State trial of the impeachment of President Johnson that Mr. Evarts' great powers shone forth with extraordinary lustre. He was among the counsel selected to defend the executive and his tact, ability, genius, resource and imagination as exhibited in this protracted struggle won for him the admiration of civilized mankind.

Mr. Evarts labors in behalf of the United States at the Geneva Conference can never be over-estimated nor forgotten. The purpose of this celebrated tribunal of arbitration was to determine the harassing question of the amount of damage done to the commerce of the United States by the so-called Confederate men-of-war on the high seas during the Rebellion.

Through the ability and persistence of and the respect inspired by Mr. Evarts, the position of the United States before that august tribunal was to a great extent conceded and allowed.

As is well-known, Mr. Evarts was for a short time Attorney-General, having been appointed by President Johnson, and he was also counsel for President Hayes before what was known as the "Electoral Commission," and on the inauguration of Mr. Hayes the latter nominated him for Secretary of State, and during his administration of that Department he had to consider and determine the vexed question of the "Fisheries," which had been in dispute between the United States and England for nearly three-quarters of a century. This question was very unsatisfactorily solved by the appointment of a Committee of Arbitration known legally and diplomatically as the "Fisheries Commission" at whose hands the United States suffered to the extent of an award of over five millions which she was compelled to pay to England. This unexpected result, however, was never charged to the indifference or want of capacity of Mr. Evarts.

Mr. Evarts was for six years a member of the Senate, representing in part the Empire State—New York—and his speeches in that body have become a part of the political wealth, history and literature of the United States.

As a lawyer he is in a group of which Webster, Fessenden, Luther Martin and Jeremiah Mason are members. There is but one man in the political, legal and professional history of the United States who towers above him, and that is Daniel "the Godlike."

William A. Beach, the greatest antagonist of Mr. Evarts in the *Tilton v. Beecher* trial, was born in Saratoga County in this State early in the present century. He and John K. Porter contested for nearly a quarter of a century the *nisi prius* supremacy in the Albany and Saratoga Circuits and so equally were they matched that an eminent lawyer who knew them both well once told me that "it depended altogether on which had the last say to the Jury, so far as the verdict was concerned." That, "If Gus Beach had the last talk to the jury as a rule he prevailed, but, if Porter had the opportunity to review the argument of Mr. Beach, he in turn was conqueror."

For fifty years Mr. Beach was one of the leaders of the *nisi prius* bar in this State, and when he removed to New York over a generation ago, he immediately took the rank in the Metropolis which his genius, abilities, prestige, success and experience entitled him to hold.

William A. Beach was a man of singular beauty of person and fascination and grace of manner. His courage was of the most exalted character, and I believe the man would have blushed at even the suggestion of fear. This heroic quality was best evidenced in his struggle during a long and doubtful day when the odds were preëminently against him; then it was instead of sinking discouraged at the feet of his adversary he rose superior to fortune and out of "the nettle danger plucked the flower safety." In the *Tilton v. Beecher* trial Mr. Beach, during the summing up, sternly reproved one of the jury for an act or utterance of manifest partiality. To most people this course of conduct would seem to evidence a want of tact, but in point of fact it was the bright, consummate flower of the highest art; because this identical juror, who before Mr. Beach's assault upon him, was adverse to Tilton, became one of his warmest adherents in the jury room. It was undoubtedly Mr. Beach's powerful presentation of the cause of Tilton that led to the division of sentiment in the jury box; because as I have taken occasion before to say, a careful, calm analysis of the testimony will convince most professional minds at least that the proof in the cause was strongly on the side of the Brooklyn minister.

Mr. Beach, spoke, I believe, six days in presenting the cause on the part of Mr. Tilton and it is conceded that his argument was one of the most complete, able and eloquent efforts ever made at the bar. It was enriched with historical incident, play of human passion and the bright rays of human fancy, pathos and wit. His denunciation of Mr. Beecher was most terrible and scorching, and while he gave full credit to his genius and recognized his great career, he lamented that like "Ichabod," he had fallen to rise no more.

Long will this battle of legal giants live in the history and the literature of the bar. Probably a gathering of more powerful lawyers never assembled at one time on this continent. Some of the principal actors in the drama have passed away, others are near the great hereafter, and nothing is left of this dramatic trial but a recollection, a throb of anguish and a tear of sorrow. Beecher himself is dead; he has long since appeared before a Judge who never errs; before whom all things are unrolled and seen, and nothing remains of him but the marble effigy which greets the eye of citizen and stranger in the city in which he lived, "amid the people whom he loved so well."

Mr. Beach's genius was a fertile and versatile one. He appeared as advocate in causes which necessitated a wide and

varied learning and which invoked the greatest ability and the most profound experience. He defended men on trial for their lives; he protected title to real property; he overthrew unjust wills and maintained just ones. He was at home in the technicalities and intricacies of commercial law and its practice, and of him it truly can be said as Dr. Johnson wrote of Goldsmith, "he touched no subject that he did not adorn."

He left us, and the generation of which he was the leader, has also left us, and we have nothing but scant enduring knowledge and recollection of this great legal athlete; this powerful gladiator of the pugilism of the law; this grand character, this brave and generous man, this true, loyal and constant friend; "this mightiest departed."

In reviewing the life and career of James T. Brady we realize the truth of the utterance which the foremost mind of all generations puts into the mouth of one of his grandest conceptions, "take him all in all I shall never look upon his like again."

For a generation Mr. Brady was the unchallenged leader of the New York Bar. I know there are many who contend that as a mere lawyer Charles O'Connor was his equal if not superior, but to this comparison I cannot assent. Undoubtedly, O'Connor was more of a case lawyer and was more familiar with the *technique* of the profession, but that he ever approached Mr. Brady as a *nisi prius* lawyer, I cannot be made to believe.

Mr. Brady's ancestors, as his name indicates, were Irish. His father was a very accomplished scholar and a remarkable linguist. He spoke fluently and correctly the language of many countries. His classical and belles-lettres-learning was the surprise and admiration of all who knew him. It was like that which Macaulay attributed to the celebrated Dr. Parr, "grand, massive and splendid."

When James became a student of the law, his father said to him: "James, the study of law is like scaling the Alps; you must adopt the indomitable energy of Hannibal and your ascent will be easy. Of all things beware of half knowledge; it begets pedantry and conceit. Make your learning practical, for a book-worm is a mere plodder and gossiper.

"There is a deal of legal learning that is dry, cold, dark and revolting, but it is an old feudal castle in perfect preservation which the legal architect who aspires to the first honors of his profession will delight to explore and learn all the uses to which the various parts are to be put and thus he will better understand and relish the progressive improvements of science in

modern times." Thus it will be seen that the father was an extraordinary man and was worthy of the son who cast such renown upon the name.

His love for his mother was so great, beautiful and pathetic that for years after she was dead and gone "her name was never mentioned in his presence without the tears coming into his eyes."

Mr. Brady had that sense of humor which really great men are rarely without. On his admission to the bar, his circumstances being humble, he took an office in a basement which had been recently vacated by an eminent cobbler. One of Mr. Brady's countrymen coming by the place noticed him sitting alone in what he termed his office, and with that sense of wit that is inherent and is part of the birthright of the Irish race, he inquired: "What is it do ye sell here?" "Blockheads," replied Brady. "By Jesus!" said the man from Erin, "You must be doing a great business, I see you have only one left." Mr. Brady used to tell this story laughing until the tears rolled down his cheeks.

One day he was trying a cause in the Superior Court before a very dull judge whose name was Payn. This judge did not compensate for his mediocrity by his industry. He used to adjourn promptly at three o'clock in the afternoon. On this occasion, as the clock indicated the hour, the judge said to Mr. Brady: "I think we have worked hard and long enough to-day; it is now three o'clock; let us adjourn." Mr. Brady's answer was, quick as the lightning flash, a quotation from the great poet, "We delight in the labor which physics 'pain'" (Payn). However, it is recorded that the judge carried his own motion for an adjournment.

Mr. Brady, on one occasion, was trying a cause against the celebrated Mr. Girard, an advocate who was noted for his ability, geniality, good nature and fascination of manner, in fact, Mr. Girard was termed "the forlorn hope of a desperate cause." In the course of the discussion as to the introduction or exclusion of some testimony, Mr. Brady in some heat drew a far-fetched illustration when he said: "Mr. Girard, you have as much right to put that question as I have to go into your house at one o'clock in the morning." "Very glad; always glad to see you at any time, Mr. Brady," said Mr. Girard.

Probably no advocate ever lived who had so great an empire over the human heart as Mr. Brady. Everybody loved him and his eloquence and pathos in a noted trial were very affecting.

In my boyhood I have seen juries weep and laugh by turns as this great master of the human mind and heart painted as in a moving panorama before them the strength, the beauty and justice of his cause.

I remember a great many years ago when I was a student at law in the office of John W. Ashmead, himself a very eminent lawyer, that I desired very much to hear Mr. Brady sum up in the celebrated "John Kane case." This was a case where the defendant was charged with the crime of arson. He had several trials but was finally, I believe, acquitted. On the occasion I refer to I went over early to the Court Building and stationed myself at the door where counsel entered the court room, thinking that if I went early I would get an opportunity of hearing the great advocate of whom I had heard so much. As I stood at the door he came along walking with that free, buoyant step so characteristic of him, and holding in his hand, if I remember, a green bag; his face a poem lighted up with all the benevolence, and I may say without sacrilege, divinity of his nature. He caught sight of me standing at the door and undoubtedly reading my desire in my face, he said to me: "My boy, would you like to go in and hear the trial?" I told him that was the desire which had brought me there. Said he, with the air of one talking to an equal: "Come in then; come with me," and he took me by the arm and piloted me to a seat at the counsel table near himself, and there for hours I sat speechless, my eyes and ears open and my mouth agape, listening to the greatest orator whom I have ever heard.

He was generous—he was, in fact, Prince Bountiful. He wept always when the poor cried, and probably, at least, and it is no exaggeration to assert it, one-half of his immense professional income was given to others, for the fact remains that when he died he left, outside of his library, but a very small estate. I remember one night I had the pleasure of riding with him from the City of New York to Albany. He had an engagement before the Court of Appeals, and I was en route to attend to my duties in the Legislature. I shall never forget the talk of that winter's night; on his part so full of reminiscences; so full of love and charity for all mankind; simple and tender as a child.

In speaking of Mr. Brady's cases it is very difficult to cull those in which he shone with more lustre than in others, because, in his mental efforts either at the bar, before the Court, or upon the rostrum, he was what is termed a very equal and even

man. Probably the material was so exhaustless that he needed only to call upon his resources to have his mind respond.

One very important case in which he appeared was a patent cause which was argued at Trenton in the State of New Jersey, and he had for an associate Daniel Webster. These two giants were opposed by half a dozen of the ablest lawyers in America. Mr. Brady opened the argument for the bill and he was followed by the other side, at least three or four of the most eminent men in the country combating his views. When it came to Mr. Webster to reply he paid Mr. Brady the stupendous compliment that, in Mr. Brady's opening he had covered the entire ground; that his position had not been successfully or even seriously assailed, and therefore, there was nothing for him to add to the masterly effort of his brother Brady.

It is difficult for those who did not know Mr. Brady to credit such incidents as this, but I have it on the best authority that the statement I have now made is substantially true.

One of the most remarkable cases ever tried in this country was that of the criminal prosecution of General Daniel E. Sickles for the slaying of Philip Barton Key. This occurred prior to the Civil War. General Sickles at the time of the homicide was a representative of Congress from New York City. He had previously been attached as Secretary of Legation to Mr. Buchanan when the latter was Minister to England.

General Sickles was a lawyer of ability and conspicuous prominence and he was altogether regarded as one of the most promising men of his time. He had married a young Italian girl by the name of Theresa Bagioli, who at the time of the marriage resided with her parents in Lispenard street in the City of New York. When General Sickles assumed the discharge of his duties in Congress he took his bride with him to the City of Washington. She was a lady of the most remarkable personal beauty, of great fascination of manner and of more than ordinary intelligence, and she became at once a shining light in the social life of the national metropolis. She attracted the attention of Philip Barton Key, who was at once a fop, a voluptuary and a systematic seducer. After a long siege he triumphed over the honor of Mrs. Sickles and accomplished the domestic ruin of her husband.

Mrs. Sickles and Mr. Key were accustomed to meet in a house situated in the suburbs of Washington. Their intimacy was discovered and the fact communicated to Mr. Sickles. On the very day of the shooting, Key appeared before Mr. Sickles'

residence and waved a handkerchief, which salute was afterwards discovered to be the sign agreed on for a future assignation between him and his unhappy victim. Mr. Sickles was in the house at the time, and the presence of Key in the street before his house was notified to him. He immediately left his residence, pursued and overtook the adulterer, and slew him in his footsteps.

The occurrence created the greatest consternation and excitement throughout the country. General Sickles was put upon his trial and he selected as his counsel a trinity of marvelous ability. His advocates were Mr. Brady, John Graham and Edwin M. Stanton.

Mr. Brady was the leader for the defense. He argued the questions of law which arose at the trial, examined and cross-examined the witnesses and made the most remarkable opening for the defendant. Mr. Brady's great capacity on this occasion was stimulated by a warm love, affection and friendship which he entertained for Mr. Sickles.

The technical defense, of course, was that of insanity. The real reliance was on the unwritten law of all peoples—that the life of the adulterer is forfeit to the husband whom he had wronged. It is best typified by Mr. Brady himself in his opening when he said: "I shall, gentlemen prove to you, circumstances which for a hundred years past have been regarded as a justifiable retribution for domestic peace destroyed, for hopes blasted, home desecrated of all that the heart has garnered up as its last, its only, solace withered by some brilliant and insidious seducer whom the arm of the law cannot reach."

After a tremendous legal controversy which lasted for weeks, Mr. Sickles was acquitted and he paid his debt of gratitude to the nation by contributing in a very large degree to the preservation of his country upon the field of Gettysburg. Probably in no cause in which he ever appeared did the transcendent genius of Mr. Brady shine out more resplendent than on the occasion which secured the acquittal of Mr. Sickles.

Mr. Brady was also the counsel before the Court of Appeals for Edwin Forrest in his celebrated controversy with his wife. Charles O'Connor appeared for Mrs. Forrest. In the trial below John VanBuren represented the interest of Mr. Forrest and after a long legal struggle the jury found a verdict in favor of the wife of the great tragedian.

John VanBuren was a man of great natural powers, but he was not a close student and he failed somewhat in the proper

development of the details of his case. It seems to me that very few can read the testimony of the trial without coming to the conclusion that if Mr. Forrest was guilty his wife was not innocent, but the public excitement and clamor, the power of the press and sympathy for an unfortunate woman, carried the day for the wife.

Mr. Brady, as I have said, argued the appeal for Mr. Forrest in the Court of "Last Resort," and although his argument was one of great power, replete with logical force, legal learning and rhetorical finish, the court above after careful consideration, came to the conclusion that the cause below was decided upon a question of fact and could not be disturbed. What the fate of the verdict might have been had Mr. Brady appeared on the trial at nisi prius, must be left to conjecture. It is the opinion of many, however, that had he been originally entrusted with the defense of Mr. Forrest a different outcome might have resulted.

One of the last great criminal trials in which Mr. Brady appeared was that of the People *v.* General Cole for the murder of Speaker Hiscock. It appears that the deceased, in the absence of the accused, while acting as professional adviser for his wife, succeeded in debauching her. That the information which General Cole received was conveyed to him by his stricken wife through the instrumentality of a confession; and that in the frenzy of his passion and revenge he immolated Speaker Hiscock almost upon the very steps of the Capitol.

Mr. Brady's associate in this trial was William A. Beach, who was, as I have before said, one of the greatest advocates who ever lived in any country or in any age. General Cole was acquitted and this great trial may be said to be the last criminal cause in which the great powers of Mr. Brady were invoked.

At the time of the Civil War Mr. Brady took strong ground in favor of the Union and in favor of putting down the insurrection; refusing to listen to any compromise that did not involve the security of the Federal Union. Prior to the war he had been a strong Democrat. When the South resolved upon her suicidal conduct in seceding from the Union Mr. Brady used all his vast influence to recruit the armies of the nation and to hold up the hands of the general Government. The effect of his position, particularly in the State of New York, was marked and impressive. He lived to see the rebellion overpowered and the institutions of the country placed upon a more enduring basis. No Greek or Roman, lover of his country, ever displayed more

patriotism and zeal than Mr. Brady brought to the service of the United States in the hour of her supreme trouble. He was respected and beloved of all men, and when he died the heart of the nation stood still because, it was realized that a great patriot, lawyer and statesman had forever passed away.

His brethren of the bar covered his memory with the flowers of eulogy.

Geo. M. Curtis.

NEW YORK CITY.

(To be continued.)