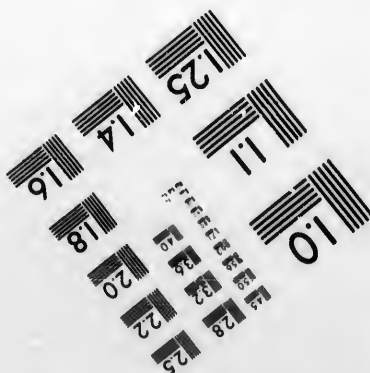
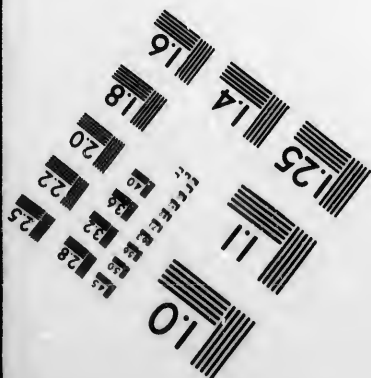
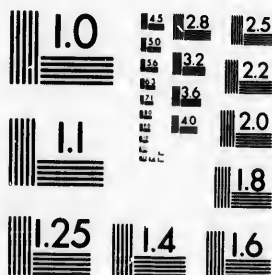


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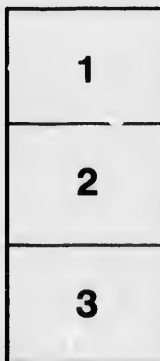
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MARSHALL S. BIDWELL.

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A MEMOIR

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HISTORICAL AND BIOGRAPHICAL.

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MARSHALL S. BIDWELL,

*A MEMOIR*

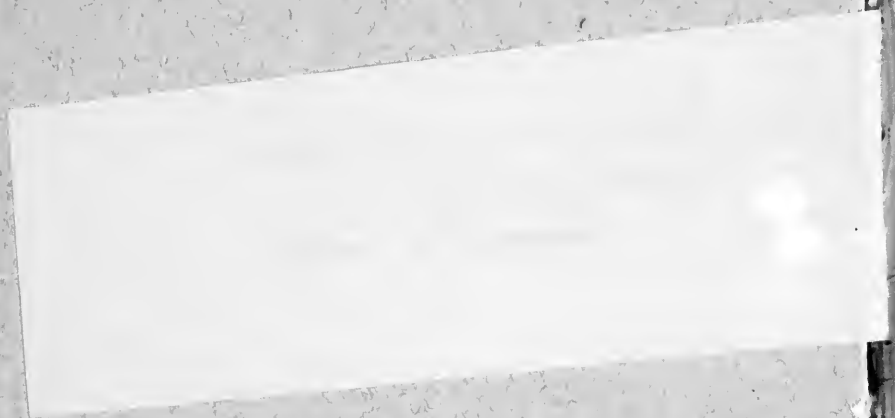
HISTORICAL AND BIOGRAPHICAL,

*Rev. W. O. Raymond*  
*With the respects of*  
*Edward F. de Lancey*

NEW YORK

1890





MARSHALL S. BIDWELL,

*A MEMOIR*

HISTORICAL AND BIOGRAPHICAL,

BY

EDWARD F. DE LANCEY.

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NEW YORK

1890

1890  
(43)

# MARSHALL S. BIDWELL.

A MEMOIR

HISTORICAL AND BIOGRAPHICAL.

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BY EDWARD F. DE LANCEY.

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ONE of the most venerable and honored members of the Bar of New York, courtly in manners, profound in learning, pure in life, was Marshall Spring Bidwell.

Born in the year 1799 at Stockbridge, in that beautiful county of Berkshire, which has given to Massachusetts so many of her greatest men, he became a subject of George the Third, and took successively the oaths of allegiance to George the Fourth, William the Fourth and Victoria, sovereigns of Great Britain. Driven from their dominions in the prime of his life, by the iron hand of arbitrary power, and subsequently besought in vain to return and accept high judicial station, he lived and died a citizen of New York in 1872.

A memoir of Mr. Bidwell is not only the biography of an individual, but a statement of the early history of a new country,—a record of the sufferings of the neighboring people under arbitrary authority, and of their struggles to secure a government of law and justice.

Mr. Bidwell was the son of Barnabas Bidwell, a prominent lawyer of Massachusetts and at one time its Attorney-General, who in 1811 removed to the province of Ontario, then called Upper Canada. He was educated there under his father's eye. His legal studies began in March, 1816, when he was "articled as a clerk" under the English system, to Solomon Johns, an attorney of Bath in Upper Canada, and the next month entered as a student at law by the Law Society of that Province. In April, 1821, he was called to the degree of Barrister at Law by the same "Law Society of Upper Canada," an institution somewhat analogous to an English "Inn of Court," and having somewhat similar powers; and three years afterwards, in 1824, he was elected to the Eighth Provincial Parliament as one of the representatives of the County of Lennox and Addington.

In order to arrive at a correct understanding of Mr. Bidwell's peculiar and difficult position during his public life, it will be necessary to glance at the history of the Province.

At the close of the Revolutionary war, the British Government, it will be recollected, made a scanty provision in her remaining northern colonies for those who by remaining faithful to the Crown had

lost their all. Some went to Nova Scotia, some to New Brunswick, and others to Canada, where they were given, in compensation for their losses, grants of wild land, and other encouragement in the way of petty public offices. These Americans were subsequently distinguished by the name of "U. E. Loyalists"—that is, "United Empire Loyalists."

A few years after,—in 1791,—an act was passed by the British Parliament dividing the Canadas into two provinces and conferring on each a quasi-constitutional government, under the names of "Lower" and "Upper" Canada.

The ministers of the day seem to have run in the old groove, and to have learned nothing from American history. Blind to the palpable fact, which a seven years' war and an inglorious peace ought to have impressed on their minds, that the Constitutions of the old American colonies had not only not prevented, but to some extent actually helped to produce, a rebellion, they copied the Canadian constitution almost literally from that of the colony of New York, and gave Upper Canada a Governor, a Council possessing Executive and Legislative powers, and a House of Assembly.

The British Cabinet through the Colonial minister appointed the Governor, and the members of the Council. The Assembly was elected by the freeholders. Thus the Canadian legislature consisted ostensibly of three branches, but in fact of only two; for the members of the Executive Council, who were the advisers of the Governor, held seats also in the Legislative Council, or Upper House, where were also to be seen the Chief Justice, the Superintendent of the Indian Department, the Receiver General, Inspector General of Accounts, and the Surveyor General, who in one chamber made the laws, and only such as pleased them; for if the acts interfered with their interests, they as the Executive Council advised the Governor to veto them, and he almost invariably complied with their advice.

In this connection it is to be borne in mind that the whole of the public lands in Canada, the Clergy Reserves excepted, were at the disposal of the Executive Council, and thus formed an inexhaustible fund to bribe and buy up at any time a majority of the House of Assembly, which body numbered at first twenty-five, and subsequently about fifty, members. Add to this that the entire patronage of the province was in fact in the hands and at the disposal of the Council, who appointed every officer from Chief Justice down to tide waiters—Judges, Crown Lawyers, Surrogates, Sheriffs, Magistrates, Officers of Militia, Returning Officers of Election, Heads and Clerks of the several departments,—all were named by, and held their offices during the will and pleasure of, the Executive. Eventually, this class, or the more influential among them, constituted a ruling oligarchy, who to concentrate their power and preserve their lucrative places and patronage formed alliances by intermarriage within their own exclusive circle, and became known throughout the length and breadth of Canada as "*The Family Compact*." So great became the power of this combination, that it absolutely ruled the Lieutenant-Governor for the time being, controlled every department of the government, and obeyed or disobeyed the commands of the Colonial Office, as they accorded with the views or conflicted with the interests of the "Family."

Those who opposed misrule, attempted to introduce economy and reform in the government, or exposed jobbery or misappropriation of the public money, were marked and hunted down. Alien and sedition laws were enacted. Though freedom of speech was the parliamentary right of members of assembly, it was imprudent to hint at corruption, or to assert the truth that members were bribed by large grants of land. He who was so bold as to make the charge or to demand a committee of investigation was summarily expelled. In 1816, a sheriff dared to vote "the opposition ticket" at an election; he was at once dismissed. He subsequently established a newspaper; exposed abuses, was prosecuted, acquitted, became popular, and was elected to the assembly, where having used his "privilege" rather freely, he was thrust into prison, his paper was seized, and though he served as a volunteer in the war of 1812, was ultimately driven from the province.

The case of Robert Gourlay illustrates more clearly the tyranny of those days. He emigrated from Scotland in 1817, with a view to settle in Canada with his family and to promote emigration to that province. He addressed the landholders for information; sent circulars among the people and eventually invited a convention of delegates to promote his views. The Executive needlessly became alarmed, charged him with seditious purposes, and ordered his arrest. He was tried and acquitted; again accused of treasonable practices, he was re-arrested, and after spending some time in jail was ordered to quit the province, and on refusing, was tried for disobeying *an ex post facto* "Act for preventing seditious meetings in the Province," and forcibly thrust out of the country; all because he desired to obtain and publish information which would encourage emigration to the province.

Such was the government of Upper Canada, when the Honorable Barnabas Bidwell, father of the subject of this memoir, was returned as a reformer to the Assembly from the county of Lennox and Addington in 1821. He was a Presbyterian, a man of considerable ability, eloquent, and a firm advocate of civil and religious liberty.

Mr. Barnabas Bidwell, though a native of Massachusetts, was a British subject, having been born before 1776. He remained however in the United States until 1811, as already stated. His independence of action and outspoken condemnation of the abuses that prevailed in the government evoked a spirit of hostility against him among the oligarchy, who resolved to get rid of him at all hazards. Consequently he was expelled by a majority of one vote—seventeen yeas to sixteen nays, on the ground that he was an alien. This arbitrary proceeding only aroused a determined spirit of opposition, which thereafter never succumbed, and which though repeatedly circumvented and defeated, yet finally buried the oligarchy and the "Family Compact" in a common ruin:

"For Freedom's battle once begun,  
Bequeathed from bleeding sire to son,  
Though baffled oft, is ever won."

In this instance "Freedom's battle" was transferred literally from father to son, for the sturdy yeomanry of Lennox and Addington resenting the affront to the father, brought forward the son, Marshall S. Bidwell, as a candidate for the vacant seat. But the victory was not to be easily achieved. The returning officer or inspector of elections

counted in the opposing candidate. A protest was entered, and after an able defence of his rights by Mr. Bidwell, at the bar of the House, the return was set aside, and a new election ordered. Thereupon the returning officer refused to receive any votes for Mr. Bidwell, on the ground of his being an alien as the son of his father. Another protest followed and the election was again set aside. Finally young Mr. Bidwell was triumphantly returned to Parliament for the county of Lennox and Addington in August, 1824, and took his seat in the Assembly the following January without further opposition.

These rejections of both father and son were caused by mere partisan feeling, for there was no law on the subject; and so high did this feeling run, that after the expulsion of Barnabas Bidwell, an act was passed making natives of the United States ineligible to seats in the Upper Canada Legislature. This statute however proved so injurious to Canadian interests, that it was repealed in 1824, and a previous residence of seven years was substituted as a qualification for membership.

In 1825, for the first time since the organization of the province, the opponents of the high Tory oligarchy had a majority in the House of Assembly. Mr. Bidwell at once became their leader. The new party called "The Reformers" aimed at making the government responsible to the House of Assembly, precisely as it is to the House of Commons in England, and not to the Governor and Council—the Executive Authority—as the oligarchy had done.

Mr. Bidwell was, perhaps, the strongest man in his party, during his entire career in Canada. Calm, cautious, courteous, high principled, well informed, and ever ready, he had no rival in debate and no superior as a presiding officer. He was chosen speaker in 1829, again in 1835, and held this office in 1836, when Sir Francis Bond Head assumed the government of Upper Canada.

During this period he had a large and lucrative practice at the Bar, won by eminent ability, close application and high moral principle.

He had married happily, had been blessed with children, was beloved by his friends, respected by all, and enjoyed the confidence of the public.

Such was the position of Mr. Bidwell when Sir Francis Head arrived at Toronto as governor in 1836. The new governor, though appointed by the Whig government of Lord Melbourne, proved a bitter Tory. He was a retired half-pay major who had written two or three gossipy books of travel, and was a poor law commissioner of his native county of Kent, the only civil office he had ever held prior to his appointment to Upper Canada. Of Canada, its history, people, politics, and resources, he was, to use his own language, "*grossly ignorant*."\*

Among the first who called upon him was Mr. Speaker Bidwell, the acknowledged leader of the reformers. Sir Francis told him plainly that he was an inexperienced man, but would deal honestly towards the country, and resolutely correct the grievances of the province, and taking up the report of those grievances by William Lyon MacKenzie

\* See his own "Narrative," published after his return to England. This work, and the "Life of Lord Sydenham" who was subsequently "Governor-General of Canada," and the official correspondence with the Home authorities contained in each, give a vivid idea of the state of Canada referred to in this sketch.

—a volume of over five hundred pages—invited Mr. Bidwell to converse freely on the subject. Mr. Bidwell did so, and to the Governor's great astonishment told him—to use his own words—"that there were grievances not detailed in that report, which the people had long endured and were still enduring with great patience; *that there was no desire to rebel*, but that a morbid feeling of dissatisfaction was daily increasing; that increase it *would*, and that in fact, if it had not been distinctly stated that the governor was the bearer of new instructions, those with whom he was associated had come to the determination never to meet in provincial parliament again." This interview was the foundation of a political dislike to Mr. Bidwell which in the end changed his whole life and career. Sir Francis, after a little dallying with the reformers, threw himself finally into the arms of the old party. An exciting political contest followed, in which the latter with the aid of the government triumphed at the next general election, and Mr. Bidwell, among others, lost his seat in parliament and retired from active political life.

The Home Government determined on a conciliatory policy, and, in 1837, Lord Glenelg, the British Colonial minister, requested Sir Francis Head to offer to Mr. Bidwell the appointment of Justice of the Court of King's Bench, in which two vacancies had occurred.

This the Governor not only declined to do, but actually gave the appointment to another gentleman. In reporting his action to Lord Glenelg, Sir Francis, after admitting that Mr. Bidwell's legal acquirements were superior to one of the new appointees, and that his moral character was above reproach, says: "Anxious as I am to give talent its due, yet I cannot but feel that the welfare and honor of this province depend on *his Majesty never promoting a disloyal man.*"

Lord Glenelg replied that Mr. Bidwell's former political action should not prevent his professional advancement, and closed by saying: "If, therefore, as you appear to anticipate, another vacancy should occur among the judges of the Court of King's Bench, it is the wish of his Majesty's government that the situation *should be offered to Mr. Bidwell, and they will hear with much pleasure that he has accepted it.*"

But Sir Francis Head took the responsibility of positively refusing to place Mr. Bidwell on the Bench. This was in September, 1837. Sir Francis Head believed that Mr. Bidwell was a republican at heart, and leagued with Mr. Papineau and his friends in Lower Canada in their political action, which was then fast verging towards armed insurrection. This was an entire mistake, the objects of the opposition in the two provinces were entirely dissimilar, and no league or combination existed between them. There was one object however in which both agreed, and that was, the desire for a government responsible to the legislative, and not to the executive power.

Finding that the Home Government meant to promote Mr. Bidwell, Sir Francis Head, fearing the effect upon himself in the province, determined to force Mr. Bidwell to leave the country.

He sent for him and told him that his party was beaten at all points, which was then the fact; that the armed outbreaks which had just occurred in both provinces, and especially MacKenzie's attempt on Toronto, had so embittered the people against him, as he was believed to have covertly approved them, that all his chances of further political or profes-



sional success were ended ; that the provincial government was opposed to him in all its branches, and that he would consult his own happiness and interest by departing from Upper Canada.

About this period Mr. Bidwell received a gross insult and suffered from a great outrage. His wife had been for some years in delicate health, so that her winters had been spent either at the South or in the West Indies. During his absence from home professionally, Sir Francis Head's government seized his letters in the post-office, and at his house all his private papers, his wife's letters among them, and read their contents to try and get evidence of his complicity with the rebellion.

This outrage, as the complicity never existed, of course failed in its object. But its effect on Mr. Bidwell was so great, that in connection with Sir Francis Head's threats before referred to, he *did* leave Upper Canada with all his family, and came to the city of New York at the end of the year 1837.

The next year Sir Francis Head was recalled in disgrace, and a new governor sent out, Sir George Arthur. On the return of the Reform party to power, which however did not occur for some time, Mr. Bidwell was not only requested to return to Canada, but was again tendered a seat in the Court of Queen's Bench. This was in the year 1842. Mr. Bidwell, however, declined to go back, refused the Judgeship, and remained in New York.

Sir Francis Head felt that he had acted intemperately in Mr. Bidwell's case and it is to his credit that he admitted it to Mr. Bidwell. When Sir Francis came to New York on his return to England in 1838, he wrote to Mr. Bidwell requesting him to come and see him. The interview took place at the old City Hotel in Broadway, just above Trinity Church (on the site of which the Boreel Building now stands), where Sir Francis was staying. Sir Francis told him he regretted the severity of his action, that he had been led too far by political excitement and trouble, and urged his return to Canada. Mr. Bidwell heard him quietly to the end, and then calmly but strongly giving him his own view most fully of his whole conduct and action from the beginning, ended by stating that never under any circumstances would he return to a land where he had been so badly treated, and politely bade him a good afternoon.

On arriving at New York Mr. Bidwell met with most kind treatment from the late Chancellor Walworth, and that unrivalled real property lawyer, the late eminent Mr. George Wood. Both interested themselves strenuously in his behalf. He was admitted to the Bar of New York, on motion, both in the Supreme Court and in the Court of Chancery, notwithstanding his being a British subject, the courts taking the then British view, that no man can expatriate himself, and as Mr. Bidwell had been born in Massachusetts, he was already an American citizen.

By Mr. Wood he was introduced to the late distinguished Mr. George Strong, with whom in September, 1838, he formed a professional partnership which was only terminated by the death of Mr. Strong in 1855, and which was continued with that gentleman's son and nephew, the surviving members of the firm, till his own decease.

The first important case in which Mr. Bidwell was engaged in New

York, was the great libel case of James Fenimore Cooper against William L. Stone, in which he defended Mr. Stone, then the editor of the *Commercial Advertiser*.

Mr. Cooper argued his own cause with the greatest ability and eloquence, as he was by nature gifted with wonderful powers of oratory, and was as logical as he was brilliant; and had made himself a most thorough master of the law of libel.

Stone's libel was so gross that Mr. Bidwell, fearing to go before a jury, raised the question of its being a privileged publication—the only possible defence—by a demurrer, thus bringing the question directly before the court—the first time such a course had ever been adopted in the annals of jurisprudence. I have been told at different times by two of the most eminent jurists that this state has known,\* both of whom heard both arguments, that never in their whole experience had any case been so eloquently, thoroughly, and exhaustively laid before a court as that was by these two distinguished men. Mr. Bidwell however failed to succeed, the court deciding in Mr. Cooper's favor that the articles were *not privileged*, the decision closing with these remarkable words: "It is difficult to read the articles as set forth in the counts without seeing at once that they are direct and undisguised attacks upon the moral character of the plaintiff by name." †

This case drew public attention to Mr. Bidwell at once, and from that time his legal career was one continued success. He was engaged in most of the great civil cases of the day from that time onward.

Mr. Bidwell was deeply read in every department of law, constitutional, commercial, real property, and equity. Perhaps he had bestowed most attention upon the law of real estate, of trusts, and upon the construction of wills, and felt himself more fully at home in their discussion.

Mr. Bidwell took a warm and lively interest in the New York Historical Society, and for many years served as a member of its Executive Committee. He was instrumental in procuring valuable additions to its collections, especially of portraits for its Gallery of Art.

There were two points in his character of especial prominence; the first was his extraordinary amiability and equanimity of temper. One of the members of his firm testifies without hesitation, that during a daily intercourse of a little more than thirty-four years spent amid the care, worry, and annoyance of active practice, he never heard from him one syllable of petulance, impatience or irritability.

The other, was the keen enjoyment he took in following a legal principle up to its remotest sources. He has often said "that he found far more entertainment in tracing some legal point through the reports of the seventeenth century and still earlier than in reading the best novel ever written."

\* The Hon. Samuel Stevens of Albany, and Judge Samuel A. Foot of the Court of Appeals.

† Associated as junior counsel with Bidwell in this case was the late Charles P. Kirkland of New York City, then of Utica, who also personally confirmed to me the testimony of the two distinguished jurists, to which reference has been made.

Mr. Bidwell was a truly conscientious and deeply religious man, and in his views a rigid and unswerving Presbyterian, but so kind and tolerant to all men, that when he died in the seventy-third year of his age, he left behind him warm and deeply attached friends among Roman Catholics as well as all denominations of Protestants. He was gentle, kind, and true, the very incarnation of honesty and honor.

"Firm to his purpose, vigilant and bold,  
Detesting traitors, and despising gold,  
He scorn'd all bribes from Britain's hostile throne,  
For all his country's wrongs were thrice his own."

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