

IN MEMORIAM.

MARSHALL S. BIDWELL.





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[Proceedings of the Meeting of the New York Bar, on the death of MARSHALL S. BIDWELL, Esq., November 2d, 1872.]

ON the second of November, 1872, in pursuance of public notice, a large number of the members of the New York Bar assembled in the County Court House in the City of New York, to take proceedings in relation to the death of the late MARSHALL S. BIDWELL.

The meeting was called to order by Henry Nicoll, Esq., on whose motion Judge Daniel P. Ingraham was called to the Chair.

On motion of Edgar S. Van Winkle, Esq., John P. Crosby, Esq., was elected Secretary of the meeting.

Mr. Henry Nicoll addressed the meeting as follows:—

Mr. Chairman, I have been instructed to offer the following resolutions, as expressive of the

sense of this meeting of the Bar, at the death of our associate, Mr. BIDWELL:

Resolved, That the Bar of the City of New York is deeply sensible of the loss it has sustained in the death of MARSHALL S. BIDWELL. Suddenly called from the midst of us in the full possession of his matured intellect, and after a long career of distinguished usefulness in his profession, he will be remembered by his brethren as an able and learned lawyer, a courteous gentleman, and an earnest Christian.

Resolved, That we tender to the family of the deceased the expression of our sincere condolence in this afflicting event, and that a copy of these resolutions, attested by the Chairman and Secretary, be forwarded to them.

Resolved, That a Committee of three members of the Bar, to be appointed by the Chair, be directed to present these resolutions to the Court of Appeals and to the General Term of the Supreme Court, and respectfully ask that they may be entered on the minutes of those Courts.

Probably the duty better devolves upon those who were more intimate with Mr. BIDWELL than myself, of speaking of the character and distinguished position which that gentleman enjoyed at this Bar. I have known him through a long career, and I presume I simply speak the sentiments of every one here, when I say that a more learned lawyer never practiced in our Courts. He was especially distinguished, as we all know, in those higher branches of the law which relate to real estate. And no lawyer in this country had made himself more thoroughly a master of

the recondite principles of that law than Mr. BIDWELL.

I remember well being present when he was sworn in as a Counsellor of the Supreme Court of this State, in January, 1838. The country at the time was in a very excited state, owing to the burning by the Canadians of the Steamer *Caroline*, on the Niagara River. News of this startling event had just arrived in the City of Albany, and it was universally believed that it would lead to war with Great Britain. Mr. BIDWELL was erroneously supposed to have compromised himself in the Liberal movement in Canada, and in consequence received notice from the Government authorities to quit the country immediately. He arrived in Albany when the public mind was greatly agitated on the subject, and the appearance of so distinguished a man, exiled and driven from his home for such a cause, added not a little to the excitement.

I well remember the interest that was felt when Mr. BIDWELL came into the Court, and, in the presence of a large assembly, was sworn in as one of its Attorneys and Counsellors of this State. He was most cordially received by his brethren,

and, bearing as he did a high reputation, which he had acquired by an active professional life in Canada, the addition of such a person to our Bar was hailed with great satisfaction. From that time to this, a period of nearly forty years, Mr. BIDWELL has lived in this City, quietly following his profession, and has earned for himself the character depicted in these resolutions. I ask their adoption.

MR. BENJAMIN D. SILLIMAN.

Mr. Chairman :

The resolutions which have been read, and which I beg leave to second, describe justly the character and the virtues of the great lawyer, and the good man, who has passed away. The venerable, and honored, and beloved senior of this Bar has finished his long career of labor and of usefulness. He was indeed a most learned and able lawyer,—a dignified, refined and accomplished gentleman,—a warm and faithful friend,—a pure, generous and noble man. These expressions are strong, but I am sure that they are sanctioned no less by the judgment, than by the heart, of every member of this meeting.

Mr. BIDWELL was born in Stockbridge, Mass., in February, 1799. When he was thirteen years of age the family removed to Bath, and thence to Kingston, in Upper Canada. His education, and his admission to the Bar, in April, 1821, were in that province. He quickly rose to eminence, and was, at an early period of his life, among the very foremost members of the Canadian Bar.

In 1824 (at twenty-five years of age), he was elected to the Provincial Parliament, of which he continued to be a member for eleven successive years. He was elected Speaker at the sessions of 1829, 1830, 1835 and 1836. He was the acknowledged leader in that body of the "Liberal," or "Reform" party, which corresponded substantially in principle with the "Whig" party of England. Opposed to this organization was the "Conservative" party, nearly identical with the "Tory" party of England, though, perhaps, more ultra than the latter in its convictions, and disposed to go farther in enforcing them. There was, at the same time, in Canada, a third party of Ultra Radicals, headed by William Lyon McKenzie, which aimed at revolutionary measures, and sought to detach the Colony, by violence, from the British Crown. In the opinions and plans of this party Mr. BIDWELL did not concur. He, and those with whom he acted, proposed to accomplish the reforms for which they contended, only by peaceful and legal means.

About this period, Sir Francis Bond Head became the Governor of Upper Canada. He was an extreme Tory, intolerant and bitter

toward those who differed from his political creed.—impetuous, arrogant, and prompt in exercising the power with which he was vested. Mr. BIDWELL was in quick antagonism to such a ruler, and was an opponent of whom Sir Francis earnestly desired to be rid, because his ability, his purity of character, and his singleness of purpose, gave great strength to the Reform party, of which he was justly regarded by the Government as the controlling and formidable leader.

But the Governor was specially embarrassed, at the same time, by receiving from the Home Government, (of which Lord Melbourne was then the head), a commission appointing, or directions to appoint, Mr. BIDWELL to the office of Chief Justice of the Court of Queen's Bench. The Governor thus thwarted, it is believed, addressed a remonstrance to the Foreign office against the appointment, but without effect.

Meantime, however, he found relief in an untoward event. The Radical, or revolutionary, party commenced the armed and disastrous insurrection of December, 1837. It was quickly suppressed, and the insurgents dispersed. But among the banners captured from them was one

bearing the inscription, "BIDWELL AND THE GLORIOUS MINORITY." This was, in fact, an old political banner, which had been used on an earlier occasion, and had been appropriated by the insurgents, whose hasty preparation, and scanty means, compelled them to adopt and use imperfect ensigns, as well as arms.

I need not say to this audience that nothing could be less compatible with Mr. BIDWELL'S peaceful and law-loving nature, than violent and insurrectionary measures. His reverence for law and order was part of his very being, and nothing could be more certain than his non-concurrence in the course of the revolutionary party, even had its movement been less desperate, and certain of failure, than it was.

But this occurrence gave to Sir Francis Head the opportunity he desired. He notified Mr. BIDWELL of the capture of the flag; intimated the existence of letters, and other evidence, implicating him with the rebellion, and rendering him liable to prosecution for High Treason. He further stated to Mr. BIDWELL that martial law was about to be declared, and that he could not protect him from arrest; but informed him

that, in consideration of his unblemished private character, and high professional standing, he would not be disturbed, if he saw fit to depart from Canada. Mr. BIDWELL, perfectly conscious of his own absolute innocence of participation in the plans and actions of the insurgents, at the same time knew that the country was wild with wrath and excitement,—that the exasperated “Conservatives” (or “Tories”) were at such a time likely to rush to quick judgments, and that he was especially obnoxious to them as the most prominent, and the ablest, of their constitutional adversaries.

Under these circumstances, he foresaw nothing but personal embarrassment, and the total interruption, perhaps for an indefinite and ruinous period, of his peaceful and professional pursuits. He therefore accepted the Governor’s proposition, and left Canada for New York.

I trust, Mr. Chairman, that my learned friend, Judge Neilson, of Brooklyn, who is now present, and much of whose youth was passed in Canada, will add to the slight and very general sketch which I have given of Mr. BIDWELL’S career before he came among us, with the particulars of which Judge Neilson is familiar.

When Mr. BIDWELL came to this State, the Chief Justice of our Supreme Court was the Hon. Samuel Nelson, now and since 1845 one of the Justices of the Supreme Court of the United States, and who is still spared to us. "By reason of strength he has come to four score years," yet his "eye is not dim nor his natural force abated." The reverence and affection in which he is held by the profession and by the country, are the fit reward of the life he has led. At the head of our Equity Courts was *Walworth, clarum et venerabile nomen*, the last of the Chancellors. To the Courts over which these eminent jurists presided Mr. BIDWELL was welcomed, and he was admitted to them by special orders.

Among the many who extended to him a cordial reception was the very distinguished lawyer, George Wood, by whom he was introduced to the late George W. Strong, Esq., one of the most trusted and able Counsellors of that day, with whom he formed a professional alliance, which continued until Mr. Strong's death, in 1855, and which was maintained with the surviving members of that firm, George T. Strong, Charles E.

Strong and Elias G. Drake, Jr., Esquires, until his own departure from the world.

Although the outbreak in Canada, to which I have referred, was crushed, yet the Government ere long conceded what the popular voice had demanded, and those who had so long struggled for that great result were thenceforth placed in power.

Mr. BIDWELL'S return to Canada was earnestly desired by its best and most prominent citizens, and he received assurances of the welcome and preferment which awaited his coming. But he had already found abundant professional occupation and social sympathies in our great City and State, where he determined to remain, though his interest in the home and friends of his earlier life never failed, and his friendships and intercourse with them continued to the end.

The thirty-four years of his residence here have been a period of unbroken, active, distinguished professional labor and usefulness, and, at the same time, of devoted service in the great religious and charitable institutions with which he was connected,—prominent among which were the American Bible Society, of which he

was a Director, and the Bank for Savings, in the City of New York, of which he was the President.

The first case of importance in the Courts in which he was concerned, after his arrival in New York, was that of James Fenimore Cooper *vs.* William L. Stone, for libel, founded on criticisms by defendant on certain literary labors of the plaintiff. Mr. BIDWELL conducted the defence with ability so distinguished as to place him, at once, in the front rank of the New York Bar. From that time forward he was engaged in very many most important cases, in the local Courts, and in the Court of Errors, and the Court of Appeals, and in the Supreme Court of the United States. Those cases are so numerous, and are so familiar in the reports, as to render particular reference to them here unnecessary.

He was profoundly learned in the Law. Chancellor Walworth said of him, what can be said of few in these days of Codes and Digests, that he was "a great lawyer." He had gone back to the sources and fountains, and studied and mastered the principles and the rules of law, that had become established. He knew not only what

they were, but he knew their origin, their history, and the cases in which they had become shaped, modified and determined. Nothing more delighted him than such studies. He has often said that he found far more entertainment in tracing some legal principle back through the Reports of the seventeenth century, than in perusing the most attractive work of fiction ever written. Not only the provisions of the leading statutes, but their political and legal history, were entirely familiar to him.

Though he was thoroughly acquainted with every branch of his profession, including constitutional, commercial, and equity law, yet he had, perhaps, given the most attention to the law of real estate,—of trusts,—and of the construction of wills,—and felt himself most fully at home in their discussion. His name is identified with the leading cases of this character in our Courts, during his time, in the learned arguments of which he bore a distinguished part.

His "Points" and "Briefs" were models of compact, clear, and close reasoning, and were enriched by full citations of sustaining authorities and decisions. He was not a "Case Law-

yer." He argued every question on principle. He was a legal philosopher and reasoner. He was so familiar with the principles that when a case was stated to him, he rarely hesitated in pronouncing the law that governed it,—and his knowledge of the leading decisions was so ample that he was always prepared to marshal them to his support.

He loved the law, and he practiced it not for lucre, or even for fame, but as a science of which he was an ardent votary. He regarded its majesty, and sovereignty, and certainty, with reverence. Such was his sense of the duty of administering it in its exact integrity that, had he been on the Bench, he would have made little of that "bad law" which is said to spring from "hard cases," for he could no more pervert, or warp, or misrepresent the law than a mathematician could pervert, or warp, or misrepresent a mathematical demonstration. When on an argument he cited, and stated an authority, the Court had no occasion to examine as to the correctness of its presentation. He was wholly incapable of giving any coloring to a decision which he cited, other than that which it properly bore.

He was a wise and sagacious Counsellor. He possessed largely the uncommon gift of strong "common sense." He had great vigor and clearness of mind, a strong sense of equity, and his whole life was marked by purity and truth, that knew no shadow of change.

A more generous and unselfish man I have not known. How many of my brethren about me can attest this truth? Who, that in cases of difficulty and doubt, has applied to him for friendly counsel, that did not find him not only ready but eager to pour out to them, unsparingly, the rich treasures of his knowledge and wisdom? I allude not to cases in which he was "retained," but to those where the brotherhood of the Bar entitles each to seek a brother's aid.

Mr. BIDWELL'S reading beyond his professional studies was very large and varied, and his conversation was illuminated and made charming by his familiarity with science and polite literature. I may mention, in corroboration of this estimate of his attainments, as well as of his professional position, that Yale College conferred on him the degree of Doctor of Laws in 1859.

He was distinguished for the dignity of his

person, and his bearing, his manly modesty, his courtesy, and his never-failing kindness and benevolence to all, and the ardor and steadiness of his affection for his friends.

One of his professional associates assures me that, during a daily intercourse of thirty-four years, passed amid the trying cares and worry and annoyances of active practice, he never heard from Mr. BIDWELL one syllable of petulance, impatience, or irritability.

He had unfailing and unqualified faith in the Christian religion, the beauty and purity of which he illustrated by his daily life, and he was entirely happy in his reliance on the future which it held out to him.

It was his often expressed wish, and his often uttered prayer, that he might be spared an enfeebled condition of mind or body, and a lingering death. His wish and his prayer were granted. In the full possession of his high faculties, and in perfect health, at the close of a cheerful and varied conversation in his office with one of his associates, followed by a playful and kind remark to another person, he instantly, without a struggle or a sigh, ceased to breathe.

How sad that such a light must be extinguished—that the knowledge and the wisdom accumulated by the toil of more than half a century, must, in the twinkling of an eye, be blotted from the world forever.

How sad that the fame, and even the memory, of the most illustrious of our profession are so brief, scarcely surviving their departure. Those who adorned the Bench are registered in the "Reports," but the very names of William Slosson, of Peter A. Jay, of Samuel A. Talcott, of George Griffin, of George W. Strong, of Seth P. Staples, of Henry R. Storrs, of David B. Ogden, of Daniel Cady, of Abraham Van Vechten, are unknown to many who have already become prominent at the Bar.

But, Mr. Chairman, what a space they filled! They were the giants of the law in your and my earlier day. Who more trusted or honored than they? To whom did men more resort for advice, and guidance, and protection? Whose wisdom, and counsels, were more sought and heeded?

In a brief space the same will be told of Jones, of Sanford, of Ogden Hoffman, of Butler, of William Kent, of Prescott Hall, of Wood, of

Lord, of Noyes, and of Hill—" *So soon passeth it away.*" But they are not wholly dead. Each of them might well have exclaimed, "*Non omnis moriar.*" They still live in "the gladsome light of Jurisprudence," which they have shed, far beyond the limit of their own footsteps, upon the path that we are following. They still live in the good influence of their lives and example, perpetuated in the profession, long after they have vanished from the stage, as the wave rolls on after the breath has ceased that gave it impulse.

None have led a purer or a better life, or left a better fame, or a higher example, or will thus live longer, than the wise, and learned, and good man who has now departed from us.

PROFESSOR THEODORE W. DWIGHT.

Mr. Chairman :

It has been my good fortune to have been acquainted with Mr. BIDWELL for about fifteen years. During that time I have had abundant opportunities to know his rare legal attainments, and his excellent personal qualities. He was, in the strictest sense of the word, a learned lawyer. While his mind was stored with American and English precedents, he was able to apply them with sound judgment and with great force of argument. His legal training was of the time when the old Common Law practice was still in force, and he was a master of the intricacies of the science of Special Pleading, before it was invaded by the New York Code of Procedure. Not only was he acquainted with the ordinary matters which occur in the routine of legal practice, but he had obtained a thorough understanding of topics with which few lawyers are familiar. I might instance the case of Charitable Trusts. Mr. BIDWELL was engaged in the great arguments of recent times in which that subject

has been thoroughly sifted; and, among others, in the leading case of Williams against Williams, in Selden's Reports, when, by his investigations, he aided the late lamented Judge Denio to frame a masterly opinion, in which he followed in the ancient footsteps of the sages of the English Law. Mr. BIDWELL'S mind delighted in such recondite and remote historical studies. I have known him, when a new phase of that and kindred subjects has been presented, to refer to it with all the interest and glee of boyhood. So, with the whole law of Trusts he was extremely familiar. His mind was of a nature adapted to the refinements appertaining to that subject; and his moral sense was keenly alive to the duties which are imposed upon men who act in a fiduciary capacity. Not only was Mr. BIDWELL acquainted in a broad and comprehensive way with the general principles of the law, but he also knew them in such a manner that his knowledge was accurate and ready at hand. His memory was tenacious of details. I recall the fact that on a certain occasion, I had made some search respecting an out of the way and abstruse point of English law, and had been unsuccessful

in finding any case to establish the proposition. Having casually met Mr. BIDWELL, I referred to the matter, and he at once gave me a case decided more than one hundred and fifty years ago in England, which met the point I wanted. Upon examination I found his memory served him well both as to the nature of the decision and the volume in which it was reported.

It was of such a man as this, whose mind was thoroughly stored with legal principles, and at the same time capable of applying them carefully to practice, that we have to speak to-day. And I ought to add that he was also acquainted with the history and progress of the law. He knew well the lives of particular judges, both in England and America, and how much weight ought to be accorded to their individual opinions. He was also familiar with the lives of the distinguished lawyers of our day and of remote periods, and knew who were conservative and narrow-minded, and also those who were alive to the work of reform. For this reason his conversation was extremely entertaining. He was vivacious and interesting, and he poured out upon every subject he handled a flood of light.

Mr. BIDWELL did not confine himself in his studies to strict legal science. He was fond of the principles of government, was attracted by the theories of political science. I recall the fact that during one whole winter he attended the entire course of lectures of my late distinguished colleague, Dr. Lieber; and never did that gentleman have a more enlightened or interested listener. It was, indeed, a rare thing to see a man of the age of sixty-five years, of Mr. BIDWELL'S talents and attainments, occupying as it were the position of a disciple upon such a theme.

As a citizen and friend, Mr. BIDWELL was a model. He was interested in the elevation of the legal profession. No man more befriended any step which looked towards the progress of legal education. He looked back with regret to the good old times when the name of lawyer and gentleman were regularly associated; and he looked with glad anticipation forward to the days when they should again become so. As has been remarked by my friend, Mr. Silliman, no man was more eager to give up the stores of his knowledge to another; and with the utmost

alacrity even, and a considerable expense of time—he would render aid to a professional brother. Few that knew him will soon forget his cheerful, kind and hearty ways, or fail to respect his integrity of purpose or purity of life.

He was a decided Christian. His religion was of a bright and sunny type; crowned with practical beneficence. Now, sir, it was fit and proper that a man like this, who had rounded up the full measure of his days, and whose work was done, should instantly cease to live. To borrow the thought of the old poet, he could depart from life as a satisfied guest leaves a perfect banquet, in which not a viand or accessory that could charm the eye or please the taste, has been omitted or badly served.

Such a life as this, it seems to me, is a perpetual benediction. And although it may not have the glitter, or perhaps the false glare, that attends a more brilliant career; yet its pure, white light, shining with a steady effulgence, is most agreeable and satisfying to all who gaze upon it. We may well hold up such a man to the imitation of the younger members of the profession, for his purity and simplicity of character, for his sound

and varied learning, for his absolute fidelity to trusts, for his contented, cheerful and successful industry, for his warm and constant friendship, and for his high-toned morality.

No, sir ; the memory of such men does not die ; their life is simply exhaled, and it still exists ; their thought and wisdom are breathed into their professional successors. I believe with old Lord Coke, that no great lawyer in this sense ever dies without offspring or intestate. His example, his worth, his attainments, pass to his successors, and his successors carry them on from time to time to the remotest generation.

MR. WILLIAM M. EVARTS.

Mr. Chairman :

When one, after a long absence abroad, returns to his home, he feels a certain solicitude covering that brief space of time which he spends upon the ocean, without any means of knowledge of what is happening on either side of the water. Some of our ship's company, alas! on arriving, found that sickness and death had been busy in the nearest relations of life for them, but I, by a kind Providence, have found all near and dear to me, in personal relations, safe and well. But one of the earliest facts brought to my notice before I landed, was the very recent death of Mr. BIDWELL, a gentleman, a lawyer, whom I had known almost all the while he had been at this Bar, and longer than I had been myself; whom I never doubted to be one of the very foremost men of our profession, in all the great relations which he bears to human society and to the safety and credit of our community. It was when I was a student in Mr. Lord's office, commencing in 1839, that Mr. BIDWELL established his relations with

our Bar. Mr. Lord was one of his most intimate, one of his most valued and most valuable friends. I thus was very early brought into personal contact with Mr. BIDWELL. A young man, too, knowing the peculiar circumstances of his removal from Canada, and of his adoption of this Bar and this community as the sphere of his usefulness and the scene of all his exertions in life, when I came to the Bar I always had him, in common with other leaders of the Bar, in my mind and in my eye, as one whose example and character it was most worthy for young men to aim to imitate and to emulate.

I can add nothing to what has been said so well, so thoroughly, so truly, and at the same time with so much of warmth and force in praise of the great attainments, of the great and useful labors, of the high and beautiful character of Mr. BIDWELL. The circumstances which withdrew him from the community in which his more active personal career would have been filled out with great distinction, induced him, and as it seemed very properly, under very delicate sentiments, very much to abstain from any participation in active political affairs in this country or in

this city. But he was always in favor of good government and of good men; and he did his whole share in that part of the labors of society, which by example and by precept, make the individuals of a community good, in order that their concurrent action may be beneficent. In no eminent relation, in no moral or religious connection, did he fail to bear his full share; and in all that made up the collective power of our profession, in the relations of its members with each other, and in their solemn maintenance of their duty to the law and to the courts and to the interests of society confided to them, Mr. BIDWELL was always prominent, always earnest, always of one opinion, of one action and of one voice.

I cannot think it is entirely just to say (as has been said here to-day), that, as each thread of life is broken, that life has lost its place or its memory in the twisted and continuous cord which is made up of our joint lives, and which goes on unbroken in strength, if the fibers be of the true nature and purity. So is it with these dead lawyers of a past generation; so is it with those who have passed away under our immediate observation. So let it be with all of us whose

labors in our profession shall be worthily interwoven in the texture of the life of our time.

And now that the end, death, has set its coronation to this beautiful and beneficent life, we all can concur in appreciating its value and its service, and in cherishing its memory and imitating its example.

MR. ERASTUS C. BENEDICT.

After what has been so well said, I rise, only to say a brief word in expansion of what has been said by Mr. Silliman and Mr. Dwight, on the single topic of Mr. BIDWELL'S religious character.

I became acquainted with him in 1838, in connexion with the great ecclesiastical controversy which resulted in the division of the Presbyterian Church, now so happily reunited, since which time I have known him familiarly till his death. We were both connected with that denomination of Christians, whose faith is sometimes said to be austere, gloomy and repulsive. No one would pass that judgment upon it from Mr. BIDWELL'S example. He had studied the law of God, the doctrines of the church, and the practical truths of the Gospel, with a careful, earnest and conscientious search for truth, and he had read its literature for its effect upon his heart and life. To him religion did not bring the fruitful river in the eye, nor the dejected 'havior of the visage, but indwelling joy. He walked in the way of life with unchanging cheerfulness.

He looked upon this world, with all its faults, as God's fair world, and to him the outlook from this to the future life was

“Like the glimpses a saint has of heaven in his dreams,”

and he may well have desired to make the change from the one to the other in the twinkling of an eye, that the weak and timid flesh might not have an opportunity to do discredit to the willing spirit.

JUDGE NEILSON.

Mr. Chairman :

Although I have known our late friend longer than any other person present may have known him, yet, after what has been said, I should be silent but for the belief that his character was best exemplified in that field of labor which he occupied prior to his removal to this State. With that belief I accept the suggestion, so kindly made, that some more extended reference to his life in Canada may not now be inappropriate. But in recalling events,—the earlier from family tradition and from what I may have read; the later from personal observation and intercourse,—I may not be fortunate in selecting what best illustrates his genius and character, and shall need your indulgence.

With relation, sir, to the learning he possessed when first he appeared before *you* in his practice here, consider, for a moment, his early advantages. As has been said, he went to Upper Canada in his boyhood, but his father, Barnabas Bidwell, had been the Attorney General of Massa-

chusetts, was a profound jurist, a man of great culture and attainments outside of the law as well as in it. He was distinguished for his courtly and agreeable manners, his great conversational powers, his mental and personal activity.

When the family went to Canada it consisted of the father, the son, and a daughter who never married. They settled in Bath, a village on the bay of Quinte, eighteen miles above Kingston, and resided there several years. In due time the son was articled as a student to Mr. Washburn, and afterwards to Daniel Hagerman, Barristers and Attorneys at Law. Before he had fully completed the term of formal legal studies, the family removed to Kingston. It is known that the elder Mr. Bidwell gave some attention to office consultations, and that the son's preparatory and legal studies had received his immediate and constant aid and supervision during all those years; and what a tutor he must have been! He who can remember, as indeed which of us may not, how in the solitary studies of his student life he was perplexed and hindered, the best authors having left rules and principles involved in mystery, the spirit of the law remain-

ing inarticulate, can appreciate the worth of such a tutor, coming, in perfect sympathy, with explanations, analogies, illustrations. The page, else so dark flooded with light.

At that time the Judges of the Court of King's Bench were sent over from England, and it was not expected that a young gentleman, on attaining to the dignity of a Barrister, would directly proceed to the trial of causes. But in this instance some special circumstances may have precipitated action,—perhaps the loss of Mr. Washburn, or of Mr. Hagerman, both of whom died early in their professional lives; or, perhaps, a sense of duty and fitness. But, from whatever cause, young BIDWELL, as he was then called, directly after his admission to the Bar, went in and tried causes with signal ability and acceptance. Some time later, when there during my school vacations, I was allowed to haunt the courts, and saw Mr. BIDWELL try many causes. Then, as in years afterwards I saw his father, who was never admitted to practice there, sit at a table below the seats allotted to the barristers, and when his son was engaged, hand up memoranda and books. As that was the common

course, and as the books were always handed up at the right time to meet or to support an objection, or for citation on the argument, the received notion was that the causes which the son tried so well, and with such affluence of learning, had been previously argued in the seclusion of the law office.

I recollect the trial of an early case, which excited some popular attention and anxiety, that of *Hawley vs. Ham*, an action by the father-in-law against the son-in-law, to recover for the support of the wife, from the time when, owing to the alleged cruelty of the husband, she fled from his roof to her father's protection. It was said that the action had been brought to test some principle. Mr. BIDWELL was for the plaintiff; the Attorney General for the defendant. The validity of the marriage was contested, the Attorney General claiming that the Rev. Robert McDowell, a preacher of the Dutch Reformed Church, settled near Bath, was not competent to perform the marriage ceremony, the parties concerned in that sacrament not having been members of his church.* But the ruling of the pre-

* The Rev. Robert McDowell was a native of Washington county, in this State, and went to Canada about the year

siding Judge on the question of cruelty was the most striking feature of the case: he held that the husband had the right to inflict personal chastisement on the wife, when she was disobedient or refractory.

Early in Mr. BIDWELL'S professional career he attained great celebrity, and thenceforth, while he remained in practice there, his services as counsel were sought for in causes of importance in every part of the Province.

But, sir, without extending these details, you will accept the suggestion that our late friend had great, very great special advantages in preliminary and legal study, and during several years of his practice at the Bar. When we add to that large and generous preparation and aid, that Mr. BIDWELL, generally, was in good health, was devoted to his books, that principles which had served important uses, and were infused with a spirit of equity, were very dear to him, it could excite no surprise that those who

1798. He was a great friend of the Messrs. BIDWELL, and of considerable Provincial influence. His eldest son, John R., after spending some years at Princeton, N. J., preparatory to the ministry, settled in the city of New York, and published the "McDowell's Magdalene Journal." J. N.

were so lately at the Bar with him and knew his resources so well, are enabled to ascribe to him such learning and research.

Mr. Chairman, some reference to his religious influence.

Early in life, and while yet a student, he united with the Presbyterian Church, and was thenceforward an earnest and devoted Christian.

So, too, while thus a mere student, he married Miss Wilcox, whose family lived on the bay near Bath, a lady of exemplary piety, and, as some present well know, of great social worth. My personal acquaintance with her dates from some years after the marriage, but before she had lost her health, when she was distinguished for her active Christian benevolence. His sister had great devotion, and gave to moral and religious efforts her countenance and support. Thus it was that those influences which act so powerfully in giving moral tone and strength to the heart, surrounded our late friend from his very youth.

The Messrs. BIDWELL, in connection with others, but especially in connection with Dr. Armstrong and Mr. John G. Parker, both of whom suffered in the rebellion to which refer-

ence has been made, built a Presbyterian Church in Kingston, and supported a preacher in it for several years; a church less imposing than the Scotch Kirk there, a church for the common people.* They also brought out missionaries from these States and from Scotland to labor there, and gave them generous support.†

* Dr. Edmund W. Armstrong stood in the front rank of Physicians and Surgeons in Kingston. He left Canada owing to the Rebellion, and settled in Rochester, in this State, where he still resides. No man feels Mr. BIDWELL'S death more acutely than he. Mr. John G. Parker had been a merchant in Kingston, and at the time of the Rebellion resided in Hamilton. He was convicted of treason, *upon informal confession*, and was sentenced to penal servitude for life in Van Diemen's Land, but on his way thither was intercepted, in England, at the instance of Mr. Roebuck, Mr. Hill, and other liberal members of the Bar, and was finally pardoned and released. Unfavorable treatment of his case appears in 9 Adolphus & Ellis' R., p. 731, and in 5 Meeson & Welby's R., p. 31.

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† The last of those, and the most distinguished, the Rev. David Murdock, remained in the Province until after the Rebellion, when, finding his old friends dispersed, he came to this State, was for a time at Catskill, then called to Elmira, where he labored on until the close of his life. A son of his has been the District Attorney of Chemung County; another son is a physician at Oswego. His relations with Mr. BIDWELL were of the most affectionate kind to the last.

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I had, years ago, a collection of Mr. BIDWELL'S speeches, as they were published from time to time in pamphlet form, delivered at the Bar, in Parliament, at meetings of the Bible, Missionary and Tract Societies, in different parts of the Province, and had got, quite early in my studies, a strong impression of his power as a speaker and writer; an impression confirmed by subsequent reading and observation.

But, as contrasted with the great occasions when, in the presence of clouds of witnesses, such speeches were delivered, take an instance of labor quite obscure. Mr. Edwin Clark, of Oswego, said to me; "When I was over at Kingston I became acquainted with Mr. BIDWELL. I strolled out in the morning, saw the sign of a Sunday school, went in and found him teaching a class." Such was his humility and devotion.

Mr. Chairman, a brief reference to his attitude in Parliament.

Some circumstances conspired to render his position, at first, trying and peculiar. His father had been regarded as a radical in politics. He had, in the press and otherwise, taught what he

considered the rights of the people, under the democratic element supposed to reside in the constitution, and had criticized the policy of the government. He was an affirmative, an aggressive man; a great controversialist. He had drawn upon himself the disfavor of the Tory party, the enmity of some of its distinguished members. Eminent lawyers, the brothers Charles and Jonas Jones, Mr. Attorney General Robinson, Mr. Boulton, and Mr. Solicitor General Hagerman, had sought to lessen his influence, and in the press and in pamphlets had controverted his views. Many, if not all, of the questions upon which they differed, however important then, have, in changes and new combinations, lost their significance. Mr. Bidwell, senior, had been elected to Parliament for the counties of Lennox and Addington, but, some irregularity having been found in the proceedings, he was unseated, and, directly thereafter, an act as to the qualifications of members was adopted, with a provision that no person who had held office in the United States should sit in that House, thus rendering him ineligible. It was to fill the vacancy thus created that the younger BIDWELL

was chosen. As he was then only known as a brilliant young barrister, of fine presence and manners, his political views not yet sufficiently pronounced to indicate their real character, it remained for him to assert his position, and, as best he could, to win the public confidence. It is apparent, therefore, that he must have taken his seat in the House under a sense of great embarrassment.

At that time the Episcopalians, a branch of the established Church of England, and the Calvinists, known as the Scotch Kirk, an off-shoot of the established Church of Scotland, were well planted, and had affirmative rights, governmental recognition and support. Not so with the great body of Christians known as Dissenters, the Presbyterian, the Dutch Reformed, the Methodist, and other less prominent churches. They labored under disabilities, and the question raised in the case of *Hawley vs. Ham*, as to the validity of a marriage, may, in some degree, indicate how the Dissenters were cramped and hindered in their efforts, and the frail or uncertain tenure by which necessary powers were held.

Mr. BIDWELL introduced bills for the relief of

all these churches. His first efforts met with opposition; an apparent indisposition, save on the part of the Reformers, then in a minority, to accept changes recommended by him. But when, from the earnestness and gentleness with which he presented his views, the respect with which he treated the opinions of others, they came to know what manner of man he was, he secured influence, and those and many other reformatory measures introduced by him were adopted, with great and wide-spread public benefit.

One measure to which Mr. BIDWELL gave great attention, a bill to abolish the law of primogeniture, did not go into effect while he remained in Parliament. He introduced the bill again and again, supported by extended arguments; it was passed more than once in the House below, defeated in the House above. But after Mr. BIDWELL had ceased to be in Parliament, and probably upon the Home government, moved by those arguments, intimating to the provincial administration that the measure was not objectionable, that change in the law was made; so, even in that, he lived to see the fruit of his labors.

Some special circumstances which occurred at one session while Mr. BIDWELL was Speaker, may be noticed. At a time when the Reform party had a strong majority in the House, the Governor, Sir John Colborne, was exhibited in effigy at Hamilton. Each party charged the act upon the other, the Reformers especially claiming that it was a device of the enemy to excite prejudice against them. The House appointed a committee of investigation, with power to send for persons and papers, and Mr. McNabb, a young lawyer of Hamilton, and Mr. Solicitor General Boulton were cited to appear and be examined. They refused to answer certain questions, and having been reported to the House, were required to attend and answer for the contempt.

Mr. McNabb came first, and not exercising much discretion, was punished by actual imprisonment. But, as his party regarded him as a martyr, the event gave an impetus to his fortunes, and so it was that, instead of living, as he might have done, an obscure lawyer in the town of Hamilton, he became a member of Parliament, and died Sir Allan McNabb.

When Mr. Solicitor General Boulton came before the House, he understood its spirit, and so adroitly explained his offence that, after debate, it was resolved that he should be reprimanded by the Speaker.

Now, sir, please to observe that the Solicitor General had been a principal opponent of the elder Mr. Bidwell, had favored his removal from the House, and the adoption of the special statute which had closed the doors of Parliament to him forever; that, as the newspapers of the day had it, there was a deadly feud between the Bidwells and the Boultons: great concern on the part of Mr. Boulton's friends lest he should be roughly handled; great exultation on the part of the Radicals, that one of the chief opponents of the father was to receive punishment at the hands of the son, the notion being that the son would pay off all his father's old debts.

It was said in a non-partisan journal, that the occasion when the Solicitor General was brought to the bar of the House was one of great ceremony and solemnity; that in the first part of the reprimand, when the Speaker was vindicating the power of Parliament, and stating that he

could not forget that its power and dignity had been offended and sought to be impaired by one who was the legal adviser of the government, an example most pernicious, Mr. Boulton appeared calm, if not indifferent, but that as the Speaker proceeded and administered the required reproof, with such magnanimity and forbearance, that a mere observer could not have told whether the offender was or was not the friend of the Speaker; Mr. Boulton, recognizing the presence of a superior mind and heart, was humbled, and finally left the House profoundly affected. The London Times, in publishing that reprimand, declared it to be the best paper of the kind on record.

These circumstances, though historical, the actors all or nearly all gone now, are not without present interest as illustrating how our late friend, when charged with the performance of a great constitutional duty, could rise to the dignity of the occasion, quite above mere personal and party griefs and dissensions, and discharge that duty in the sovereign spirit of a great magistrate.

Thus, Mr. Chairman, from that field of public

and private service, a service covering so many years, and abounding in incidents worthy of being treasured up, I gather these few detached particulars. The presentation, though inadequate, may be suggestive of an honorable ambition in the profession, a devotion to the public welfare, a Christian patience, humility and consecration worthy of remembrance.

Mr. Barnabas Bidwell died at Kingston. Afterwards, our late friend, declaring his intention to take no further part in politics, removed to Toronto, and devoted himself to his professional duties until the Rebellion came.

The peculiar and painful circumstances under which Mr. BIDWELL was suddenly required to leave the Province, have been stated by Mr. Siliman. It was well that one who, from thirty years of personal friendship and professional intercourse, knew what had been the delicacy of Mr. BIDWELL'S feelings, should have made that statement. Prior to the recall of Sir Francis Bond Head, Mr. BIDWELL had sought to persuade himself that, in requiring him to leave the Province, Sir Francis had acted under a misapprehension, and from good motives, and, beyond

the simple and necessary declaration that he had not sympathized with or favored the rebellion, Mr. BIDWELL preserved toward the public a dignified silence.*

But though he thus maintained a dignified silence here, the people there were not silent after the turmoil created by the Rebellion had

* It should not be assumed that Mr. BIDWELL tamely accepted the condition imposed as to his leaving the Province. He was under terrible constraint; a duress having few precedents. In the interview to which the Governor had called him he was assured that martial law was about to be declared; that his actual imprisonment was inevitable. Sir Francis, in great apparent tribulation, and with tears, assured Mr. BIDWELL, whom he called his friend, that he would not be able to protect him; that his safety depended upon his departure from the Province. At that time the popular excitement and turmoil were very great, and the extent of the rising throughout the Provinces, and its probable duration, could not be known. However free Mr. BIDWELL may have been from all taint of complicity in the rebellion, the imminence of martial law, and the prospect of indefinite imprisonment, might have been sufficient to appal a stouter heart. A consciousness of innocence, with no hope of being heard in declaring it until after long deprivation and suffering, would not have given the most sanguine much strength. It has been believed, and, I think justly, in view of the real character of Sir Francis, as subsequently disclosed, and of strictures published by him in England unfriendly to Mr. BIDWELL, that the consent thus wrung from him was not unwisely given.

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passed away. They regarded his absence as a great loss. But, perhaps, in no case, could the undeserved exile of a distinguished man have called forth more signal rebuke than that administered in a controversy originated and carried on by Dr. Egerton Ryerson, a writer of great power, in which he arraigned the Governor and his advisers for the manner in which Mr. BIDWELL had been treated. Mr. Ryerson has since held important relations to the government, and is now the Minister of Public Instruction in the Province.

Now, Mr. Chairman, you will observe that the professional connection thus built up by so many years of effort, was of great value; that while Mr. BIDWELL may have known that he was favorably regarded in England, he could not have known that his appointment as a Judge had been contemplated; also that the office, one of great dignity and importance, might well have been acceptable to him, as the highest testimony to his life and character, to the wisdom of his conduct in Parliament, and as opening to him a career of great usefulness in the administration of justice.*

* The English government had, in effect, indicated its approval of Mr. BIDWELL's moderation in proceedings which

Bearing all that in mind, I ask your attention to the occasion when, on his way to England, Sir Francis Bond Head invited Mr. BIDWELL to see him at the City Hotel in this city. At that interview, and at the close of a long conversation, Sir Francis said to him (I give the substance ; not, perhaps, the words): I think I ought to tell you, Mr. BIDWELL, that you are the cause of my being recalled. Mr. BIDWELL testified his surprise, and assured him that he was under a misapprehension. No, said Sir Francis, the facts are these: I was instructed by the Colonial Secre-

excited the Provincial Parliament in 1832 and 1833. A member of the House, who was the editor of a newspaper, was expelled for publishing libels upon other members, and upon the Legislative Council. He was re-elected and expelled several times in quick succession. The case had no precedent in the action of the British House of Commons, in the expulsion of Wilkes and in declaring him ineligible, as legal proceedings had been taken against him, and as the resolutions expelling Wilkes, and declaring him incapable of re-election had been, by the vote of the House in 1782, expunged from its minutes, as subversive of constitutional rights. Without justifying, or seeking to palliate, the offence of the editor, Mr. BIDWELL questioned the power of Parliament to take cognizance of it ; thought that the question of guilt and punishment belonged to the courts of law ; that it was not wise or proper for members of the House, however much aggrieved by the publications, to act as prosecutors and as judges, and that the proceedings were infractions rather than

tary to place your name on the list of Judges of the Court of Queen's Bench, and was induced to send a remonstrance. That instruction was renewed, and, influenced by my advisers, a further remonstrance was sent. Afterwards I received notice that my successor had been appointed. So you see I am correct. Mr. BIDWELL, then, perhaps, calling up in review all that he had lost and suffered, said: You may be correct in that, sir, but I now see why it was desired that I should leave the Province: you wished to be able to say to your

vindications of parliamentary privilege. He voted against each of the expulsions. Mr. Boulton, then Attorney General, and Mr. Hagerman, Solicitor General, were members of the House, the recognized leaders of the Tory Party, and voted for those expulsions. The English ministry not only adopted Mr. BIDWELL's views, but, regarding Mr. Boulton and Mr. Hagerman as responsible for those violent and ill-advised acts, signified its disapprobation by dismissing them from office. They went to England to exculpate themselves and seek restoration. Mr. Stanley had, happily for them, succeeded Lord Goderich as Colonial Secretary. Mr. Hagerman, who had been more moderate than Mr. Boulton, was allowed to resume his official relations to the government. Mr. Boulton was not restored, but was sent to Newfoundland as Chief Justice. His friends regarded that transfer as little less than expatriation. He soon became embroiled in difficulties there, was dismissed, and never after called to any public employment.

J. N.

superiors, whom you had disobeyed, that the man they intended to honor was a rebel, and had left the country. Mr. BIDWELL retired without ceremony.

But, showing the gentleness of that man's spirit, a gentleness exceeding that of woman, one who could not let the sun go down upon his wrath, Mr. BIDWELL told me afterwards that he had not walked more than a block from the hotel, before he felt ashamed of having been in such temper, and was inclined to return and say so to Sir Francis, and bid him a respectful farewell. I said to him I was glad he did not; that the case called for a good degree of righteous indignation; and reminded him that one had said, "I do well to be angry." He smiled and told me to look up that passage and observe the connection.

Mr. Chairman, he who adds one good word, one new application of a principle to the science of the law, leaves that science his debtor. Thus the great masters of the law have toiled for us, and we have entered into their labors. But, sir, our late friend would not have been disturbed by the thought that the known relation of the work-

man to his work would soon be forgotten, though the work remained. As some of us look down the vista of the coming years, the clouds may gather and darken, but to him that vista opened to a world of light. His general views as to the future state may be inferred from his life. But, as further indicating those views, I may be indulged in speaking of a touching and affectionate letter which I received from him in November, 1860, in reference to the then recent death of my father. That letter may have been written with tears, as they were near and dear friends. But in its tone and spirit it savored somewhat of congratulation. He seemed to think that his old friend, at his great age, had fitly retired, had been blessed by a transition as from toil to rest, as from dusty roads of weary travel to the house of many mansions, as if the present were the unreal and the unseen, the future the known and the seen, as well as the eternal. That transition, so full of peace, became his own: the dusky wings fanned his brow faintly, as the mysterious veil was drawn aside and he passed on. I am persuaded, sir, that if he could have had a moment's regret in the prospect or in the article

of closing this life, that must have been imposed by the thought of leaving those who were cherished in his great and loving heart.

I feel, sir, a melancholy satisfaction in adding these feeble words to the other and higher testimony of our common respect and love for the memory of a great and good man.

[Proceedings in the Court of Appeals of the State of New York, on the 11th day of December, 1872, on the death of
MARSHALL S. BIDWELL, Esquire.]

Mr. HENRY NICOLL presented the resolutions adopted at the meeting of the Bar of the City of New York, on the 2d day of November, 1872, and respectfully asked that they be entered on the minutes of the Court.

MR. AMASA J. PARKER

thereupon addressed the Court as follows :

If the Court please, I rise for the purpose of seconding the request of Mr. Nicoll. I had the pleasure of an acquaintance with Mr. BIDWELL for more than a quarter of a century, and I have had the opportunity of observing him from different stand-points. On the Bench, I listened to him with the most sincere respect for his learning and ability ; at the Bar, I found him a most formidable antagonist. Everywhere and by all who knew him, he was conceded to occupy, most worthily, a place in the front rank of the profession, and was esteemed for his unquestioned integrity, and beloved for his social and personal virtues.

Mr. BIDWELL accomplished successfully a

change in which most men would have failed. Impelled by political considerations, in his mature years, he left Canada, where he was educated and where he had long been engaged in successful professional practice, and established himself in the city of New York. Very rarely, before, had such a removal proved successful. The difficulties to be encountered under such circumstances have generally been deemed insurmountable. It is like transplanting the full grown oak, and tearing from their native soil its wide spread roots, in the hope of preserving the vigor of its life when planted again in a distant field. But Mr. BIDWELL overcame every obstacle, and soon rose to professional eminence in his new theater of action. Success under the discouragements of such an experiment affords the highest evidence of industry, talent and personal worth.

I have heard Mr. BIDWELL spoken of in Canada, by those, who, from their connection with the courts and with public affairs, had the best opportunities of knowing him while he resided there, and they always expressed for him the most sincere respect and esteem. Such was, I

am sure, the sentiment of all parties there. It was conceded that if he had remained in that Province, he would have won its highest judicial honors.

We cling fondly to the memory of our deceased friend. He combined, in his character, the qualities which we most respect, esteem and love, and while we mourn his death, and follow him sadly to his last resting place on earth, it is consoling to remember, that he had completed the full age allotted to man, and that in closing a successful and honorable career, he has left behind him the fragrant record of a well-spent life.

It seems to me eminently proper, and I join in the request, that the proposed entry be made on the minutes of this Court, in honor to his memory.

MR. A. J. VANDERPOEL.

May it please the Court, I desire to unite in the request made that this Court should join in the tribute of respect and affection to the memory of MARSHALL S. BIDWELL. Mr. BIDWELL was a model man in all relations of life, and in his professional career he exhibited the highest type of the true and accomplished lawyer. More than thirty years ago, in the prime of his physical and intellectual manhood, he joined our Bar. The galaxy of lawyers who then were eminent, whom the Courts delighted to hear and their brethren to honor, found in him their peer.

It was apparent, at the outset, that his vigorous intellect had been cultivated and refined by study, so that he was able to take and at all times to maintain his place in the foremost rank of lawyers. He eschewed public life, and his ambition was gratified when in his daily walk and conversation he proved himself the noble lawyer and Christian gentleman. Mr. BIDWELL excelled in that class of cases which come before the Courts, involving the construction of devises and

trusts, and the more intricate of the class of questions in commercial law, constantly arising in the transactions which center in our great city in its trade with foreign countries.

I recall his argument before the Court in about the year 1866, involving the construction of the Will of Richard Ray. Mr. BIDWELL represented the appellant, and Mr. Lord the respondent. It afforded a pleasant excitement and interest to the members of the Bar then present to follow the able and experienced counsel, as they, with a zeal wholly untempered by age, presented to the Court the learning of the sages upon the intricate question under discussion.

No one among us was more familiar with the "great book of equity," nor with the Rules of the common law, or more accurate in their application. The lives of the eminent lawyers of all ages were with him a constant study, and while he emulated them in all that was great and good, he avoided their foibles. The old race of lawyers are rapidly leaving us. It is becoming that we should not be remiss in recording and transmitting our respect for their virtues.

MR. CHIEF JUSTICE CHURCH.

The members of the Court concur fully with the sentiments contained in the resolutions, and those which have been so well and feelingly expressed upon this occasion.

Mr. BIDWELL was one of those who, when he appeared professionally in the Court, always impressed us by his argument, with his profound and accurate legal learning, and by his deportment and manner, with his perfect sincerity and dignified refinement.

His great learning and ability, not less than the purity of his private character and kindness of heart, endeared him to all who had the pleasure of his acquaintance during his life, and will embalm his memory in grateful remembrance, now that he has departed from among us.

The motion to enter the resolutions upon the minutes of the Court is granted, and as a further mark of respect, the Court will now adjourn.

