

LIFE SKETCHES <sup>07</sup>

OF

# EMINENT LAWYERS,

AMERICAN, ENGLISH AND CANADIAN,

TO WHICH IS ADDED

THOUGHTS, FACTS AND FACETIÆ.

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IN TWO VOLUMES.

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BY

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**BENJAMIN FRANKLIN BUTLER, MASSACHUSETTS.****(1818-1893.)**

Lawyer, soldier, millionaire, politician, orator. Born at Deerfield, New Hampshire, November 5, 1818; died at Washington, D. C., January 10, 1893, aged seventy-four. Graduated from Waterville College, Maine, at twenty; admitted at twenty-two, at Lowell; member of the Legislature and Congress; Governor of Massachusetts in 1882; was three years in the war for the Union, becoming Major General; was refused degree of L.L. D. by Harvard.

His first important case in the United States Supreme Court was in 1857 (*U. S. v. Sutter*, 21 How., 170); appeared for the United States in 1866 in *ex parte Milligan* (4 Wall. 2); received a \$75,000 fee in prize act cases in United States Supreme Court at close of war; was leading counsel for the prosecution in the Johnson impeachment; appeared in the Legal Tender cases (12 Wall., 457). His practice before the war was the most lucrative of any lawyer in New England—at least \$25,000 a year, and the last few

years amounted to \$50,000 annually. Died worth \$7,000,000. He never took notes, said if the jury could carry the facts he could; held a point of law was as much the property of his client as a point of fact; believed in hard study and careful thought; that any man who thoroughly applied his common sense ought to know the common law, as it is the perfection of common sense; that a lawyer must study almost every kind of business and many of the sciences. He therefore spent a week in a repair shop, coat off, hammer in hand, testing the resisting power of iron to intelligently try a railroad accident case. Studied all books on scurvy to prosecute a sea captain, defended by Choate, and recovered a verdict for \$3,000 for negligence in not taking sufficient vegetables, etc., for the voyage.

He was prompt in retort and a master cross-examiner. His chief trait was sharpness. Said Judge Abbott: "He excelled all lawyers in keeping out and getting in evidence." A man of great intellectual force, his brain weighed sixty-two ounces. He was vigorous, aggressive, pugnacious, picturesque.

### The Farming Population.

“The wealth, the prosperity, the steadfastness, the hope of religion, of liberty, and of freedom of the world, rests upon the producing and on the country population of this Commonwealth (Mass.) and on that of the United States.”—From an Address at Middletown.

### Answer to Judge Hoar.

Judge Rockwell Hoar, in opposing Butler for Congress, said he had “no personal hostility to General Butler, but could not but regard him as an objectionable candidate.” Butler, in reply, said: “Your affection, however, is like yourself, peculiar. Something like that of the lady in Tennyson’s poem for the Prince:

“I hated him with the hate of hell!

But I loved his beauty passing well.”

He admitted the judge had been a good judge between party and party, but accused him of sometimes “mistaking dyspepsia for a conscience.”

### Never Refused Assistance Where He Could Win.

“I have made it a rule of my life never to refuse to assist in trying cases, however desperate, if I believed there was any chance to win.”—Butler’s Book.

### Refused the Vice-Presidency in 1864.

He was offered the Vice-Presidency with Lincoln in 1864, but declined, unless the President would

agree to die within three months after his inauguration. He did die in less than a month and a half. Thus Butler missed the opportunity of being President of the United States. When he declined, the position was offered to Andrew Johnson, at Lincoln's request.

### Tarbox and Pill-Box.

Butler alluded to the campaign of 1876 between Dr. Ayer, the famous pill manufacturer, and John K. Tarbox, Republican and Democratic Congressional nominees, respectively, as "one between Tarbox and Pill-box."

### Diligence, Study and Thought Necessary to Success.

"I do not believe in genius carrying a man along in the practice of the law, and I want here to record, for the benefit of the young men who come after me in the profession, that diligence, hard study and careful thought are the only roads to success in any branch of the law, except that, possibly, a turn for oratory may help the advocate. But the mere advocate, however brilliant, will lose the most cases, although he may win the most verdicts."—Butler's Book, p. 990.

### "Lord, What Wilt Thou Have Me to Do?"

Butler, who had borne the decisions in favor of one Mr. Lord, of Salem, in the Massachusetts Legislature, finally said to the Speaker, "I suppose you feel as did Saul in his trance on the road to Damascus, 'Lord, what wilt Thou have me to do?'"

## Analysis of His Character as a Lawyer.

“Opposition only strengthened him, though often in a wrong direction. Qualities such as his were bound sooner or later to lead their possessor to success at the bar. Was he, then, a great lawyer? The bar generally would scarcely admit this. He was not a great lawyer in the sense in which Curtis was a great lawyer; nor a great advocate, like Choate; nor a skilful conductor of a cause, like Durant. And yet, even before the war, he had encountered and overthrown the veteran Choate and the redoubtable Farley, and many more of a race of giants. His quickness, his marvelous memory, which carried without the aid of pen or pencil the details of the most elaborate, and complicated causes, his audacity, often imprudence, his readiness, and, when angered, his contempt for scruple, made of him a formidable adversary. To achieve a personal triumph over witness or counsel, and sometimes over court, he would sacrifice his chance for a verdict. Thus he said of a Rhode Island United States District Judge, that he was ‘an inferior judge, of an inferior court, of an inferior State.’ The fact is that his judgment was, and continued to be, bad. If a case arose which called for, and would stand the fullest investigation, he was the man for it—for concealment and equivocation were scarcely possible to a witness under the operation of his methods. But to touch delicately on certain matters, to maintain a wise silence on others,

were, in general, not contemplated by him, and when contemplated, came to naught if a taunt from his adversary provoked him. He was, however, full of resources. His intellect saw the object and the path to it with marvelous distinctness. His nature was an untiring and unresting one. A trial with him was a battle in which every energy was put forth, every nerve was strained. Politeness, even humanity, were entirely beside the question"—F. W. Griffin, "Analysis of General Butler's Character as a Lawyer."

#### Butler's Bible Knowledge.

"I regret to say that my knowledge of the Scriptures is largely confined to the fact that under the tutelage of my Christian mother I read the Scriptures through very carefully, and was examined upon my reading by her. I also committed the four gospels to memory; having fortunately a retentive one, and was able to recite them when called upon, even to the first eighteen verses in our version of the Gospel of St. Matthew, which is very trying, as everybody seemed to beget everybody else. I send you, which you do not seem to have seen, a copy of 'Butler's Book' which I have written, which I beg you to accept with my compliments.

"Very truly, your friend and servant,

"BENJ. F. BUTLER."

A letter dated October 1st, 1892, to Father Moore, of Holy Cross, Kan.

## Groan by Opposing Counsel—Butler Wanted Court to Adjourn.

An opposing counsel to Butler, when a witness gave some damaging evidence, gave a groan, doubtless intended for effect on the jury. In an instant up sprang Ben, with "Stop! stop!! stop!!!" "What is the matter, Mr. Butler?" asked the judge, taken by surprise at the interruption. "May it please your honor," replied the imperturbable advocate in the blandest of accents, "my brother L—— is taken suddenly ill. Did you not hear him groan just now? The court might like to take a short recess, I thought." "Proceed with the examination of the witness. Let there be no more interruption," said the judge. But the effect of the groan was neutralized.

### Butler's Tact in Anticipating Choate.

Being opposed to Rufus Choate in an important case, Butler forestalled his eloquent opponent by saying to the jury: "Choate is retained in every great case to lend to it the power of his rare abilities to obtain a verdict. Such, gentlemen of the jury, is the charm of his eloquence, that he has only to wave over you his magic wand and you are so completely mesmerized by his will that you will say black is white, and white, black, if he only says it is so. You are wholly under the bewitching influence of his eloquence, and are led by it whithersoever he chooses to lead you. You start, gentlemen—you brace yourself



back with a determined air, as if to say, however it may be with others, you are proof against his blandishments. Ah! gentlemen, little do you know the spell that will soon be upon you. I have myself seen it in so many instances that I speak with confidence and certainty on this point."

Choate's speech being anticipated, he made a very ordinary speech, claimed he was an ordinary, plain spoken man, and thus made a very tame speech. Butler's tact succeeded in a disagreement—equivalent to a verdict for Butler's client.

### Don't Tell the Court What You Don't Know.

He was always audacious. For instance, a case being called in which publication had to be made to get service, the young lawyer said, "Let notice be given." "In what paper?" was the inquiry of the gray-haired clerk of the court, a staunch Whig. "In the Lowell Advertiser," said young Butler, who was a Democrat, naming a Jackson paper. "I don't know such a paper," said the clerk, disdainfully. "Don't interrupt the court proceedings, Mr. Clerk," said the lawyer, "for if you begin to tell us what you don't know there will be no time for anything else."

### \$1,000 to Argue Case in U. S. Supreme Court—Refused to Draw Contract.

He was employed by New York city clients to argue an important case of infringement, was paid \$1,000 to go to Washington and argue the case in the

Supreme Court. On the way over there the litigants got together, agreed upon a sum to be paid, and when it should be paid, etc. Butler's client requested him to draw the contract of settlement, but Butler refused, saying he was not paid to come to Washington to do the work of a scrivener, and no inducement could persuade him to draw the papers, and his client was obliged to get a local Washington lawyer to do it.

### Harvard Professor.

He was cross-questioning a witness in a somewhat sharp manner and the judge interrupted, reminding the lawyer that the witness was a Harvard professor. "I know it, your honor," he replied, "we hanged one of them the other day."

### Offsetting Damages of Cow by Legal Advice.

"Mr. Butler," said a supposed client, "one of my neighbor's cows jumped my garden gate last night, and completely destroyed my flower beds. The gate was of the height required by law, and was closed. Now I wish to know whether I can obtain damages?"

"Most assuredly," replied the widow's friend.

"Well, Mr. Butler, how much?"

"O, about ten dollars."

"But, Mr. Butler," triumphantly, "the cow was yours."

"Ah!" said Mr. Butler, thoughtfully; and he looked unutterable things out of his bad eye. Then

he turned to his desk, scratched off a few lines on a piece of paper and handed it to his visitor. It was in the form of an account, and read as follows:

“B. F. Butler to Mrs. ——— Dr.: To damages caused by cow, \$10.00. Cr., by legal advice, \$15.00. Balance due me, \$5.00.”

“Mrs. ———,” said Mr. Butler, softly, “you needn’t hurry about the payment.”

### Lyman Trumbull’s Estimate Of.

“Butler was a man of versatile talents, great resources and executive ability. He was egotistical had a high opinion of himself, and was not always scrupulous in the means employed to accomplish his ends; but he possessed great ability and rendered his country valuable services, both in a military and civil capacity. He possessed many good qualities, and it is to be regretted that his ambition to succeed in whatever he undertook should ever have led him to resort to questionable actions. This is briefly the opinion I formed of the General during my long acquaintance with him.”—Lyman Trumbull, upon Butler’s death.

### Advises President Johnson in Jefferson Davis’ Treason.

Upon the advice of Senator Benjamin F. Wade, of Ohio, Butler was called in as counsel and advised President Johnson in the treason case of Jefferson Davis.—Butler’s Book, pp. 916-918.

### Cleared Peter Moore on Flaw in Indictment.

In *State of Massachusetts v. Peter Moore*, indicted for adultery with one Mary Stuart, Butler made the objection that the indictment did not state that Mary Stuart was not the wife of the defendant. The court overruled the objection and said that the point was a "sharp" one. But Butler took the case up on a writ of error and the Supreme Court decided in his favor.—*Idem*.

### Cleared Prisoner for Larceny.

In another case a prisoner was indicted for larceny, there being four counts in the indictment, under which the full penalty was sixty years. Butler agreed that his client should plead guilty on the one that charged the theft of the greatest amount, and the other three should be quashed. After his client had pleaded guilty the three other counts were nollied and the prosecutor moved for sentence on the fourth. Butler pointed out that the indictment did not allege any place where the crime was committed, and that the court had no jurisdiction. Ten minutes from that time the prisoner was walking out of court a free man.—*Idem*. 998.

### \$75,000 Fee.

In the Prize Act cases, involving over \$1,000,000, which he won, the court awarded him \$75,000 as a fee.—*Butler's Book*, pp. 1010-12.

## How to Get Rich.

“Nothing is so safe for an investment as improved real estate. Nothing is likely to grow in value faster. In the last fifty years ninety per cent of all the merchants and traders in Boston have failed. In the last fifty years ninety per cent of all the business corporations have failed or gone out of business, so that their stock has been wiped out. In the last fifty years all the improved real estate, on the average, has paid its interest and taxes and quadrupled in value. If a young man’s father can give him anything to start him in the world he had better invest in that way, and let it accumulate, and earn his living, and he will be richer than if he had gone into business.”  
—From letter to Boston Herald, Aug. 26th, 1887:  
“How to Get Rich.”

## Assisting an Embezzler.

An embezzling bank cashier once called upon Butler and said he had been speculating and had used \$40,000 of the bank’s money; that an expert was working upon the books, and it would be but a day or two when he would be found out, and he wanted Butler’s counsel in this dilemma. Butler asked how much money was then in the bank under his control. The terrified cashier replied \$100,000. “Bring it to my office,” said Butler, “follow my advice and keep quiet.” The young man did so. Butler then took a carriage, drove around to the residences of some of the chief

bank officials and told them he had a client that had taken \$140,000 from their bank; that the bank was powerless to recover a cent; that he had prevailed upon his client to pay back, and he could get \$90,000 turned back into the bank, if at the same time they would solemnly promise not to prosecute. This they gladly did. The young man was helped out of a very embarrassing situation, and Butler, with a twinkle of his game eye, put \$10,000 in his pocket.

#### A Key—Real Estate.

He cleared Elijah Record of larceny, charged with stealing a door-key from a lock, on the ground that a key, being part of the house, is real estate.—Butler's Book, p. 987.

#### Giving the Court a Chance to Get Right.

Upon one occasion Butler was discussing a point of law to the full bench of the United States Supreme Court, when one of the court remarked: "Mr. Butler, that proposition of law is settled in *Brown v. Smith*, 106 U. S."

"I understand that, your honor, but I want to give the court a chance to get right," said Butler, nothing daunted.

#### Wealthy.

He was said to be worth \$7,000,000 when he died.

### A Case on Second Rehearing.

He got a second rehearing in the American Emigrant Aid Society, plaintiff in error, v. the County of Adams, after the case had been decided against plaintiff in error below and in the United States Supreme Court, and there had been a rehearing in the Supreme Court, notwithstanding there is a rule of the court that there can be but one rehearing. This and the legal tender cases, in which he was also concerned, being the only cases in which a second rehearing has been had. Butler said to his client, who came to him with the record and wanted him to examine it: "The patient being dead and buried, and the sexton having gone home to supper, you come to me for resurrection."—Butler's Book, p. 993.

### His Brain Weighed Sixty-two Ounces.

Butler's brain was found to weigh sixty-two ounces, four more than the brain of Daniel Webster. Up to this time the brain of Webster was the second largest on record, the largest being that of Cuvier, which weighed sixty-five ounces. The average weight of the brain in man is forty-nine ounces.