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H I S T O R Y
OF
THE LAW, THE COURTS,
AND
THE LAWYERS

Of Maine,

FROM ITS FIRST COLONIZATION TO THE EARLY PART OF THE
PRESENT CENTURY.

By WILLIAM WILLIS.

PORTLAND:



Samuel Fessenden

1830 at the age of 46.

Few men have had a more prosperous career through a long life. Health, friends, ease, comparative affluence, and the respect of the community, were his. These were elements of happiness, the value of which he appreciated; and with these he was satisfied.

It is nearly two years since I saw him. He was then about eighty; erect, vigorous, and very little changed in person from the period of our first acquaintance. I have never known a man so little marked by the hand of time for sixty years."

SAMUEL FESSENDEN. 1809—

The venerable Samuel Fessenden, now, with one exception, the oldest resident member of the Cumberland Bar, was the early contemporary of Mr. Greenleaf, and a competitor, of equal ardor and ability, for the practice, in the interior of Cumberland County.

Mr. Fessenden — or, as we shall call him, General Fessenden, for he is universally known by that title — was the son of the Rev. William Fessenden, of Fryeburg, Maine, where the General was born, July 16, 1784. His father was descended from Nicholas Fessenden, who was born in England, in 1651, and came to Cambridge in New England, previous to 1674.

John Fessenden, the first of the name who came to this country, was one of the first settlers in Cambridge, Massachusetts, and was admitted a freeman in 1641. He was by trade a saddler, and died without issue. Nicholas, his nephew, was his heir, and probably came over to settle and enjoy the estate: he had fourteen children by his wife, Margaret Cheney. His son Benjamin, educated at Harvard College, went to Sandwich, and is the ancestor of the Fes-

sends in that quarter. The branch in Maine descended from William, born in 1693, who married Martha Wyeth in 1716, and had eleven children. His oldest son, William, born December, 1718, and graduated at Harvard College, 1737, was a schoolmaster, and licensed to preach, but did not follow the vocation. He married Mary Palmer, March 31, 1740, by whom he had six children: one of whom was William, the father of Samuel, who was born November 3, 1747, old style, and graduated at Harvard College in 1768. He was settled the first minister of the first parish in Fryeburg, October 11, 1775; in which office he continued about thirty years, to the time of his death, May 6, 1805. He was a man of sterling qualities, earnest and devout, and died deeply lamented. He was twice married: first to Sarah Reed of Dunbarton, New Hampshire, in 1771, who with one child early died. In August, 1774, he married Sarah Clement of Boscawen, New Hampshire,—the wise and genial woman who long survived him, and was the mother of nine children: several of whom have left the imprint of their honorable and useful lives upon the pages of the times through which they passed. Ebenezer, a farmer in Fryeburg, though dead, lives in a family of lawyers, merchants, and physicians, who descended from him and survive him; Thomas was a respected lawyer in New York; Joseph Palmer, the well-known clergyman of South Bridgton, died in 1861, at the age of sixty-eight; Sarah was the wife of Dr. Oliver Griswold; and Mary Palmer, the wife of our late esteemed brother of the bar, William Barrows, and mother of our no less esteemed brother and judge of probate for Cumberland County. His distinguished son, Samuel, the subject of this notice, was born in Fryeburg, July 16, 1784; and was brought up at Fryeburg, receiving instruction in the fundamental principles of virtue and religion from his excellent parents, as well as the rudiments

of the education, afterwards pursued at Fryeburg Academy, an institution established in 1792, by the influence of his father and other gentlemen of that town. He afterwards taught school in his native town, before going to college; and while in college, he pursued the same occupation at Paris and Boscawen, to help out the means of finishing his college course. Entering Dartmouth College, he devoted his time diligently to the acquisition of knowledge, and took his degree, with a high reputation as a scholar, in 1806. Among his classmates were his future brother-in-law, William Barrows; Judge Richard Fletcher of Massachusetts; the late Governor Harvey of New Hampshire; and the late Governor Parris of Maine.

On leaving college, Mr. Fessenden entered the office of the late Judge Dana at Fryeburg, where he faithfully pursued his studies, and was admitted to the bar in 1809; when he opened an office in New Gloucester, where Judge Weston and Daniel Howard were then in practice. This was in the central part of the county, and was then the center of a considerable trade. Mr. Fessenden entered upon the practice with earnestness, and having a strong mind, well furnished by literary and legal study, and in the vigor of life, and with the advantages of a well developed and handsome person, he soon took the lead in the practice of his town and neighborhood. A fortunate concurrence of events or some trifling incident often gives a sudden turn to a man's life, and hastens on his advancement or decline. Such an incident happened to General Fessenden soon after commencing practice in New Gloucester. He was called to attend a trial before a magistrate in a neighboring town, in the course of which, one of the witnesses opposed to him, somewhat excited by liquor, was contradictory in his statements, and prevaricated, to favor the party by whom he was summoned. Mr. Fessenden, perceiving this, cross-examined

him so closely as to make him appear ridiculous, and to destroy the force of his testimony: this so provoked the witness that he determined to be revenged on the attorney; and when Mr. Fessenden went out of court, he found the bully waiting for him, and with his shirt sleeves rolled up, he made a sudden assault upon his adversary. The General coolly dealt him a left-handed blow, not a slight one, and at the same time dextrously applied his foot, so that the culprit was laid quivering on the ground. The General went to him, and quietly said, "If you are satisfied, I will go home, as I am somewhat in a hurry." The crowd raised a deafening shout, and told the General he had vanquished the greatest bully in the town, and he should have their business. His popularity was thus secured, and the next term of the court he made thirty entries.

His most powerful competitor was the late Prof. Greenleaf, who lived in the adjoining town of Gray, and who had already acquired popularity and reputation for his ingenuity and eloquence. The encounters of these two young men, struggling for mastery in the profession, and for an honorable livelihood, were often sharp and interesting, as they took place before country magistrates, as well as on the broader field of the Common Pleas and Supreme Courts. One anecdote of their country practice often amused the bar. Mr. Greenleaf usually brought his justice actions before Squire Perley of Gray, and Mr. Fessenden was occasionally called there in the defense. In one of those trials, which had occupied the forenoon, and was contested with considerable feeling, the justice had thrown out intimations favorable to the plaintiff, which, Fessenden perceiving, endeavored to avert by the most courteous treatment: they adjourned for dinner, after which the magistrate was to render judgment. On meeting again in the afternoon, to the surprise of all but General Fessenden, and most of all

to Mr. Greenleaf, the case was given in favor of Mr. Fessenden's client. On their way home, the two counsel were commenting on the decision, in which Greenleaf expressed astonishment at the sudden change of opinion in the magistrate, and asked Fessenden if he could imagine the cause. The only reply Fessenden made, was to show Greenleaf a package of blank writs signed by Perley, which satisfied him that the prospect of getting a new customer had produced a striking development in the mind of the justice.

The oft-repeated skirmishes of these sharpshooters on the outposts prepared them for the sterner conflicts on the larger arena of the courts. They were thus trained and disciplined: both ardent and ambitious, — Greenleaf keen, ingenious, insinuating, and fluent; Fessenden solid, moderate in manner, pertinacious, and persevering, — and both having great weight with the jury, but by different approaches. Their forensic encounters, from their rivalry and ability, were listened to by the bar and the court with much interest: in these were displayed copious resources of legal knowledge and cultivated powers of elocution. Greenleaf's manner was more plausible, Fessenden's more ingenuous: each having peculiar effect in his own way. Fessenden did not arrive at his points and conclusions so directly as Greenleaf: he had more circumlocution and repetition, but he reached his point, and every point, before he quitted his subject, and nothing was omitted that could give light to the jury. Greenleaf's manner was extremely pleasant, his elocution easy and graceful, and his arguments more concise. In learning and ability, it was difficult to choose between them. For more than twenty years, this rivalry existed between them in a larger degree than with any other members of the Cumberland Bar, because their competition in the country was brought to Portland, to

which place they both moved, bringing their clients, and retaining those local feelings and prejudices, which they had not escaped in their early practice. Gen. Fessenden moved to Portland in 1822; Mr. Greenleaf had preceded him four years; their fame went before them, their business followed them; and they advanced in both with a firm and steady step to the highest ranks in the profession, gaining and securing the confidence of their brethren of the bar and on the bench, and the respect of their fellow citizens. They were both men of high honor and integrity, professors of religion, Christian men, and Christian gentlemen. Such men were an honor to the bar, and a blessing to the community in which they lived.

When Gen. Fessenden moved to Portland, he formed a connection in business with Thomas Amory Deblois, who was born in Boston, the son of Stephen Deblois, and grandson, by the mother, of the wealthy and respected merchant, Thomas C. Amory. He graduated at Harvard College in 1813, and prepared for the bar in the office of Samuel A. Bradley at Fryeburg. He was admitted to the bar in 1816, and after practicing a short time in Windham, he moved to Portland. This professional partnership continued to 1854, a period of thirty-two years, and was one of the most successful ever established in the State. The junior partner had numerous friends in Boston, his native place, with which our State was largely connected in commercial transactions, which brought large accessions to the office; while the senior's popularity in the country secured many clients from that quarter; and the attention, promptness, and ability which they gave to their business, secured all the clients and correspondents whom they had once received. Gen. Fessenden was particularly familiar with the law of real estate, which formed much of the controversy, and the gravest part of it, that occupied our courts. He

was largely employed in this branch of business, and managed it with skill, learning, and success. Both parties were able advocates, and held conspicuous rank, during this period, at the bar.

He dissolved his connection with Mr. Deblois in 1854, in order to take his son Daniel into partnership, and the new firm continued until his son was elected clerk of the courts in 1861, when, advanced in years, and with the honors and burdens of more than fifty years' professional life, and the respect of the community upon him, he retired from the courts and all active duty, to the repose of private and domestic life, which his enfeebled health imperatively demanded. He happily now survives at the age of seventy-eight, the oldest member, but one, of the Cumberland Bar, and for many years its honored president. And as he leaves with pain these scenes of his labors and his triumphs, he speaks emphatically of the high regard he carries with him, for the profession in which he was so long and honorably engaged.

He found at the bar of Cumberland, when he entered it, Mellen, Whitman, Longfellow, Hopkins, Emery, Henry A. S. Dearborn, Potter, — all of Portland; Orr of Brunswick; Cutler of North Yarmouth; Greenleaf of Gray; besides other lesser lights: Freeman was clerk and Waite sheriff, time-honored attendants. Of all these whose names I have mentioned, Whitman and Potter are the only survivors, one in his eighty-sixth and the other in his eighty-seventh year, still enjoying the mellow fruits of temperance, moderation, and virtuous lives.

General Fessenden's literary attainments were very respectable: in early life he had cultivated his classical taste, and stored his mind by a course of general reading with copious knowledge, which he subsequently improved as the duties of his profession would admit. His standing in college was among the best scholars, and this rank he sustained

in after life, and received a public acknowledgment, in his election in 1828 as a member of the Maine Historical Society, and in 1846, by the degree of LL. D. conferred upon him by Bowdoin College. In 1828, he was spoken of as president of Dartmouth College, on the death of President Tyler; but his aversion to change his mode of life, suspended further effort in that direction.

General Fessenden early took a deep interest in the political affairs of the country, as his father had before him, who had represented his town in the General Court. They were strong and undeviating federalists of the Washington and Hamilton school; and the whole family being ardent, earnest persons, threw themselves zealously into the conflicts which occurred between the opposing parties in the early part of the century. The year after he settled in New Gloucester, he was invited by the federalists there to deliver the 4th of July oration: Francis Eaton, another lawyer of the town, was the orator of the democratic party. The town was strongly federal, and that party erected a flag staff in front of the house in which their oration was to be delivered, on which they hoisted the national flag. Col. Foxcroft, the democratic leader, sent word that the flag must come down; which, when Mr. Fessenden heard, he stationed two men at the foot of the staff, first asking them if they would see that the flag was not lowered during the delivery of the oration. They replied that it should not come down, unless they passed over their dead bodies. It is needless to say that the banner floated unmolested. It was on this occasion that Parson Mosely, the minister of the parish, and a high federalist, read the hymn beginning thus:

"Break out their teeth, Almighty God,
Those teeth of lions dyed in blood."

General Fessenden was a representative from New Gloucester to the General Court in 1814, 1815, and 1816, and a

senator from the county in 1818 and 1819, in which year the State swung away from her ancient moorings by the side of the old commonwealth into independent life. In these years, he steadily advocated the principles of the federal party, and often with great eloquence and power. It was in 1814, in the discussion of the proposition to send delegates to the *Hartford Convention*, that he made his famous speech against the national administration, in which he uttered the memorable declaration, that he was "ready to take the constitution in one hand and a sword in the other, and demand at Washington the constitutional rights of the people." He held a high position in the Legislature, and was considered during this period of public life, being but thirty years old when he entered it, one of the most promising of the young men in the District of Maine.

It was while he was senator, in the political year of 1818, that a sharp controversy occurred on the floor of the Senate between him and General King, a senator from Lincoln county, which was subsequently continued before the people in the public papers, and had an influence on political events. It arose on the question of making a grant to the "Maine Literary and Theological Institution," now Waterville College. The trustees had petitioned the legislature for aid: at the same session, the subject was referred to a committee of which Gen. King was chairman, who made a report accompanied by a bill granting four townships of land, and \$3,000 a year for several years to the institution. The bill was postponed to the next session, an opposition being manifested to it. During the summer, the Baptist denomination was roused by Gen. King to an effort in favor of the passage of the bill, and printed petitions were prepared by General King, and sent through the State for signature. These were presented at the January session, and were so objectionable by their offensive language, that it had an unfavor-

able effect upon the application and the object of the grant. They demanded the passage of the bill, and made disparaging reflections upon other literary institutions. When the subject came before the Senate, General Fessenden and others objected to the passage of the bill, on the ground that it granted too much; and General Fessenden, in a speech on the occasion, in order to obviate the effect of the offensive language of the petitions, observed that they did not emanate from the board of trustees, nor have their assent. This was immediately denied in a very excited manner by General King, who pronounced the statement false. General Fessenden replied that the information had been given him by a member of the other house, who was also one of the trustees of the institution, and he had no doubt of its correctness. King re-affirmed, with great vehemence, that the statement was untrue, and that the petitions were submitted to the trustees, and approved by them, with one exception. After much angry discussion, the bill was defeated; and the battle was renewed on the broader arena of the public press. The Eastern Argus threw itself warmly into the controversy, and sustained the position of General King with keenness of sarcasm, for which the editor of that paper, Mr. Ware, had acknowledged talent. And it was used as one of the arguments in favor of separation, that as Massachusetts and the federal party withheld a just favor and patronage from the literary institutions of Maine, the District should place itself in a situation to bestow a proper endowment upon her own institutions. The argument had great weight, especially in the Baptist denomination, to which the Waterville institution belonged.

Gen. Alford Richardson, the representative from North Yarmouth, was the member who furnished the information to General Fessenden on which he made his statement: he and General King were both members of the board of

Trustees of the Waterville Seminary, and were thus brought in direct issue on the question of veracity. General Richardson, in 1822, published a pamphlet in which he thoroughly examined the whole subject, produced copies of the records of the trustees and various correspondence and facts, in order to vindicate himself from the charge of falsehood. He was a man of great purity of character and incapable of falsehood; and now that the principal belligerents are dead, King and Richardson, and the party issues which gave interest and importance to the controversy, entirely effete, we may justly say, that General Richardson stands relieved from the imputation, hastily and harshly cast upon him. As for General Fessenden, his vindication was made on the spot, and was triumphant and successful. The college, by this injudicious management, was the principal sufferer.

General Fessenden's powers, physical and mental, seemed peculiarly to qualify him for a prominent position in a deliberative assembly: his commanding figure, his full round voice, his emphatic and graceful elocution, could not but make a deep impression upon such an audience. He distinguished himself so much in the Legislature, that, in 1818, while holding the office of senator, he was elected by both branches, major general of the 12th division of the militia of Massachusetts. This office he held fourteen years, and took great pleasure in it. At that time, the militia was held in respect, and scarcely a year passed but he had reviews of different portions of his division, which embraced the whole county. He collected around him as his staff, gentlemen of high standing in the community, and his parades were brilliant and attractive. His figure and appearance were in a high degree military and commanding. In a manuscript note of Mr. Williamson, the

find these comments: "He is a man of very good intellectual powers, a thorough lawyer, an able advocate, and a safe and faithful counsellor. He is in person above the usual size, has an expressive countenance, and his manners are elevated, and his bearing military. Though he is a high-toned federalist, he was popular, for his principles were pure — a man of accredited piety. He was emulous to excel, and his example worthy to be imitated."

The separation, and his removal to Portland, soon after, threw him for awhile out of public employment, especially as his strong party biases were obnoxious to the ruling power in the new State. But in 1825 and 1826, he represented Portland in the Legislature, and did good service in that capacity: his colleagues the first year were Joseph Adams and Joshua Richardson; the second year, Stephen Longfellow and Isaac Adams. After this, he became more engrossed in business which occupied all his time. He early became a member of the Masonic Order, and rose through its various grades to its chief position in the State; for a number of years he was Grand Master of the Grand Lodge of Maine.

General Fessenden followed the federal party in its various changes; to national republican, under John Quincy Adams, and to whig, when Clay led off the party. But, at length, when the anti-slavery power was acquiring force, and taking a firm stand for the emancipation of the African race on this continent, General Fessenden, with his accustomed ardor, and from sincere conviction, entered the ranks of that party, and did yeoman's service in its cause. For a long time, it was very unpopular in Portland: the municipal authorities refused the public halls for their meetings, and when they did assemble, they encountered an exasperated mob. The General became quite obnoxious for his earnest advocacy of the cause. but nothing intimidated or discour-

aged, he struggled on through evil report and good report, holding up the banner of freedom for all men, not whites alone, but blacks as well. It was a matter of principle with him, and he was regardless of what men might say, if it conflicted with his sense of right. He received colored persons into his house, he took them with him to church, he visited them in their families, and encouraged them in every way to give them self-respect and a place in society. In 1844, he introduced a colored man, Macon B. Allen, into the court-house, while the District Court was in session, and moved the court that he be admitted to practice as an attorney and counsellor at law, under the law then existing in Maine, which rendered any citizen eligible to admission, who produced a certificate of good moral character. Allen was rejected on the ground that he was not a citizen. He afterwards applied to be admitted on examination; he was thereupon called before the examiners, a committee of the bar, and having sustained a satisfactory examination, he was recommended and admitted. He, however, never entered upon the practice in Maine, but went to Boston, and made repeated applications for admission to the Suffolk Bar, but was uniformly rejected.

General Fessenden has always been extremely popular with those people, not only from his great benevolence of character, but from the strong, undeviating interest he has taken in the race. One of them, to show his affection, at a festival which they held, gave the following toast: "General Fessenden — though he has a white face, he has a black heart." He has advocated the anti-slavery cause consistently and uniformly, from a deep conviction, but is far from entering into the ultra radical views of those who would sacrifice the Union and all other of our political blessings to this one issue. He is governed by enlightened

but a large liberty in which man may exercise his freedom of thought and speech, under the salutary restraints of just laws, which guarantee the rights and give their protection to others, as well as himself. His maxim is, "*Et sentire quæ velit, et quæ sentiat discere*,"—he is willing to grant to others what he claims for himself.

In 1841, and several other years, General Fessenden was the candidate of the anti-slavery party for governor of the State; and he has always enjoyed their confidence, and stood high in their esteem as a firm friend and wise counsellor. He has lived to see the sect which was despised and rejected, come to be high in public consideration, and courted for its popular influence; and its orators, who once encountered hisses and reproaches, now greeted with huzzas and applause, not the faintest of which are bestowed upon those really gifted men who advance up from the ranks of the colored race itself.

As might be inferred from the uniform benignity and kindness which have ever warmed the heart and guided the steps of this excellent man, the purest source of his enjoyment, and the kindest influences of his life, were to be found in the domestic circle. No man ever made a better husband or a better father than he; and in response to this sentiment, his cherished wife, and his eight living children, seven sons and one daughter, all respectably settled in life, will rise up with one accord, and do him homage. His children numbered eleven, nine sons and two daughters; two sons and one daughter are dead. Eight of the sons were educated at New England colleges,—five at Bowdoin and three at Dartmouth. Four of his sons were educated for the bar, three for medicine, and one for the pulpit. Three are now in Congress,—Samuel C., a representative from the third congressional district in Maine; and William Pitt, the distinguished senator from our State; and his son Thomas

A. D., recently elected from the Oxford District, for the unexpired term of Judge Walton. William Pitt, the oldest son of the General, has had a splendid career: born in 1806, he early manifested remarkably quick perceptions and strong mental power. He entered college before he was thirteen years old, and graduated in 1823, before he was seventeen. He studied his profession with Charles S. Daveis in Portland, whose kind and able counsel, and the peculiar line of his practice, cultivated and developed that activity of mind and those brilliant powers that carried him, with undeviating step, to the head of the bar in Maine, and to the leadership in the Senate of the United States; and would have given him the highest seat on the bench of the Supreme Court of the State, if he would have been willing to sacrifice the noble aspirations of political life for the quiet and solid rewards of judicial office. His first appearance in public life was as a representative from Portland in 1832, at the age of twenty-five; and being repeatedly elected to the House, where he distinguished himself by the keenness of his intellect and his graceful and powerful elocution, he was selected by the whigs of Cumberland District, in the exciting campaign of 1840, to represent that district in Congress. In this first portion of the first whig administration, he at once took a prominent stand on the floor of Congress, and acquired a reputation that did honor to himself and the district which he ably represented. His professional engagements, which were numerous and important, and the claims of a young family, induced him to decline a re-election. After this, he was returned four times to the Legislature from Portland, and in 1853, was elected United States senator for a full term of six years, as successor to James W. Bradbury. During this term, he served on the finance committee, of which Mr. Hunter of Virginia was chairman; much of the labor,

therefore, of this important committee devolved on Mr. Fessenden, and he signally distinguished himself during the whole of his term, embracing the administration of Franklin Pierce, and the first half of James Buchanan's, by wisdom in council and eloquence in debate. He resisted with undeviating firmness and skill, the deep and insidious machinations of the slaveholding party to fasten their supremacy on the country, and with equal ability, illustrated the financial policy of the government, and the other varied and multifarious interests of the country. His merits and services were justly and handsomely acknowledged by a re-election for a second term of six years, in 1859. His large experience in political life, and especially on this broad field of national politics, engrafted on intellectual powers and resources of the highest quality, all united to a dialectic skill rarely equalled, have justly given him that prominence in the national councils, which the public award and his colleagues concede. In the exciting and deeply interesting discussions and measures which have grown out of the great rebellion, he has proved himself no less an unflinching enemy to treason, than friend to a sound and wise conservatism, which seeks the re-establishment of the Union upon the basis of the old and venerable and venerated constitution. As chairman of the committee of finance in the Senate, his labors, his rare powers and resources, in this period, when the highest financial ability of the country is put in requisition to meet the unparalleled demands upon the treasury, have proved equal to the emergency, and he has shown himself to be a chancellor of the exchequer admirably adapted to the urgent demands of the great republic.

In addition to his own labors in council, three of his four sons, all educated at college, promptly entered the army. Two remain in the service; but his youngest, Samuel, nobly

The mother of his children was Ellen, the youngest daughter of James Deering, Esq., of Portland: her lamented death in 1857 deprived him of a loved companion and a dearly cherished friend. In 1858, Senator Fessenden received from Bowdoin College the degree of LL. D.

These are some of the claims which General Fessenden has to public gratitude, and had he given no more than his children to his native land, he would deserve the thanks of the present and future time. He has devoted to their education and support, the resources of a large income, which has been invested beyond the reach of casualty or depreciation, and become a large benefaction to his country.

And should some envious, or superficial, or curious person ask, "Where are his jewels? where is the pecuniary result of fifty years' professional labor?" he would have more reason than the mother of the Gracchi, to point to his sons and say, "They are here." It is a source of unalloyed satisfaction to the venerable Fessenden, to have lived to this day, and to be a witness to the honors, the respect, and prosperity which have attended upon all of his surviving children, without a single exception. Standing upon the verge of life, he may well exclaim with the ancient seer, "Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation."

WILLIAM ALLEN HAYES. 1809—1850.

Mr. Hayes, who long filled places of honor and trust in the county of York, was the youngest of the three sons of David Hayes of North Yarmouth. He was born in that town October 20, 1783. The family was of Scotch descent: his first American ancestor, John, was in Dover, New Hampshire, as early as 1680, and married there in 1686.