

LIVES 27  
OF  
EMINENT LAWYERS AND STATESMEN  
OF THE STATE OF NEW YORK,  
WITH  
NOTES OF CASES TRIED BY THEM,  
SPEECHES, ANECDOTES,  
AND  
INCIDENTS IN THEIR LIVES.

BY  
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CLIENT," ETC.

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VOLUME I.

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## SAMUEL G. HATHAWAY.

**His Love of the Legal Profession and Literature.—A Patron of Indigent Literary Men.—Incident Connected with an Eminent Poet.—The Loan.—The Singular but Generous Payment.—His Birth.—A Son of General S. G. Hathaway.—Character of his Father.—The Pioneers.—Their Memory.—Political Incidents in the Life of General Hathaway.—Is Present at the Attempted Assassination of General Jackson.—Scene.—Young Hathaway Enters Union College.—During Vacation, Visits a Friend Engaged in Teaching.—Dullness of the School Room to the Visitor.—Effort of the Teacher to Amuse his Friend.—Laughable Scene in the School Room.—A Whipping in Advance.—Hathaway Graduates and Commences the Study of Law at Cortland, New York.—Completes his Studies with Judge Gray, at Elmira.—Admitted to the Bar, and Commences Practice with his Preceptor.—Election of Judge Gray to the Bench of the Supreme Court.—Hathaway forms new Professional Relations.—His Politics.—Is Elected to the Legislature of 1842-43.—His Legislative Career.—Azariah C. Flagg.—George P. Barker.—Horatio Seymour.—Michael Hoffman.—Edwin Crosswell.—Samuel Beardsley.—Speeches of Mr. Hathaway.—His Reply to Colonel Young.—Stop Policy.—Governor Bouck.—Hathaway Retires from the Legislature.—Refuses a Renomination, but Afterwards Active in Politics.—The Democratic War Horse of the Southern Tier.—Engages Actively in his Profession.—Character as a Lawyer.—Amusing Scene with a Judge.—Hathaway and the Doctor.—Personal Appearance.—Enters the Army as Colonel of the One Hundred and Forty-first Regiment.—Attachment of his Officers to Him.—Ill Health.—Compelled to Resign.—Continued Sickness.—Scene of his Death.—General Characteristics.**

No man was ever more ardently attached to his profession than Samuel G. Hathaway; he regarded it as "the great avenue to political influence and reputation, whose honors are among the most splendid that can be attained in a free State, and whose emoluments and privileges are exhibited as a prize to be contested freely by all its members." He believed the science of law to be "the perfection of all human reason." As a student, he reduced the study of it to those methodical rules which are adopted in the acquisition of any science; still he did not sacrifice to his profession

the general improvement of his intellect and heart. Never was there a more unconfined mind than his, and it may be cited as a practical example of the benefits of that general culture of the intellect which forms one distinction of our times; but which some dread as unfriendly to original thought; but as has been well said, the mind is diffusive, and accordingly, its natural progress is from one to another field of thought; and that wherever original power, or creative genius exists, far from being distracted or oppressed by the variety of its acquisitions, it will see more and more common bearings—more hidden and beautiful analogies in all the objects of knowledge—will see mutual light shed from truth to truth, in whatever topic it would unfold. This was well understood by Mr. Hathaway, and this rendered his mind singularly harmonious—a well adjusted whole.

He was accustomed from his youth to drink from the fountains of classical literature, but he possessed no pedantry or undue fastidiousness. In the midst of his most trying professional labors, he often surrendered himself to the enchantment of literary reading—of Oriental fiction—of the strange and beautiful creations of “Araby the blest.”

An ample fortune gave him every opportunity for the cultivation and enjoyment of his taste.

To indigent literary men, his hand was ever open. The following circumstance is only one of the many that characterized his intercourse with them. Several years before his death, a distinguished poet of our own State, who still lives and is known to fame, but who, like many that court the Muses and linger around Parnassus, was then poor; happened to be in the city of New York, much in need of means to extricate himself from embarrassment. While deeply studying how and in what manner to obtain pecuniary relief, he happened to meet Mr. Hathaway, with whom he was acquainted, coming out of the Supreme Court room in the City Hall.

“Ah, Colonel, how do you do? I am very glad to see you,” said the poet, shaking hands with the former.

“I am very happy to meet you, and how is it with you and the republic of letters?” said the colonel.

“You know, Colonel Hathaway, that all republics are ungrateful, but the republic of letters is especially so, and I am just now a victim of the latter,” said he of the Muses.

“I am sorry to hear this; it cannot be that the *vox populi* demand your oppression,” replied Mr. H.

“Oh, no,” said our friend, “it is only this, I am sorely oppressed for the want of a sum of money, and as I always give my particular friends the preference on such occasions, I desire that you will loan me the amount I need.”

Mr. Hathaway learned that the sum he desired was one hundred and fifty dollars. As soon as it could be counted, the poet was rejoicing in the possession of the money. With many thanks, and promises of an early payment, he hastened from his benefactor to his importunate creditors.

Time passed on, a year rolled away, and in the multiplicity of business, the event had nearly passed from the memory of Mr. Hathaway, when one day he received by express, a box of considerable size, quite heavy, and apparently well filled. Upon removing the cover, he saw that it contained a large number of neatly bound books, which, upon examination, proved to be the recently published works of the poet to whom he had loaned the money in New York. Taking the books from the box, he discovered, neatly written on the inside of it, the following couplet:

“Bards are birds of various prey,  
Ye gods, why pounce on Hathaway?”

It was enough; the lender was generously paid, and, as he afterwards said, the books more than paid

the principal, and the poetry paid the interest compounded.

Colonel Samuel G. Hathaway was born at Free-town, in the county of Cortland, on the 18th day of January, 1810. His parents were the late Major-General Samuel G. Hathaway, and Sally Emerson, of Solon, Cortland county. The families of Hathaway and Emerson, are both of English descent; that of the former has a known genealogy, which extends far back into English history. In the long and eventful life of General Hathaway—in the various positions which he occupied—in the many posts of public duty which he filled—in the many instances which his life affords of untiring energy, and devoted patriotism, a true representative character of our Republic is developed, which impresses its own appropriate teaching on posterity; for, in the language of inspiration, “No man liveth, and no man dieth unto himself.” It was quaintly said by one of the kings of Arragon, “Dead men are our best instructors.” General Hathaway was one of those who aided in making the desert bloom. He was a pioneer of central New York.

Alas! how fast they are passing away from earth, these sons and daughters of a day of peril, toil, and hardships. Their stern virtue, their unbending integrity, their enterprise and industry, laid the foundation for the wealth, the culture, the refinement of our day. Most of them sleep beneath the soil they loved so well, and which they made almost as rich as the vale of Cashmere. Wealth and fashion have changed their good old customs, their homely, but time-honored institutions; yet on the hillside, and in the valley, their green graves are venerated spots, and their spirits seem to linger by the forest and the stream, while the murmuring breeze breathes a gentle, but not unwelcome, requiem for them. Let us fondly cherish the memory of the pioneer. “Let not ambition mock their useful toil.” Amid the events of our day their memory will come to us, like a voice

from the past, with many hallowed associations, which bind their names to every spot where they fought so well the battle of life.

“ And these—of whose abode,  
Midst her green vallies earth retains no trace,  
Save a flower springing from their burial sod,  
A shade of sadness on some kindred face  
A dim and vacant place  
In some sweet home.”

Among such men Mr. Hathaway was a leader whom they delighted to honor; and whose interest he ever labored to advance and promote. At the organization of Cortland county, which took place in 1808, he settled at Solon, where he continued to reside until his death. In the spring of 1814, he was elected member of Assembly from Cortland county. In the spring of 1813, Daniel D. Tompkins was triumphantly re-elected governor, over Stephen Van Rensselaer, his opponent. The war with England was then raging, and such was the ardent, energetic and patriotic support which Mr. Tompkins, in his previous administration, had given President Madison in the prosecution of the war, that he became the darling of the then victorious Republicans, and “The Farmer Boy of Westchester,” as Mr. T. was then called, “was toasted at every gathering of that party.”

General Hathaway entered the Legislature the firm and unswerving friend of the president, the close, intimate and influential supporter of Governor Tompkins; and their friendly relations continued through life. In the year 1816, the General acted with Enos T. Throop, Martin Van Buren, Peter B. Porter and others, in securing the nomination and election of Mr. Tompkins to the vice-presidency of the United States. Mr. Monroe received the electoral vote for president. Mr. Hathaway was again elected to the Legislature in the year 1818. Cadwadader D.

Calden, and Ogden Edwards, of New York city; Stephen Van Rensselaer and William A. Duer, of Albany; William B. Rochester, of Steuben; Erastus Root, of Delaware, and William C. Bouck, of Schoharie, were then members of Assembly — while the Senate was composed of such names as Martin Van Buren, Abraham Van Vechten, Samuel Young, Peter R. Livingston, Moses J. Cantine, Jabez D. Hammond.

Those were days when talent, ability, probity and honor were sternly demanded of those who sought legislative and other official honors. In those days cupidity, speculation, and infamous panderings to sources of wealth, were not known by law-makers. In those days ambitious, inefficient, ignorant, bad men did not push themselves into high places. In those days men did not prate, in halls of legislation, of morality, patriotism, and even religion, in accompaniment to the ring of the dollars which had just bought their souls. Politics was not then the reeking cesspool where men fatten and grow rich on corruption—men, who yesterday were the Lazaruses whose sores were not even licked, and who to-day revel in putrid magnificence.

General Hathaway was elected a State senator from the old sixth Senatorial district in 1823, during the administration of Governor Yates. He was elected a representative in Congress from the then seventh Congressional district in the year 1832, and took his seat in 1833.

It was during the second session of this Congress that Richard Lawrence made a bold and intrepid attempt to assassinate President Jackson, "which produced great sensation at the time, and which, if the consequences had been equal to the apparent purpose, would have signalized the day by a horrible catastrophe." The attempt was made in the portico of the capitol, at the funeral of the Honorable Warren R.

Davis, member of Congress from South Carolina, just as the president, with the secretary of the treasury, Hon. Levi Woodbury, on his left arm, was leaving the rotunda. Mr. Hathaway and General Root were a few paces in their rear, when a person stepping forward from the crowd in front of the president, within two yards and a half of him, leveled a pistol at his breast.

A loud and sharp report instantly followed, which was supposed to be the report of the pistol, but which was only the explosion of the percussion cap. The man instantly threw the weapon upon the ground, and drew another, ready cocked, from his pocket, which he presented at the heart of the president, and another loud report reverberated through the portico; this, too, proved to be merely the explosion of the cap; the pistol did not discharge.

All this was done so rapidly and adroitly that no one had time to interfere with the attack until all was over. In a moment a scene of indescribable terror and confusion ensued; many believed that the president had been assassinated. The old hero himself exhibited that dauntless courage which ever characterized him in times of peril. He did not observe the assailant until after the discharge of the first cap, when his attention was directed to him by the report. The man was then in the act of presenting the second pistol. Lifting his cane, the general sprang like a lion upon his antagonist, but, before reaching him, the explosion of the cap took place. The next instant the President was near enough to strike him with his cane, exclaiming, "Leave him to me, and, by the Eternal, he will never do that thing again"; but by this time Mr. Woodbury, Generals Root and Hathaway, had reached the assassin, and he was at once prostrated upon the floor. Upon examination, the weapons proved to be a pair of elaborately finished pistols, of the Derringer order. They



were perfect in all their parts, and carefully charged with powder and ball.

There was nothing discovered which could prevent their discharge. The next day, in presence of the secretary of the navy, and other distinguished gentlemen, they were re-capped, the charge which had been inserted by Lawrence still remaining, and, at the first attempt, they were both discharged; the balls which they contained penetrated several inches into a stick of hard timber, exhibiting at once the deadly nature of the weapons which had so mysteriously failed when presented at the heart of the president. His escape was, indeed, most wonderful, and a grateful nation saw in it the hand of Omnipotence—the shield of Him who controls the destinies of nations.

President Jackson laid his hand upon the Bank of the United States with the energy of a giant, and that powerful institution which controlled the money marts of the nation, I had almost said of the world, writhed in his grasp like the fabled Laocoon, Neptune's priest, in the folds of Minerva's monsters. Rage and bitter defiance followed the fearful contact. The nation was convulsed from center to circumference; but the genius, the power, and the irresistible determination of Jackson prevailed, and the Bank, with all its power and influence, fell conquered and helpless at his feet.

The attempt at his assassination was believed by his friends to have been planned by the friends of the Bank, and for a short time it was openly charged upon them. But, upon due examination, it was ascertained that Lawrence was hopelessly insane; having no motive whatever in his attempt upon the life of the president, except the vagaries of a mind in ruins.

After retiring from Congress, General Hathaway returned to Cortland county, and ever after declined all civil office. He was, however, until a period near his death, an acting major-general of militia in this State, having held that office for many years. He

died at Solon on the 2nd day of May, in the year 1867, in the eighty-seventh year of his age.

Colonel S. G. Hathaway prepared for college principally at the Cortland Academy. He graduated at Union College when he was twenty-one years of age. While at college, he had a much esteemed friend, who was a student at law, and who, during the winter, taught a district school to aid him in procuring means for the prosecution of his studies. During one of his college vacations, young Hathaway visited his friend, spending the afternoon in the school room. It was a dull place for the gay and active young collegian. This soon became apparent to the teacher, who exerted himself to create some interest for his friend. Classes were called for Hathaway to inspect. Lessons were rehearsed, hard words were spelled, and hard problems in arithmetic solved, but all to no purpose, the school room was the empire of dullness to the visitor. The schoolmaster found himself pushed to extremities for something to interest his friend. In this manner some time passed away, when suddenly the man of the rod called out—

“James Buck, come here!”

This command was addressed to a dirty, squint-eyed, mischievous looking boy, apparently twelve or fourteen years of age, who happened just then to be demeaning himself quite reputably. The boy obeyed, looking the very picture of injured innocence.

“Take off your coat, sir,” said the teacher, seizing a formidable looking rod which lay upon a table near by.

“O, dear, I hain’t been doing nothing, no how. Bill Jones wanted to give me a great launking doughnut just now, but I wouldn’t take it, ’cause I wanted to be good,” blubbered the urchin.

“Take off your coat, I say!” said the teacher, flourishing the whip.

“You ain’t going to lick a feller for being good, are you?” roared the boy.

“Take off your coat!” thundered the teacher.

Seeing no other alternative, he obeyed, and the master gave him a good, thorough, old-fashioned whipping, during which the boy continued to scream, “Oh, hold up, hold up! I didn’t take Bill Jones’ big dough-nut; I didn’t do nothing, no how. Oh, hold up! hold up!”

The whipping over, the boy put on his coat and resumed his seat. Hathaway, during this scene, was obliged to cram a handkerchief into his mouth, to prevent his roaring with laughter at the queer ejaculations and gyrations of the boy.

“What on earth did you whip the boy for? I didn’t see as he had done anything to deserve it,” said Hathaway to the teacher, as they were walking home after school.

“Hath,” replied the schoolmaster, “I saw that it was getting confounded dull, and I felt so sorry for you, that I didn’t know what to do. So I called up that boy and thrashed him for your especial benefit.”

“But the boy had done nothing to deserve it,” replied Hathaway.

“Never mind that; he seldom goes a half day without deserving a thrashing, and I’ll give him credit for this one the next time he deserves the gad. So he has lost nothing, and I made it interesting for you, Sam,” replied the teacher.

Subsequently, the schoolmaster became a distinguished and successful lawyer, continuing his friendly relations with Mr. Hathaway through life. It was the delight of the latter to relate this story before his friends on festive occasions, always ending by saying, “It is true, you know;” to which the latter would reply, “Yes, it is as true now as it ever was.”

Immediately after graduating, Colonel Hathaway entered the office of Hon. Jonathan L. Woods, a lawyer of high standing, residing at Cortland village. Mr. Woods represented Cortland county in the Leg-

islature of this State with much ability, in the year 1832, and during his life he retained the confidence and respect of the bar and of the people generally.

After continuing one year with Mr. Woods, Hathaway was invited by Hon. Hiram Gray, of Elmira, to enter his office as a student. The offer was accepted, and he removed from Cortland to Elmira, in August, 1833. At this period, Judge Gray had fully entered upon that field of successful and extensive professional practice that led to the high position which he has attained as a lawyer and a judge. He had once been a resident of Cortland, having for some time pursued his legal studies there. Here he first became acquainted with Mr. Hathaway, whom he regarded as a young man of uncommonly ripe understanding, and possessing many rare and engaging qualities.

Under the care and superintendence of Judge Gray, Mr. Hathaway progressed rapidly in his studies; he was a close and methodical student. The science of law opened to him a vast field of intellectual research; and he regarded it not only as a rule of action, but as a system of ethical and inductive philosophy, through which the intellect and heart are alike invigorated and enlarged; a science which is intimately connected with the great objects of thought, and the great interests of life—a theme which has summoned as its follower, all orders of mind, the scholar, the statesman, the student of nature, and the observer of life's great drama. To the casual observer, it is sometimes regarded as a system of technicalities disjointed from philosophy, from literature, and from liberal research—a system through which justice and equity is often too finely filtered to answer the great ends for which it was designed. But this is a Utopian view, founded, perhaps, on observing the career of legal martinetts, instead of liberal and high-minded lawyers. In studying law, Mr. Hathaway was not satisfied with simply ac-

quiring the "familiar weapons with which lawyers war with one another." It was not his object to become expert, but profound.

He completed his legal studies with Judge Gray, and was admitted to the bar at the October term of the Supreme Court, held at Albany, in 1836. John Savage was then chief justice, and this was the last term at which that eminent and learned jurist presided. He retired from the bench in January following, spending the remainder of his days in dignified retirement, upon his estate at Salem, in the county of Washington. Mr. Hathaway, immediately after being called to the bar, formed a copartnership with Hon. James Dunn, of Elmira, who was subsequently appointed first judge of Chemung county, by Governor Wright. This relation continued but one year. After its termination, Mr. Hathaway entered into partnership with his preceptor, Judge Gray.

This firm existed until the year 1846, when the senior member was appointed one of the circuit judges of the State. Judge Gray had previously been elected to represent the then twenty-second Congressional district in Congress.

The Constitution of 1846 provided that the judges of the Supreme Court should be elected by the people. In the convention which formed this Constitution, the question of an elective judiciary was one of the great subjects for discussion. The propriety of submitting so important an office to the vicissitudes of political parties, and political interests—to the corrupting influence of partizan strife—of rendering its high and dignified functions a prize for scrambling party politicians and petty demagogues—was doubted by many liberal and reflective minds. But happily, with some exceptions, the doubts and fears which existed against an elective judiciary have proved groundless, and to-day the Empire State has a bench which loses nothing when compared with the learned and illustrious judges of the past.

Judge Gray was elected a justice of the Supreme Court at the judicial election, which took place soon after the new Constitution went into operation. His official term continued four years, at the expiration of which time he returned again to the practice of his profession, simply because he was ardently attached to it, and because he could not endure to be an idle spectator of an arena, wherein he had been so long and so successfully a contestant.

After the appointment of Judge Gray, Colonel Hathaway formed a copartnership with Hon. A. S. Diven and James L. Woods. The former had been a distinguished and successful member of the Allegany bar, which was composed of men of much more than ordinary ability and learning—of such men as William G. Angel, Martin Grover, Luther C. Peck, George Miles, Samuel S. Haight, and others. A bar within whose pale John Young, of Livingston, John B. Skinner, of Wyoming, Selden, of Rochester, Howell, Cruiger, and Hawley, of Steuben, often appeared. The firm of Diven, Hathaway & Woods soon became one of the most prominent and successful legal firms in the State. It continued in successful operation fifteen years, and was dissolved by the death of Colonel Hathaway.

Colonel Hathaway represented Chemung county in the Legislature of 1842-43. In the session of 1842, the subject of State finances engrossed the attention of both branches of the Legislature to a large extent. On the part of many there was a bitter and determined hostility to the prosecution of the public works: and this winter a law was passed which suspended the public works, and imposed a direct tax, pledging a portion of the canal revenues as a sinking fund for the extinguishment of the public debt. Azariah C. Flagg was then comptroller. He was an able, methodical, keen, and sagacious financier, a warm personal and political friend of Colonel Young, who was distinguished for his antagonism to internal improve-

ments. It has been said that the State was indebted to Mr. Flagg for whatever evil flowed from the famous measure known as the stop and tax policy. But Colonel Young was really the originator of that policy. On the 25th of April, 1839, as chairman of the Senate Committee on Finance, he presented to that body his celebrated report. It was able, logical, scholastic. It denounced, in the most bitter and sarcastic manner, the existing system of internal improvement. As it was generally read by all parties, it accelerated the growing hostility to the prosecution of public works, and led to the enactment of the great stop law.

“Should a quack doctor,” said Mr. Young, in his remarkable report, “propose to his patients that he would duly open their veins and feed and nourish them with their own vital fluid, they would probably ask him whether it would be more nutritious after having passed through his hands than it was at present; and whether it would be an ‘internal improvement’ to suffer the pain of reiterated venesection and pay his fees besides? But if the quack should go a step farther, and propose to apply their blood to the use of others, or to the benefit of the favored few, then the cheat would be obvious. When a State empiric, however, urges the same process upon this great community; when he proposes to fix the tourniquet of law upon the body politic, and make a deep incision into the jugular vein, causing a depletion of forty millions of its wealth, thousands of robbers known as corporators, are prompt to applaud the experiment, to hold the bowl and to adjust the bandage.”

On this financial and internal improvement question the Democratic party were divided. Colonel Young, Mr. Flagg, Mr. Barker, Michael Hoffman and others favored the stop and tax policy, while Mr. Seymour, Mr. Bouck, Mr. Croswell, Mr. Beardsley, and many other distinguished Democrats, opposed it. Of course the Whigs threw their strength where it would most distract and divide the Democratic party.

In politics, Colonel Hathaway was a Democrat. He inherited his political faith from his father. His attachment to the Democratic party might have been expressed in the strong and beautiful language of the daughter of Moab, "Thy people shall be my people, where thou diest will I die, and there will I be buried."

He possessed thought, vehemence, fire, mirth, and wit. Though the ground on which he trod was that of legislator, lawyer, and logician, "he delighted to pluck the flowers that sprang spontaneously in his path, while he trampled in disdain the far-fetched and tawdry exotic." A sharp and polished sarcasm was at his command, which, like the spear of Ithuriel, often exhausted the force of an opponent's argument, with singular facility. Yet he was dignified, gentle, conciliating, often commanding and imposing. He entered ardently, but consistently, into the consideration of the great questions before the Legislature. He took a statesmanlike and liberal view of the internal improvement and finance question, and coincided with Dickinson, Seymour, Bearseley, and Crosswell.

On the 5th of February, 1842, Colonel Hathaway delivered a speech in the Assembly on the internal improvement and stop law, then pending before the Legislature, which won the highest commendation and applause from all parties. In portions of it he went far above politics and parties. He spoke of the sacred duties, and the awful responsibilities of the Legislature. He boldly rebuked legislative abuses and errors which had passed current for years. This speech was delivered with a clearness of reason, a variety of illustration, a felicity of diction, and a glowing imagery which at once stamped him a successful orator, who was master of his subject and himself; finally, it "blended instruction with delight."

"There should," said Mr. Hathaway, "be an honesty of purpose in this matter. All questions here should be absorbed in that of the general wel-



fare, and the advancement of the interest of our great State. What are politics or party compared to this great question? When, sir, it comes to be understood that politics is a game, and that those who engage in it but act a part subservient to their own aggrandisement, that they make this or that profession, not from an honest conviction, or from any intent to fulfil them, but as a means of deluding the people, and through that delusion to acquire power or wealth; when such professions are made only to be entirely forgotten, the people will lose confidence in public men; the politician, aye, sir, and the legislator, will be regarded as a mere juggler—the honest and the patriotic, as well as the cunning and the profligate—and the people will become indifferent and passive to the grossest abuse of power, on the ground that those whom they elevate, under whatever pledges, instead of reforming, will but imitate the example of those whom they have expelled.”

Such was the language and such the sentiments of Mr. Hathaway in 1842. Did not his words have a prophetic meaning? Have not the people become indifferent and passive to the grossest abuses of power? Who can deny that the symptoms of the present day indicate a deep and growing propensity to regard all matters of legislation as measures of private speculation and advancement? Rich and powerful corporations are constantly petitioning the Legislature, both State and national, for franchises, privileges and immunities, which enable them to disregard all individual rights, and at length to defy the Legislature itself.

This indifference to the great evils of which Mr. Hathaway spoke twenty-eight years ago, has been increasing down to the present time; but, however dormant and stupid the people now are, the time will come when they will awaken with terrible earnestness to the dangers that surround them.

In the fall of 1842, Colonel Hathaway again con-

sented to accept the nomination for member of Assembly; he was triumphantly elected, and took his seat in that body in January, 1843. Mr. Bouck had been elected governor, and was inaugurated on the first day of January, 1843.

Notwithstanding the great victory of the Democratic party in the election of 1842, it was evident that a collision between the two factions of that party was inevitable. It was soon ascertained that Colonel Young, Mr. Flagg and others, of the Radical side of the party, would submit to no compromise which did not recognize their right to control all party machinery — while, on the other hand, Mr. Dickinson, Seymour, Beardsley, Croswell, and others, held a position equally uncompromising. Of course, this rendered the position of Mr. Bouck one of great difficulty and embarrassment. The governor was not a great man; his chief distinction was not talent, although he had fine powers of intellect, a capacity of attention, a thorough knowledge of men and their relations. He could easily understand their preferences and prejudices, a faculty which, in usefulness if not in splendor, often surpasses genius. His primary characteristic, however, and that which gave him peculiar weight and influence, was the force of moral principle — a force which, with him, operated with the steadiness of a law of nature, and which suffered no portion of his life to be wasted. He was a self-made man, a true representative of American institutions and privileges. He early learned to appreciate and value the talents and ability of Mr. Hathaway. Upon national politics, and upon some questions of State policy, the Democrats were united. Mr. Davis, of Troy, was elected Speaker. His election was, in some sense, the result of a compromise between the factions. As a tribute of respect to Mr. Hathaway, he was made chairman of the Judiciary Committee, a position which his talents eminently qualified him to occupy.

During the winter of 1843, Colonel Hathaway in-

roduced a bill into the Legislature modifying the stop law of 1842. This bill provided for the completion of the unfinished public works in the State. An immense sum of money had already been expended upon these works, and at this time they were in various degrees of progress; some of them were nearly completed. The bill was drawn with great care and prudence, and united every element of conciliation. It was strongly supported by many of the ablest Democrats in the House. Mr. Hathaway, in a speech delivered in favor of it, clearly, ably and liberally reviewed the whole question of the stop policy, and internal improvements. His allusion to the report of Colonel Young on this subject, was exceedingly happy.

“The author of that report,” said Mr. Hathaway, “is a fierce dogmatist, armed with a splendid intellect, a bold, gigantic pen, a beautiful sophistry, over which the pinching and narrow policy of the miser presides. He is the Saul of Tarsus of the times, exceedingly mad at the great improvements of the day, and breathing out vengeance against them. He should, however, study the signs of the times, and wait the descending inspiration of coming events. It is unfortunate for the country that he has so many adherents in this House, who are wasting their voices like Baal’s prophets, in crying to dumb elements, or sleeping Pantheistic gods, while others are going about like well-meaning but over-slept watchmen calling the hours of midnight, while the morning is paling their lanterns.”

He successfully demonstrated that the damages resulting from this suspension would equal, if it did not exceed, the cost of completing the public works. But such was the prejudice of the majority against their prosecution or completion, that Mr. Hathaway’s bill was defeated. The position taken by him and his friends on this question, however, has been fully sustained by subsequent events.

The legislation of that day, on the subject of internal improvements, was governed by the same narrow policy which always springs into existence in the light of improvement and advancement. It was like the ceremony of Galileo's abjuration of his "system of the world;" "when that master spirit of his age—that high priest of the stars—that representative of science—that hoary sage, whose career of glory was near its consummation—was compelled to bow before ignorance and prejudice—before a mistaken respect for errors which had become venerable from their antiquity—before the assembled cardinals of Rome—pledging himself that he would never again teach the doctrine of the world's motion and the sun's stability." But although he was driven back from his splendid theory, in shuddering admiration, yet its truths have become immortal.

Thus, the question of internal improvement has passed into manifestations of success, from progress to progress, until distance between the Atlantic and Pacific is annihilated, and through a continent the two oceans hear each other's voices. But all improvement is a victory won by struggle. It is especially true that those great periods from which we date the most rapid movements of the human mind have been signalized by conflict. Men of natural softness and timidity of character stand appalled before the energies of great and progressive minds.

Mr. Hathaway was no exaggerator, no enthusiast; he had the capacity of distinguishing what tended to the public good, and he possessed the courage to sustain his conviction of the right, even at the expense of an ephemeral popularity. Hence, as a legislator he considered himself as the servant of his constituents, whose duty it was to advance and promote their interest. After retiring from the Legislature in 1843, Colonel Hathaway declined another nomination, and applied himself to the practice of his profession. While discharging his legislative duties he became connected

with certain speculations, which subsequently resulted very favorably for him, and which, with the large income he derived from his profession, soon placed him in affluent circumstances.

After leaving the Assembly Mr. Hathaway never held any political office, except that of supervisor in the city of Elmira; yet he was regarded as a prominent leader of the Democratic party in the State, and he was often termed "the Democratic War-horse of the Southern Tier." In the fall of 1856 he received the nomination for Congress in his district. Honorable J. M. Parker, of Oswego, was the opposing candidate. But as the Democracy in the district was hopelessly in the minority, he was of course defeated. He was again nominated in 1862, while in command of his regiment in Virginia. This nomination was made without his knowledge or consent. He was opposed by Colonel R. B. Van Valkenburg, the Republican candidate, who was elected. Absent as he was, and unable to give the canvass the least attention, still he was strongly supported, receiving a vote which was highly complimentary and flattering to him. The love and devotion of his political friends were cheering and grateful to his heart, were acknowledged all his life, and were recognized even to the day of his death.

For many years Colonel Hathaway was principally engaged in the various courts in which he practiced. He was a powerful and successful advocate, and possessed the real powers of a legal orator. He was often irresistible before a jury. Frequently, when a cause seemed hopelessly lost, he would, by a sudden thought—a skillful change of procedure—turn defeat into victory. Hence his greatest strength as a lawyer was before a jury; and yet he could successfully conduct a close legal argument. He could be successful in those cases where the law is illumined by nothing save the beauty of logic, the power of reason and the force of analysis. "He could detect the sophistries, dissipate the obscurities, obviate the doubts and disen-

tangle the subtleties in which zealous ingenuity involved a case. In the trial or argument of a cause he always controlled his temper. But meanness, treachery or fraud, touched by his sarcasm, started into their naked deformity. Often affectation and hypocrisy would writhe under the lash of his irony."

But usually, his arguments were conducted with a direct and sober earnestness, and so framed as to convince rather than amuse. Though frequently persistent and importunate, in urging his points before a court, yet his courtesy and ready wit protected him from anything like arrogance or impudence. It is related of him, that upon one occasion, while engaged in the trial of an important case, before a distinguished judge with whom he had always been on terms of great intimacy, he offered certain evidence, to which the counsel opposed objected. The judge sustained the objection, ruling that the evidence was inadmissible. But Hathaway was not thus easily to be disposed of, and he made a desperate struggle to give the evidence to the jury.

"Will your honor allow me to state another reason why I deem the evidence proper?" said he.

"Certainly," said the judge, and the reason was given with great ingenuity and force.

"Still I think the testimony should not be received, even in that view of the case," said the judge, stating the grounds upon which he founded his opinion.

"But perhaps there is another view of the case, which if your honor will allow me to suggest it, may obviate the difficulty in your honor's mind," said the colonel.

"I will hear you," said the judge, "although it is clear to my mind, that the testimony cannot be received in any point of view."

Hathaway presented a new theory as to the admissibility of the evidence, explaining his position at some length. But the judge was inflexible, and ordered the counsel to proceed with the cause.

“I am so confident that this evidence should be received,” said the persisting counsel, “that I wish to be heard further.”

The patience of the judge was now exhausted.

“Colonel Hathaway,” said he, quite sharply; “what do you think I am sitting here for?”

“Now your honor has got me,” said the colonel, with one of his peculiar smiles.

The infinite good humor and piquancy of this reply, set the bar, spectators, and jury in a roar of laughter, in which it was difficult for the judge himself, who loved a joke, to refrain from joining. With great gravity and dignity, however, he ordered the counsel to proceed with the cause.

Mr. Hathaway disliked all pretension, conceit, and pedantry; he had a particular hatred for all far-fetched phraseology. He was engaged in trying a case of malpractice, when a very pretentious M. D. was introduced as a witness against his client. While giving his testimony, the doctor removed his glasses, and assuming a very pompous manner, said:

“Mr. Hathaway, I see, sir, that you do not understand the agglutination in cases of chronic peritonitis.”

The counsel made no reply at the time; but in the course of his remarks to the jury, he said:

“Gentlemen, Doctor S—— has very frankly informed me that I am entirely ignorant of what he calls, ‘agglutination in a case of chronic peritonitis.’ I really think the doctor is in the same condition himself. He reminds me of another learned member of his profession, who, more frank than our doctor here, said to a lawyer one day: ‘Esquire, I cannot comprehend what you meant yesterday, when you talked about *docking an entail*.’”

“My dear doctor,” replied the lawyer, “I don’t wonder at that. I will explain the meaning; it is, doctor, doing what you never can do—*it is effecting a recovery*.”

It is said by De Tocqueville, in his *Democracy in America*, "That the special information which lawyers receive from their studies, insures them a separate station in society, and that they constitute a sort of privileged body, in the scale of intelligence. This notion of their superiority constantly recurs to them in the practice of their profession. They are the masters of a science, which is necessary, but which is not generally understood. They serve as arbiters between the citizens, and the habit of directing the blind passions of the parties in litigation, inspires them with a certain contempt for the multitude." Although this is the opinion which one of the ablest and most distinguished French advocates and writers conceived of the American bar, yet it must be taken with many exceptions. The class of lawyers which came under his observation while in the United States, might justify this statement. But that class who are justly regarded as the ornaments of our bar, and of which Hathaway was a representative, are so nearly allied to the people, that they cannot arrogate to themselves any such superiority as is conceded to them by De Tocqueville. It is a distinguishing feature of the American lawyers, that they unite with their fellow citizens, in all that advances and promotes the progress of society; believing that to be distinguished and great, they must serve, instead of ruling their fellow citizens.

In person Colonel Hathaway was above the middle size. His form was well proportioned, erect and manly. In contests of the forum, in the excitement of debate, there was a lustre in his eye, an eloquence in his look, a dignity in his manner, which riveted attention. His voice was flexible, under good management, and easily accommodated to the sentiment he was desirous of expressing. In hours of relaxation from business, he was characterized by benignity and mildness; no one who ever met him in a friendly circle, can easily forget the attraction of his



manner and conversation. He carried into society a cheerfulness and sunshine of soul, that rendered him a pleasing associate, a companion of inestimable value. Possessing an inexhaustible fund of anecdotes, and an inimitable manner of relation, he never failed to delight and interest when telling them.

In the summer of 1862, Mr. Hathaway entered the service of the United States as colonel of the 141st Regiment N. Y. S. V. In the language of one of his eulogists, "It was urged upon him, that in the depleted state of this and adjacent counties, the regiment could not be filled without the imprimatur of his name. He gave it, and after having received his commission, and publicly announced his intention to go to the field, eighteen companies sprang into being, as if by magic, each one striving to be one of the ten who should march to battle under the colors of Colonel Hathaway."

On the 15th of September, 1862, his regiment left Elmira and moved to the front. As soon as he decided to enter the service he directed all the energies of his mind and talents towards perfecting himself in military knowledge and discipline. Having, however, served some time as an officer under his father, he was not without military experience. By the time his regiment was ready to move, few persons in the volunteer service were more thoroughly qualified for the field than he, evincing, that like many members of the bar, who have left the forum for the field, he could entwine the laurels of Justinian with those of the soldier. As an evidence of his military capacity he was soon placed in command of the Second Brigade of Abercrombie's Division, as acting brigadier-general; a position which he filled with great credit to himself and satisfaction to those under his command. With him the common soldier was as much the object of his solicitude and care as he upon whose shoulders glittered the badge of superiority and command. "Himself as sensitive as a

woman, he invariably extended to others the same high-toned treatment which he demanded for himself." Such characteristics could not fail to render him a popular commander.

But the fatigues and exposures of camp life soon produced a disease of the heart, which at length compelled him to leave the service. Early in 1863, with great reluctance, he left his regiment and returned to Elmira. The scene of parting with his officers and men has been described as extremely affecting. "I leave you," said he, as if speaking with a prophetic view of his approaching death, "I leave you, perhaps to die at home, far from the scenes of war and strife. But had it pleased Heaven to have directed otherwise, I could have wished for another fate; I could have wished to have died leading you to battle and to victory. But wherever I go, in health, in sickness, in all that awaits me in life, I shall watch with unceasing interest your welfare as a regiment and as individuals; and when war's trials, dangers and sacrifices are over, with duties well done, that you may be gathered to happy homes in the bosom of peace, duly remembered by a grateful country, will ever be the prayer of him who can command you no more."

On many a war-worn cheek tears glistened as Hathaway rode from the camp, never again to return. On many a weary march, on many a blood-stained field, amid the harvest of death, his regiment gloriously sustained itself. But many, ah! how many, who marched with Hathaway from their beautiful camping-grounds at Elmira, fell, where showered

"The death bolts deadliest, the thinn'd files along,  
Even where the thickest of war's tempest lowered."

True to their duty, true to their country, they died "upon the ark of her magnificent and awful cause;" then let them not be forgotten; for in their blood are laid our nation's altars. Let us remember that in

their once happy homes a something that vibrated with joy on the heart is still, "and the magic of the voyage of life is no more."

After his return to Elmira, Colonel Hathaway placed himself under the care of a distinguished physician of that city; but as his disease had become so firmly seated that it would not yield to medical treatment, under the advice of his physician he sought the home of his father, in Cortland county. He arrived there in the beginning of March, 1864. He lingered, in dignified submission to that Good Being, "Who has been our refuge from one generation to another," and his submission was entire; there was no alloy of impatience or distrust. He looked upon approaching death with the calmness of a philosopher, the resignation of a martyr, the confidence and hope of a Christian, whose silent communion with his God, whose secret prayers were the votive and acceptable offering of a heart and soul turned from the withering and fading scenes of the world to Him who is the fullness and source of life, thought, beauty, power, love and happiness.

Will it be said that Hathaway was not a professing Christian? Those who knew him best, early learned that within his heart there was a spot sacred to Christian ingenuousness and sincerity. But it never was polluted by pretense, by affected fervor, by cant and fictitious zeal, for he believed that truth is "an emanation from God, a beam of His wisdom, and as immutable as its source." The scene of his sickness and suffering developed his religion, and he bowed to the will of his Maker without a murmur. "I am in God's hands, and His will be done," were sentiments which he uttered, not with commonplace and mechanical formality, but issuing, as his tones and countenance discovered, from the very depths of his heart. Thus he bore his long and painful sickness. During all his illness it was his constant wish that he might die in the morning; and there ever came to him a soft weird

whisper that his prayer would be granted. Was it the voice of unseen spirits hovering near—of loved and lost ones of other days, waiting for him on the confines of eternity?

As the 15th day of April, 1864, drew to a close, a beautiful sunset lingered upon the landscape in front of his room. He watched it until the last rays faded away; then whispering to those standing by, he said:

“So the sun of my life goes down, but it will rise again to-morrow.”

The morrow came, and with its first bright sunbeams death came as gently, as softly, almost as sweetly as that glorious sunlight fell upon the morning air. And thus, in the fifty-second year of his age, died Colonel Samuel G. Hathaway.

He was endowed with a liberal heart—with generous and high-toned sentiments—with a mind keenly attuned to every sense of honor—with a modesty that redeemed him from envy—a geniality which made him welcome in every circle. Whatever were his faults, they floated only on the surface of his character; they could not live in the recesses of a heart like his. As the dew-drops will dim the polished surface of the Damascus blade, but leave no mark on dull, rough iron, so the polished and graceful cast of his mind made error more conspicuous in him than in coarser minds; for, in common with all that is mortal, he had faults—perhaps many—who has not? “Still, they are but the fragments that surround the lofty edifice in its admirable whole—the broken frieze torn from its pediment, leaving still the glory and the grandeur of the Parthenon.”