

LIVES

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.

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HENRY WELLS.

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HENRY WELLS was born at Kinderhook, October 13, 1794. His father, Dr. Benjamin Wells, was a highly respectable physician and surgeon. He was educated in the City of New York, and commenced his private practice there, but after a few years he removed to the County of Columbia. At the commencement of the Revolutionary war, he entered the Continental army as surgeon. During the occupation of New York city by the Americans, he was connected with the military family of Major-General Putman. He was afterwards promoted to the position of surgeon on the staff of Washington, where he served two years. At the close of the war, he returned to Kinderhook and resumed his practice. At length, attracted by the glowing descriptions which were given of western New York, he was induced to visit that distant region. Finding the reality equal to the description, he selected a place of great natural beauty, on the banks of the Crooked Lake for a residence. This was

in the town of Wayne, Steuben County. Returning to Kinderhook, he formed a colony of his friends, and removed to "their new home in the west." At this place, Henry spent his boyhood days, excepting the time in which he was absent acquiring his education. At a very early age, he exhibited a thoughtful, intelligent mind, a love of study and investigation; his father, therefore, determined to give him the advantage of a good education. Accordingly, he was sent to a select school for boys, which was taught in his father's neighborhood, by a Presbyterian clergyman, who was an excellent English and classical scholar. Under the instruction of this gentleman, he made great proficiency, which encouraged his father to give him better advantages. Accordingly, on attaining his fourteenth year, Henry was sent to the Kinderhook Seminary, then one of the most celebrated institutions of learning in the State. Here he remained until he was eighteen years of age, when, owing to the delicate condition of his health, he returned home, where he resided until the spring of 1814. Dr. Wells had now retired from practice, turning his attention to the cultivation of a large farm. Under the advice of his father, Henry engaged in such labor upon the farm as his health would permit. His leisure hours were devoted to a review of his studies, and to a critical reading of the English classics. War with England was then raging; young Wells soon caught the martial spirit which everywhere pervaded the State, and he determined to enter the service of his country. In the spring of 1814, the war spirit became intensified by rumors of invasion from the British, which were rife throughout the State, partly founded on conjecture, and partly on reliable information. The whole western and northern frontiers were in a state of wild excitement and alarm. Governor Tompkins prepared to meet all threatened danger with patriotic activity, which inspired confidence in the people, while it gave the Empire State the proud distinction of being fore-

most in sustaining the patriotic Madison in his stern grapple with the invaders of our country. Troops were rapidly raised, perfected in military discipline, hurried to the field, and everywhere the roll of the drum called the patriot to duty. Early in the spring of 1814, a company was recruited in the county of Steuben; and was commanded by Captain John Kennedy, of Bath.

Among the first who enlisted into this company was young Wells. He was elected sergeant, and immediately commenced the work of perfecting himself in military knowledge and drill. He soon became a good tactician, and was promoted to the rank of ensign. His company was attached to Colonel Hopkins's regiment of infantry, and early in the following July, took the field at Black Rock. After frequent skirmishes with the enemy, the regiment crossed Niagara river, and joined the American forces then holding Fort Erie and the works surrounding it.

This once powerful and important fortress stands on the Canada side of the Niagara, nearly opposite Buffalo. Its gloomy walls, dilapidated bastions, and ruined casemates stand out grim and solitary against the western sky, telling of sieges, battles, attacks and repulses, of death "in the imminent deadly breach," and finally of all "the pomp and circumstance of war," with its havoc and destruction. Many a vanished year has swept over those walls, black with the miner's blast upon their heights. Heroes have trod the spot, and on their ashes the careless visitor now treads.

In this fortress, and in the works about it, on the 16th day of September, 1814, lay the American army. Below, and partly surrounding it, were the British forces, who, at an earlier period of the war, had been driven from Fort Erie by the Americans. Determined to regain possession of so important a work, and annoyed by the Stars and Stripes floating de-

fiantly over their own dominion, they had fiercely besieged it for a long time.

Day after day their shot and shell rained upon the fort, while their works and parallels were gradually approaching it. Nearer, and nearer, they advanced, guided by their skillful engineers, and now their commander confidently believed that within a few short hours, he would re-enter Fort Erie with his victorious columns. But on the morning of the 17th of September, the Americans suddenly moved from their work, fell like a thunder clap upon their besiegers, and after a short but sanguinary battle drove them from their works to the plain of Chippewa, with a heavy loss in killed, wounded and prisoners.

In this battle young Wells exhibited the cool intrepidity of a veteran. As his regiment entered a piece of woods in front of the British, they opened a murderous fire of grape and canister upon it, and many of his comrades fell by his side; but the enthusiasm of the Americans could not be checked, and over the dead and dying, they rushed to victory. As they were entering the works of the enemy, a British sergeant discharged his musket at young Wells; the bullet grazed his side, and mortally wounded a young soldier who was partly in his rear. The next moment the sergeant was captured, and would have been despatched on the spot, had not Wells interfered and saved his life.

Soon after the battle of the 17th of September, Lieutenant Wells moved with his regiment across the river to Black Rock. He continued in the service until the middle of the following November, when he resigned and returned to his home.

While a student at Kinderhook, he decided upon entering the legal profession, and soon after retiring from the service, he entered the office of Vincent Matthews, at Bath, as a student at law.

Dr. Wells had made the acquaintance of this eminent lawyer in the city of New York, while the

latter was pursuing his legal studies in the office of Col. Troupe of that city. A warm friendship commenced between them, which continued after they had become residents of Steuben county, and through life. The ingenuous character and respectful manner of Henry, his candor, intelligence and general information, early attracted the attention of Mr. Matthews, and he readily received the young man into his office, extending to him every advantage in his power for the prosecution of his studies. Mr. Wells became at once a close and diligent student, reading, not simply to prepare for examination, but for the purpose of enabling himself to discharge with honor the high and responsible duties of a counselor at law. He adopted the maxim of Lord Bacon: "It matters not that you read much or that you read constantly, unless you read with understanding and with memory." It was not long before the fruit of this devotion to study began to exhibit itself. "After he had been in my office a year and a half," said Mr. Matthews—speaking of young Wells—"he could draw a strong and practicable brief, with copious and correct reference to authorities."

This attention to his legal education did not cause him to neglect his classical and literary studies. Through life he was a close student of England's great poets. He particularly admired the healthy honesty and manliness developed in the style and sentiment of Pope; the dignified and solemn utterances of Young; that noblest monument of human genius, *Paradise Lost*; the intuitive sagacity, the keen appreciation of life, and vivid picture of the passions, which appear on the page of Shakespeare; the freshness, vigor, and beauty of a rural life, which the pen of Thomson describes. Indeed, there is nothing, even in the *Bucolics* or the *Georgics* of Virgil, which is as redolent of the fragrance, of the forest and the field, or which brings home more forcibly the as-

pects of pastoral life, and the vicissitudes of the changing year, than Thomson's Seasons.

From the deep and splendid philosophy of the law, its great liberating and enlightening means of human action, Mr. Wells turned to such works as these, and drank in the inspirations of their authors. Those who knew him best, those who saw most of him in his hours of relaxation from professional and judicial labor, or those who watched him in that fatal decline, while yielding with dignity to the last enemy, as a hero yields to a conquering foe, will remember what interest and grace, the study of such works lent to his conversation. And yet he was apparently a man of literal and prosaic character.

There is often in the heart of the cold, the callous and unimpassioned, a place where beautiful thoughts and bright images, invested with colors which the passions throw over them—sympathies with suffering virtue—touches of tenderness, and even poetic feelings, live and glow, unknown to all the world, just as a beautiful and brilliant gem sometimes flashes its solitary radiance in a cold and distant chamber, clear, sparkling, but almost unknown.

After remaining in the office of General Matthews three years, Mr. Wells was fully prepared for his examination; and in October, 1817, he was called to the bar. Hon. John B. Skinner, of Buffalo, was also in the same class, and admitted at the same time. Three years after their commission as attorneys, these gentlemen were in the counselors' class together, and both admitted to the degree of counselor. Subsequently, they often met at the bar as opponents, while they were often associated in the trial of causes. In the commencement of their professional life, a mutual respect was engendered, which increased as years wore away.

After a long and brilliant professional career, Mr. Skinner has retired from the bar, to the enjoyment of the comforts and happiness of domestic life.

Immediately after his admission, Mr. Wells opened an office at Bath, and commenced practice. While a student, he made many friends among the leading business men of Steuben county, who held his probity and abilities in high esteem. They now gave him their patronage and influence. With such aid, joined to untiring industry, he soon gained a respectable and remunerative practice.

In June, 1818, he married Miss Margaret Haight, a daughter of General S. S. Haight, then a prominent member of the Steuben bar. Much domestic happiness resulted from this union; and that attachment which commenced in the early summer of life, continued undiminished amid the sober scenes of autumn and the approach of winter.

In the commencement of his practice, Judge Wells often appeared in justices' courts, where he frequently met lawyers of ability and high standing; although these courts were, as they are now, a kind of practicing school for young lawyers, the skirmish grounds for older ones. He met, in these tribunals, every variety of mind and ability.

Some years before his death, he related in the presence of the writer, a scene which occurred in one of those courts: "An action had been brought before a justice, by a man against his neighbor for shooting a hog, the property of the plaintiff. Mr. Wells appeared for the defendant. For the plaintiff there appeared a famous pettifogger, noted for his pompous eloquence, his brazen impudence, his sharp and cunning tact, and his want of everything like a systematic knowledge of the law. A jury was impaneled; the case was opened to them by the plaintiff's counsel in the following pathetic *and moving language*: "Gentlemen of the jury, you are impaneled here to try a cause of the vastest importance to this community. The defendant has been guilty of a crime and cruelty which the annals of crime has no equal, which shows him to be the most carniferous wretch that walks this

celestial foot-ball. Gentlemen, when I think of it, I can hardly help gushing out in a flood of tears and crying out with one of the Apostles, 'Oh, that my head was waters, and mine eyes a fountain of tears!' While this poor unoffending hog, whose only bad trait was an innocent waggishness, and that confined to one of his most extreme extremities, was quietly ripping the miserable grass that grew in this defendant's wretched pasture, thinking of no harm, this cruel monster, armed with a deadly gun loaded to the muzzle with missiles of death, stealthily approaches his poor unconscious victim, and discharged the whole deadly contents of that still deadlier gun right into his solar system, who with one fearful squeal of agony, fell dead on the ground!"

One of the earliest cases which Judge Wells conducted in the Supreme Court, was an action brought by one Breed, a widower with several children, against a wealthy, middle-aged widow lady for breach of promise. The novelty of the action, and the position which the parties occupied in the community, attracted much attention to the suit. The plaintiff was a near neighbor of the defendant, and was often employed by her in various matters. He alleged that she had frequently promised to marry him; that after some delay the day for the happy event was fixed, which for various reasons, both parties desired should be kept secret. The day came, but the lady refused to perform her part of the contract; and the disconsolate lover of forty-five was left to exclaim with the old poet, "Frailty, thy name is woman."

To assuage his grief, and to bring consolation to his wounded heart, he sought the redress which the law in such cases vouchsafes, and the lady was prosecuted for the sum of five thousand dollars. She alleged that no thought of marrying the plaintiff ever entered her heart; that the matter was concocted by the plaintiff and his friends to extort money from her.

Mr. Wells fully believed the lady, and prepared to defend her with all his energies.

An issue was joined, containing these allegations in substance, and the cause came on for trial at Bath, before Hon. William B. Rochester, then one of the circuit judges, in October, 1823. On the trial the plaintiff attempted to prove the engagement by circumstances, but failed. At length a witness was placed upon the stand, who testified distinctly to the circumstance of having been present at a conversation between the plaintiff and the lady, in which she stated the conditions of the engagement and the time when the marriage was to take place; his evidence, given with intelligence and much candor, seemed to fix the fate of our fair defendant, and her defense was *regarded as hopeless*. The lady in great distress of mind insisted to Mr. Wells, that the story of the witness was a fabrication, that she had never seen the man but once before, and then he came with the plaintiff to her residence for the purpose of purchasing a horse; that she, with the two men, talked about the price of the animal for some time, and they left. Unfortunately for her there was no other person present. Mr. Wells had no recollection of having met the witness before; and yet his countenance was familiar to him. The more he studied the features of the man, the more he was convinced he had somewhere met him before.

Suddenly it occurred to the puzzled lawyer that about the time when the fellow pretended he heard this conversation between the plaintiff and the lady, he was attending court at Angelica, and that a man bearing a strong resemblance to the witness was tried, convicted, and sentenced to jail for some offense. Mr. Wells believed the witness to be that person. But how could he make this appear? If he could do so, his client would succeed; if not, then she must be disastrously defeated. A moment's reflection decided his plan of action. After a close cross-

examination of the witness, in which nothing favorable to his client was elicited, the plaintiff rested in triumph. Before opening the cause for the defendant, Mr. Wells begged the indulgence of the court for a few moments, for consultation. He immediately despatched a trusty person to Angelica with a subpoena for the sheriff of Allegany County, and for a copy of the record of the witness's conviction from the clerk of that county. He then proceeded to open the defense to the jury, and of course, he occupied considerable time. When he had finished his opening remarks, it was night, and the hour for the adjournment of court had come. The next day, before the trial was concluded, the sheriff of Allegany, and the record of conviction were in court. The first, established the identity of the witness, the second, the fact that he was in jail at the very time he pretended he heard the admission of the lady.

This of course turned the tables, and the lady was triumphant. To the young lawyer, the result of this case was very gratifying, and added much to his reputation. Applying himself with untiring industry to his profession, he soon attained a very extensive practice, not only in Steuben, but in the adjoining counties. Among the lawyers practicing at the Steuben bar, Mr. Wells commenced his practice, were Vincent Matthews, William B. Rochester, Edward Howell, Daniel Cruger, General Haight, Mr. Woods; names which distinguished and adorned the bar. Soon after, Mr. Matthews removed to Rochester. Early in 1823, Mr. Rochester was appointed a circuit judge, and Mr. Cruger was in Congress. Thus, many formidable competitors were removed, leaving Mr. Wells a more open field of labor.

In October, 1824, he was appointed District-Attorney of Steuben County; an appointment which was highly complimentary to him as a lawyer. His predecessor was Daniel Cruger, who was distinguished throughout western New York as a lawyer and writer,

eminent in Congress for legislative abilities of high order, and a politician of indomitable energy and power. His life appears in another part of these sketches.

Soon after Judge Wells was appointed District-Attorney, a case occurred which called into action all his professional and intellectual powers. It was the well known case of the People v. Douglas. The defendant in that case was charged with having murdered a citizen of Steuben county by the name of Ives, under circumstances of great atrocity and cruelty. The victim was found in a piece of woods mortally wounded, in a speechless and dying condition. Who the perpetrator of the foul crime was, remained for some time unknown. At length suspicion pointed to Douglas; he was arrested, indicted, and in January, 1825, brought to trial. The matters relied upon for convicting him were merely circumstantial, but they pointed to him as the guilty man. The prisoner had many friends, and some means. He prepared for a vigorous and determined defense. Hon. Edward Howell, Zibra A. Lealand, and S. S. Strong, Esqs., of Bath, were retained to defend him, while the prosecution was of course conducted by Judge Wells. The trial occupied several days, and was exceedingly interesting. Hon. William B. Rochester presided, assisted by Hon. James Norton, then first judge of Steuben county. Every effort was made to save Douglas which his eloquent and able advocates could use. Many abstruse and difficult questions of law arose, and were discussed, many thrilling circumstances developed, in all of which Mr. Wells exhibited ability and learning equal to the occasion.

Though he did not possess the highest order of talent, yet his mind was well-balanced, strong, and well stored with the learning of his profession. Nor was he an easy and fluent speaker; but his calm judgment, good taste, and ready memory rendered him

convincing and interesting. His argument to the jury was regarded as an able and powerful effort, and the accused was convicted. But on the trial, a circumstance occurred which set aside the verdict of the jury, and gave him a new hearing. While the trial was in progress, during one of its recesses, the jury visited a place where spirituous liquors were sold, and partook of refreshments, some of them drank intoxicating liquors, though not enough to affect them in the least. But the counsel for Douglas alleged this act of the jurors as a ground of error. The case was carried to the General Term of the Supreme Court, and on the 25th of February, 1825, it came on for argument at Albany: the conviction was set aside, and a new trial granted to the prisoner. This case is reported in the 4th of Cowen.

In due time the new trial took place; the counsel for Douglas again interposed a powerful defense. The dangerous tendency of circumstantial evidence was duly urged to the jury. A few years previous to this trial, a work entitled "Theory of Presumptive Proof," appeared in the legal world. It was a profound and able dissertation against this kind of evidence, and in the language of Judge Livingston it had furnished many criminals with a ready magazine of defensive armor.

This work was used with power and ability on the trial of Douglas; its argument and theory, as well as that of the defendant's counsel, was met by the firm, clear, and flexible logic of Wells. The jury were made to understand that circumstantial evidence is often more convincing than positive proof; as witnesses may be mistaken or mislead, whereas a concatenation and fitness of many circumstances, made out by different witnesses, can seldom be mistaken, or fail to elicit the truth, and that although such evidence should be received with caution, nevertheless, circumstances are often so strong as to amount to satisfactory proof. And thus it was in

the case of Douglas ; no eye save Omniscience witnessed the deed : but there was a train of circumstances which pointed indubitably to his guilt. He was therefore convicted and executed. In the discharge of his official duties, Judge Wells was called upon to conduct several important prosecutions for the people during his term of office, and he was successful in most of them. He never had an indictment quashed or set aside, notwithstanding the great technicality of those instruments, and the care required in drafting them. He continued to discharge the duties of District-Attorney until the year 1829, when his increasing civil business compelled him to resign. Hon. Edward Howell was appointed in his place.

Mr. Howell is a resident of Bath, and the oldest member of the Steuben bar. Several years ago he retired from a large and distinguished practice. His career as District-Attorney, representative in Congress, his weight of character at the bar and in private life, his example as a Christian gentleman, has caused the esteem and regard of all to follow him into retirement.

After practicing at Bath ten years, Judge Wells removed to Penn Yan, where he continued to practice with success and distinction until elected a justice of the Supreme Court. As a lawyer, he was not one of those

“ Who pit the brains against the heart,
Gloss misdeeds—and trifle with great truths.”

At the bar, he gained the attention of the court and jury by the calm, candid manner in which he presented his case. Though not a rapid thinker, though sometimes slow in coming to conclusions, yet such was the perfect preparation which he gave his cases, that he was always formidable as an antagonist. He was like a heavy piece of artillery, not easily changed about, but always well and effectually aimed. Courteous and composed in his manner, when he arose to discuss a legal question or address a jury, he al-

ways commanded respect and attention. And yet, as has been before stated, he was not an eloquent speaker, not one of those who engage the fancy of their hearers, without affecting their understanding. His arguments were solid and plain, bearing directly upon the point. He was once engaged in the trial of an important cause, at Waterloo, in which the counsel opposed to him, made an exhibition of his eloquence, and, in his conceit, a sarcastic allusion to the plain speaking of his opponent. In his reply, Mr. Wells simply remarked that he never attempted the high flights of oratory which the counsel opposed to him did; and he could only say of him as Junius did of the king, "The feathers that adorn him support his flight; strip him of his plumage and you fix him to the earth," and that he should endeavor, in a quiet way, to take some of the gentleman's plumage from him, just enough, he trusted, to keep his good friend out of the clouds; and he succeeded to the admiration of all present.

The constitution which was formed in the convention of 1846, made a radical change in the judicial system of the State. It provided for the election of judges by the people; it abolished the Court of Chancery, and gave equity powers to the Supreme Court; it annulled the old distinctions between actions, and provided for a Code of Procedure which abrogated all the nice mathematical rules which governed "the mutual altercation of parties," known as the pleadings in a suit, and which had existed for ages. At first, the bar beheld these sweeping innovations with dismay. The Court of Chancery had come down from the days of the Aula Regia; it had been sustained in England through the reign of every monarch from Henry II., to Victoria; while the office of chancellor had existed from the days of Maurice, in the reign of William the Conqueror, to the present time; its powers and duties gradually merging from the mere keeper of the great seal, to the highest judicial office in the nation;

and in this country, from the establishment of a colonial government, to the days of Walworth, who saw it pass away with its honors and dignities. The Court of Chancery was one of the great tribunals of the State; its power arising chiefly from supplying the defects of the common law by giving a remedy in a class of cases, for which that law provided none, and by disregarding certain arbitrary and absurd rules of the law courts. Thus it possessed many advantages, in a country like this. But it had become in some respects a tedious and expensive piece of legal machinery, with its chancellor, vice-chancellor, its masters, examiners, exception masters, taxing masters, &c. These offices were all abolished, and the new judges were given equity power.

An elective judiciary was regarded as the most dangerous innovation of the new constitution. "The character, influence, and position of American judges, are unlike those of any other nation. In many respects, their official influence is unbounded. They come more directly in contact with the people than the English or French judges, and thus their influence extends beyond the limits of courts. In the recreation of private life, as well as the turmoil of public business, abroad and in legislative assemblies, the judge is constantly surrounded by men, who are accustomed to regard his intelligence as superior to their own; and having exercised his power in the decision of causes, he continues to influence the habits of thought and the character of the individuals who surround him."

It was urged, that to bring the judiciary within the range of politicians, and party managers, would tend to its corruption, would render the judges dependent upon partizan manipulators. But fortunately, the selection of judges, is now almost exclusively committed to the lawyers; and as has been well said, "When the people are intoxicated by the impetuosity of partizan zeal, or of any ephemeral excitement, they are

checked by the almost invisible influence of its legal counselors. Besides, the judge must be a lawyer, who, independently of the veneration and respect for the law, for regularity, and order, which he contracted in the study of his profession, derives an additional desire to maintain those legal attainments, and that high character, which commended him to his professional brethren, and which thus elevated him to a distinguished rank among his fellow citizens." And thus the judiciary is silently, but powerfully protected. Against the appointment of judges, it was urged that an ambitious executive, to perpetuate his own power, and promote his designs, could appoint corrupt and inefficient judges, on party grounds, or remove them, to subserve party interests, or prejudices. Able and pure judicial officers, could be removed to promote the interests of demagogues. Hence, it is most prudent and safe to intrust the judiciary to the many, rather than the one man power.

In July, 1847, the first judicial election under the new constitution took place. In the seventh judicial district, Thomas A. Johnson, of Corning, Henry Wells, of Penn Yan, Samuel L. Selden, of Rochester, and John Maynard, of Auburn, were elected justices of the Supreme Court. These gentlemen were lawyers of the highest and purest professional character. As they had adorned the bar with their learning and talents, they added lustre to a bench, which, since the adoption of the first constitution had been the admiration of the nation and the world; a bench, whose opinions are unquestioned authority wherever judicial decisions and opinions are known or respected. For twenty-two years and over the judges of the seventh judicial district have upheld the learning, the dignity, and purity of the Supreme Court of the State of New York, and what has been said of these judges, may well be said of those who at this time occupy the bench of the State; and thus an elective judiciary has

been a success and a triumph in the State of New York.

Judge Wells discharged the duties of a justice of the Supreme Court, nearly twenty-one years. The legal reports of the State bear ample testimony to his ability and research. In the language of another, "He entered upon the discharge of his duties with great industry and directness of purpose, and the student of the earlier volumes of *Barbour's* and *Howard's Reports* will find the traces of his judicial labors to be quite as numerous, and quite as valuable as those of any other member of the court. His well considered and well reasoned opinions, both upon new questions of practice, and upon questions of principles of law, may be reckoned by the hundreds, and his contributions thus made to our judicial lore would in the aggregate fill volumes. For clearness of expression, thoroughness of discussion, for all practical purposes, calmness, impartiality, and all absence of pretension or show, they are certainly above mediocrity. His opinion of the leading case of *Field v. The Mayor of New York*, may be cited as a fair illustration of his manner in this particular. It settled a new and important question by language just sufficient to express, in no ambiguous terms, the views of the court, and to indicate clearly, the limits and boundaries of the decision; and did all this, with a citation of authorities, not ostentatious, but sufficient to render his reasoning impregnable."

His decisions were distinguished not so much by boldness and excursiveness, as by clearness, steadiness, justice and right. They derived their strength from that fairness, rectitude and simplicity, that love of the true and the useful which entered so largely into his moral constitution. Accordingly they are characterized by impartiality, and graduated by an independence, which placed him far above the reach of influence from any source, and beyond the corruption of politics, or the regard of party. He had

strong partizan sentiments, and adhered to them with legitimate firmness. But, on the bench, in the discharge of his judicial duties, party, politics, and friends were alike forgotten, and he stood the High Priest of the law, in whose censer unhallowed incense never burned.

The modest firmness with which Judge Wells adhered to his opinions, is exhibited in the case of *Newell v. The People*, in the Court of Appeals. The case involved doubtful questions of law, and attracted public notice. He dissented from the opinion of all the members of the court, standing entirely alone, and wrote an opinion of which the following is the concluding part :

“In the conclusions to which I have arrived, I regret to find myself standing alone among the members of the court of *dernier resort*, who take part in this decision. This circumstance, perhaps, should lead to a distrust of my own judgment, even if it failed to shake my confidence in the correctness of the views I have expressed. However this may be, I yield to the decision, if not willingly, yet respectfully.”

He was in every sense, whether at the bar, on the bench, or in private life, the true gentleman. And he did much to establish those agreeable amenities which now exist between the bench and the bar. The younger members of the profession will remember with pleasure the kindness, suavity and patience with which he listened to their first forensic efforts. Many who came, conscious of ability, but with shrinking timidity, were encouraged by him—their mental resources drawn out, and they were led up to a confidence and self-possession which now sustains them in the collisions of professional strife.

The faults with which, as a judge, he was charged, were principally that he was too slow in the dispatch of business at the circuit, and that he did not possess that rapidity of thought which was necessary for a

judge at *nisi prius*. Without doubt there were some grounds for this complaint; and yet the correctness with which he disposed of business, was an ample offset for this fault; and it is remarkable that his decisions made on the trial of causes, were seldom reversed by the appellate court.

His repeated election by the people sufficiently attests the esteem and confidence in which he was held in the district, and the record of those frequent elections, is the highest encomium that can be paid to his memory.

Judge Wells died at Penn Yan on the seventh day of March, 1868, in the seventy-fourth year of his age. Mrs. Wells survives him. Their family consisted of nine children—two sons and seven daughters. Of those, four daughters only are living. They are Mrs. T. B. Hamilton, Mrs. T. A. Johnson, Mrs. S. B. Robbins, and Mrs. J. B. Welch. The late Samuel H. Wells, an eminent member of the Yates County bar, was a son of Judge Wells. He died on the eighteenth day of October, 1867, aged forty-eight years.

There is a melancholy interest attached to the history of Mr. Wells. Within the space of a few years, his wife and all his children, three in number, were taken from him by the hand of death. His wife, an amiable, lovely, and accomplished woman, to whom he was tenderly attached, died a few months previous to her husband. The stricken husband and father thus beheld his household treasures torn from him, his earthly idols snatched away. In the depths of his heart he felt that they could never come to him, but that he should soon go to them. A few weeks he struggled with his sorrows, a few weeks he lingered around his desolated home, and then followed his loved ones, "where the beautiful fade not away."

For many years, Judge Wells was a conscientious and an undeviating member of the Presbyterian Church. His religion, though strong and earnest, was in unison with his whole character, calm and

rational; though of adamantine firmness, it was attractive, cheerful, lovely. He was a most severe and critical judge of his own conduct.

He looked upon religion as intended to regulate our intercourse with one another here, by adding the ordinary sanctions of temporal morality; the rewards and punishment of another life, "according to the deeds done in the body." He was not satisfied with apparent religion, but was particularly interested in those instructions from the pulpit, which enjoin a deep, living, all pervading sense of Christian duty and responsibility; and he united with his Christianity a deep interest in the history of good and great men, a veneration for enlightened legislators—for the majesty of the laws, a sympathy with philanthropists, a delight in efforts of intellect, consecrated to a good cause. For he possessed that congeniality with spiritual and lofty truths, without which, the evidences of religion work no deep conviction, without which, faith cannot assert her heartfelt, her glorious work.