

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.

BY
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CLIENT," ETC.

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BENJAMIN F. BUTLER.

Born at Kinderhook.—His Early Life.—Is Sent to Hudson Academy.—Makes the Acquaintance of a Young Lawyer.—Friendship of the Lawyer for him, and the Reasons.—Butler becomes a Student in his Office.—The Lawyer's Career.—Is Elected to the Senate.—Martin Van Buren, at Hudson.—Removes to Albany.—Hostility of the Federalists to him.—Boswell's Description of Wilberforce applies to him.—His Characteristics.—Butler Accompanies him to Albany and Continues his Studies with him.—Butler as a Law Student.—Unites with Dr. Chester's Church.—Incidents.—Is Admitted to the Bar, and becomes a Partner of Mr. Van Buren.—His Marriage.—The Cases of *Wilkes v. Lion*, and *Varick v. Johnson*.—The *Medcef-Eden Case*.—Aaron Burr Associated in the Cases with Butler and Van Buren.—Interesting History of the Cases.—Butler's Early Cases in the Supreme Court and Court of Errors.—Appointed District-Attorney.—Appointed to Revise the Statutes of the State with John C. Spencer and John Duer.—The work which Butler Performed on the Commission.—The manner in which the work was Performed.—Character of the Work.—Adopted in other States and in England.—Butler Elected to the Assembly.—His Labors in that Body.—John C. Spencer and Ambrose L. Jordan in the Senate.—Character of the latter.—Regent of the University.—Butler Tendered the Office of United States Senator.—Declines.—Appointed a Commissioner with Theodore Frelinghuysen to Settle Difficulties with New Jersey.—Appointed Attorney-General of the United States.—Popularity of this Appointment.—Appointed Secretary of War in Jackson's Cabinet.—Holds both Offices.—Butler's Opinions as Attorney-General.—Felix Grundy.—His Opinion of Butler.—President Van Buren.—Butler Resigns his Seat in the Cabinet.—Subsequently Resigns the Office of Attorney-General.—Removes to the City of New York.—Resumes the Practice of Law.—Is Tendered the Office of Secretary of War under Mr. Polk.—Declines.—Death of Mr. Butler's Wife.—He Visits Europe.—Sudden Return, and the Cause.—Mr. Butler and Judge Kent Engaged in the great Case of *Levit v. Curtis*.—Butler's labors in it.—Effect on his Health.—Butler's Professional Life Referred to by Judge Kent.—Other Incidents in his Life.—His Literary Tastes and Acquirements.—Characteristics as a Lawyer.—Visits Europe.—Interview with Judge Kent before Sailing.—Travels on the Continent.—Reaches Paris.—Sudden Death.

BENJAMIN F. BUTLER was born at Kinderhook landing, in the county of Columbia, on the 17th day of December, 1795. His father began life as a mechanic, but subsequently became a merchant. He

was a man of strict integrity, industrious in his vocation, and honorable in his relations to the society in which he lived.

The early years of young Butler were passed in attending a common district school and aiding his father in his store. He is represented as a boy of respectful manners and of an intellectual turn of mind. While engaged in the store, he became a favorite of a Presbyterian clergyman whose residence was near his father's. He was a man of great piety, generous and high-toned, liberally educated, and endowed with those qualities which are naturally attractive to young and ardent minds.

This good man duly appreciated the constitution and susceptibilities of Butler's mind, and inscribed upon it traces of light and beauty which were never effaced. He sowed in it those seeds of religious truth which bore abundant fruit in after years. From this clergyman Benjamin received his first knowledge of books, and his first impressions concerning the pleasures and business of life; by him he was taught to explore the records of past ages, in order to observe the footsteps, not only of conquerors, statesmen, and orators, but of the benefactors of the human race, "martyrs to the interests of freedom and religion, men who have broken the chain of the captive, who have traversed the earth to bring consolation to the cell of the prisoner, and whose lofty faculties have explored and revealed useful and ennobling truths."

At fourteen, Benjamin was sent to the Hudson Academy. His mental endowments, close application and pleasing manners gained him many friends, and he was regarded as a promising scholar.

A few years previous to this, young lawyer who had practiced some time in a small village in Columbia county, received the appointment of surrogate of that county, and removed to Hudson. He had the reputation of being a young man of much promise, and had already gained a respectable position at a

bar where William W. Van Ness, Elisha Williams, Thomas P. Grosvenor, and Jacob Rutsen Van Rensselaer were the ruling spirits. These gentlemen were Federalists, distinguished at home and abroad, not only for their legal ability, but also for their political influence. But the young lawyer was an active Democrat; and as this was a period when political dissensions were peculiarly bitter, he was compelled to contend in the political, as well as legal arena, against these powerful men. For him, the struggle was trying, and the labor intense, for he had no powerful friends and no wealth to aid in the unequal contest. But he belonged to the people, his sympathies were with them, and they in turn regarded him with favor. With this advantage, and by the most unwearied exercise of his abilities he held his ground, gaining each day in strength, popularity, and in the confidence of the community.

At the period when Butler became a student at Hudson, this lawyer had just been elected to the State Senate against a distinguished Federal politician, and in spite of a strong opposition. It was, therefore, to him, a day of triumph and rejoicing. Among those who aided him in achieving this success was the elder Butler, who had long been his intimate friend.

The senator elect extended the friendship and esteem which he felt for the father, to the son, and often invited the latter to his office and house, encouraged him in his studies, and saw with pleasure his rapid progress. When finally his academic course ended, the lawyer took him into his office as a student at law. The intimacy thus begun never ended in life.

Step by step the advocate ascended to the summit of fame, and indelibly wrote his name on the page of his country's history; that name is Martin Van Buren. The student followed closely in his footsteps; and though he did not ascend as high as his perceptor, he has yet left a bright and imperishable name, and a

personal history instructive to the student, the lawyer, and the statesman.

In the spring of 1816, Van Buren moved to Albany, where he entered upon his extraordinary professional career. His devotion to the Democratic party, his incessant efforts in its behalf, subjected him to the fierce attacks of the proud and powerful Federal leaders, who early foresaw that he must be disposed of ere he became a lion in the pathway. No effort was spared which tended to his political and even social degradation. His humble origin was often referred to in language of contempt, his want of early education was enlarged upon, his character traduced, and his talents depreciated. Being slight in form and moderate in stature, his person was also sneered at; but those who watched his career attentively were reminded of Boswell's description of Wilberforce, when addressing the electors of York from the hustings. After his triumphant return in 1784, "I saw," says Boswell, "what seemed a mere shrimp mount upon the table; but as I listened, he grew and grew, until the shrimp became a whale." So with Van Buren; the Federal leaders adhering to the custom in politics, denounced him as feeble in intellect,—as a shrimp mentally and physically; but at the bar, in the popular assembly, his eloquence and thought caught the attention of court, jurors, and electors, and he rapidly passed beyond the reach of his assailants, who beheld him occupy one distinguished position after another until he reached the highest in the nation.

That the Federal leaders detected faults in the political character of Mr. Van Buren, cannot be denied; for with his consummate skill and ability—with his strength of character as a statesman, he possessed those unscrupulous arts without which political power is rarely attained. One of the secrets of his success was the skill and discernment with which he selected his friends. In this, he imitated the

subtle power of Cardinal Richelieu, Buckingham, and Halifax.

When Van Buren removed to Albany, Mr. Butler accompanied him. He soon attracted the attention of several distinguished gentlemen, who regarded him "as a student of great brilliancy and promise." This reputation was justly due to him, for he studied with untiring industry ; his mind took a deep hold upon the subject he sought to investigate, and the tenacity of his memory was most extraordinary. Whatever he learned was not easily obliterated from his mind. He cultivated with great assiduity the power of reflection—one of the best qualifications that a student can possess ; yet as it is susceptible of cultivation, it is within the power of all.

While a student, Mr. Butler became a member of the Presbyterian Church then under the charge of the late Doctor Chester, and, soon after, the superintendent of its Sunday school. In this capacity he gained the affection and confidence of teachers and scholars, by means of his winning character and that unflinching devotion to duty which was his ruling trait. His addresses were short, but well considered and impressive. The devotional exercises were conducted with great simplicity of manner, but with genuine earnestness, and hence, lasting effect.

In October, 1827, he was called to the bar. In 1818, he was married to Miss Allen, a young lady of many accomplishments. She was a sister of the gallant Lieutenant William H. Allen, who distinguished himself in the engagement between the frigate United States, and the British ship of war Macedonian, in 1812, and who was afterwards killed by pirates in the Gulf of Mexico.

Immediately after he was called to the bar, he became the partner of Mr. Van Buren, a relation which continued until 1817, when the latter was appointed a senator in Congress, and partially withdrew from the profession. Such, however, was Mr. Van Buren's

brilliant reputation as a lawyer, that he was often compelled to assume the management of important cases brought to him by old clients. Among those which he consented to conduct, after his appointment to the Senate, was *Wilkes v. Lion*, and *Varick v. Johnson*, in the Court for the Correction of Errors. The labor bestowed upon their preparation was immense ; but he was ably assisted by Mr. Butler, who manifested those powers of application and research for which he was afterwards so distinguished. Aaron Burr was Mr. Van Buren's colleague.

These cases, or rather this case, for they were in fact but one case, is the well-known *Medcef Eden* case, with which the courts of the State were engaged so long that "it became as familiar as the cause of *Jarndice v. Jarndice*." It was commenced by Colonel Burr, after his return from Europe, when reduced to poverty and want, and was the great object of his life for several years. "His management of this case," says Mr. Parton, "was remarkable and characteristic. Medcef Eden was a New York brewer, who made a great fortune, and dying in 1798, left his two sons a large amount of real estate upon the island of Manhattan. The two sons were to share the property equally, and if either died childless the survivor was to inherit the deceased's share. These young men, partly through their own extravagance, but chiefly through the dishonest sharpness of creditors, ran through their property in two or three years and were reduced to poverty. Their case was submitted afterwards to the two leaders of the New York bar, Alexander Hamilton and Aaron Burr, and the question was proposed, whether the estate could be recovered. Hamilton said it could not ; Burr was of the opinion that it could. Hamilton's opinion was adopted ; no proceedings were attempted ; the matter was forgotten ; and the Edens lived on in poverty. After Burr's return from Europe, he was reminded of it by hearing of the death of one of the brothers.

Meanwhile the estate had enormously increased in value. Inquiring for the surviving brother, he found him in Westchester county, immersed in debt, and residing within a debtor's 'limits'. The result was, that Burr, moneyless and in debt as he was, undertook to recover the estate; Eden agreeing to follow his advice in all things, to be in fact the passive instrument in his hands. Burr brought Eden, his wife, and two daughters to the city, established them in his own house, sent the daughters to school, and labored with the same assiduity for their mental improvement as he had done in former times for his own daughter, Theodosia's.

"He went craftily to work. The valuable parts of the estate lay in the city itself, held by banks and other wealthy corporations. He let these alone, for a while, and confined his first efforts to the recovery of a small farm in the upper part of the island, his object being to get the *principle* quietly established, upon which to found the more important suits. The owner of the farm was informed of this intention, and it was further intimated to him, that if he would not seriously contest and prolong the suit, he should be allowed to buy back his farm on his own terms. Mr. Burr won the suit. The case was appealed. He was again successful. Then he came down upon the owners of the city lots with a pelting storm of writs of ejectment, to their surprise and alarm. Mr. Burr won suit after suit, and recovered in time a very large amount of property."

These cases involved the most intricate questions known in the law, and by the time they came to the knowledge of Mr. Butler, the points and questions to be examined were innumerable. While he was engaged on them, Colonel Burr often visited Albany, making valuable suggestions to him. A week before the argument of the first case took place, he was almost constantly by the side of Mr. Butler in the office. Mr. Van Buren was present enough of the time to un-

derstand the case sufficiently to conduct the argument. At the earnest solicitation of Mr. Burr, Mr. Butler was present at the argument of both cases, and opened the last one, much to the satisfaction of his distinguished associates.

The last causes which Mr. Van Buren ever tried before a jury, were the Astor case and that of the Sailor's Snug Harbor. They were tried in New York city, in the autumn of 1827; and in both he was assisted by Mr. Butler.

For two or three years after his admission to the bar, Mr. Butler confined himself to the Circuit Courts, attaining a respectable reputation as a jury lawyer.

In 1820, he argued the case of *The People v. Foot*. His opponent was the late Thomas J. Oakley, who was then ranked among the great lawyers of the State. Soon after this, he argued the celebrated case of *The President and Directors of the Bank of Auburn v. Blanchard and others*. He was opposed by Daniel Cady. One of his first cases in the Court for the Correction of Errors, was that of *Manahan v. Gibson*, a case of great importance. The opposing counsel was that giant at the bar, J. V. Henry.

In the argument of the celebrated case of *Troup v. Smith*, and also in that of *Morton v. Cragan*, he was associated with Samuel A. Talcott. Between Mr. Butler and Mr. Talcott there existed a warm personal friendship. The mighty intellect of the former was linked to many high-toned and generous sentiments. He who in his speeches made those magical transitions from the subtlest argument to the deepest pathos, saw in a mind like Butler's something highly attractive to him, and they were frequently associated in important cases. As we have seen in the life of Daniel Lord, on his first appearance in the Court of Errors, they were opposed to him.

Mr. Butler soon appeared so often in the Supreme Court and Court of Errors, that a history of his cases would amount to volumes. He took his place with

the ablest and most distinguished lawyers then at the bar—many of them the great lawyers of the nation.

In 1821, he was appointed district-attorney of Albany county. He had then been at the bar as an attorney four years, and one year as a counselor—which sufficiently explains his standing as a lawyer. He held that office until January, 1825. Though the labors it entailed were heavy, and the responsibilities great, yet his success was in proportion to his labor, and he retired with the well-earned commendations of the public.

Before his official term expired, a law was passed by the Legislature of 1824, appointing Chancellor Kent, Erastus Root, and Benjamin F. Butler, commissioners to revise the laws of the State; but as these gentlemen did not enter upon the duties thus assigned them, the Legislature of 1825 passed another act, by which Mr. Butler, John Duer, and Henry Wheaton, were made commissioners to revise the statute laws. Soon after this appointment, Mr. Wheaton became *charge d'affaires* to the Court of Berlin, and Mr. Spencer was appointed in his place. The participation of the latter in the revision has been referred to in another part of this work.

As has been well said by a distinguished member of the bar, “the selection of Mr. Butler, who had then so recently commenced his practice, carried with it evidence of the high estimation in which he was held by the Legislature. It was an undertaking of great hazard to his professional reputation, as well as of great labor. It necessarily involved for a time the almost entire sacrifice of his business, as he was obliged to devote himself almost exclusively to that duty. He undertook it; and, notwithstanding the prejudices which it at first encountered, it was carried through to a successful termination.” And, in the language of Judge Kent, “All who knew the indomitable energy of John C. Spencer, will readily believe that his spirit pervaded the whole work, but judging

from internal evidence, I cannot avoid believing that much of the essential excellence of the Revised Statutes, and more of the labor which adapted them to our general system of jurisprudence, the plan and order of the work, the learning of the notes, the marginal references, and the admirable index which accompanies it, should be ascribed to the labor, the patient touches of unwearied art, bestowed by Mr. Butler."

Those statutes, however, reveal the learning, skill, labor, and masterly ability of each of their great authors. If we trace upon them "the patient touches of unwearied art bestowed by Mr. Butler," if we find upon them evidence of the energy of thought, "knowledge of the law, and power of analysis," which characterized Mr. Spencer, we also find the indubitable evidence of the scholastic, mature, and lucid intellect of the gifted Duer, whose mind was replete with legal learning, rendered practical by long experience at the bar, and daily observation of our system of jurisprudence.

The revisers applied themselves without interruption to the discharge of their duties, until the completion of their work. The professional engagements of Mr. Duer, however, prevented him from fully participating with his co-commissioners in preparing the third and fourth parts of the statutes, as presented to the Legislature, although he occasionally met and advised his colleagues.

When the work was completed, the revisers, instead of arrogating to themselves all the honor which was naturally due to all who shared in it, publicly acknowledged the obligations they were under to various persons who aided them. "It is due to truth and justice," they said, "to remark that in the course of enactment, many alterations were made. Some of them were proposed by the joint committee from the Senate and Assembly to whom the several chapters were referred, and others were suggested by indi-

vidual members of the Legislature, who brought to the task the various and practical knowledge so essential to the perfection of the work ; and who with unwearied diligence devoted their time and labor to its completion."

In 1813, John Woodworth and William W. Van Ness, two of the most distinguished lawyers at the bar of the State, who subsequently became justices of the Supreme Court, had prepared two volumes called "Revised Laws of the State." The ability and research which the authors manifested in their preparation, rendered the Revised Laws of great advantage to the revisers of 1825.

"The public statutes in force at the time of the revision, constituted the base of the Revised Statutes ; while in numerous instances, the rules of the common law were reduced to a written text, and inserted in their proper place in connection with the statutory provisions on the subjects to which they relate ; and in other instances, those rules were enlarged, modified, and varied, more fully to conform to the nature of our government and the habits and exigencies of the people."

Like the laws of the twelve tables, which were engraven on brass by the jurisconsults, and set up in a public place, in order that every one might know his rights and their extent ; so the Revised Statutes dictate to every citizen his rights under the laws.

At length a new edition of the statutes was demanded by the people from all parts of the State, and the revisers were once more called to the work. They acceded to the request. The whole existing statute law of a general nature, all the acts of the Legislature, passed since 1828, were carefully examined, and the statutes themselves critically reviewed and rearranged with annotations and references to the decisions based upon the Revised Statutes, made by the Supreme Court, the Court of Chancery, and the Court for the Correction of Errors.

“In preparing this edition, the statutes collated, and the copy of the text as published, were furnished by John C. Spencer; while the labors of Mr. Butler and Mr. Duer were confined to the examination of the text so prepared, and the preparation of the extracts from the reports of the revisers, with the accompanying notes, and other matters which are inserted in the third volume.”

This new edition was reported to the Legislature at its annual session in the winter of 1836, and by appropriate acts was passed as the statutes of the State. Other editions have succeeded it, embracing the acts since passed; and they are voluminous, but indispensable works in the library of the practicing lawyer.

“The principle of the revision was wise and conservative. Acknowledged evils were removed; doubts were cleared away; the doctrines of important decisions were extended; anomalies were suppressed or reconciled; but all the essence of the old laws was preserved, and even the habits of lawyers were wisely respected.”

The statutes, when completed by these revisers compared favorably with any code of laws which had ever before appeared. They resemble in the manner of their preparation and the material of which they were composed, the works of Justinian, who in 528 appointed ten lawyers, with directions to make a selection from all the constitutions of his predecessors, including those contained in preceding codes, and modify them so that they would conform to the usages of the times, and to arrange the whole under appropriate titles. This work was known as the *Codex Vetus*. It consisted of twelve volumes, and occupied the commissioners fourteen months. When it was completed, Justinian appointed a new commission, consisting of seventeen jurists, chief of whom was Tribonian, who had belonged to the former commission. The new commissioners were directed to sub-

ject the writings of the old jurists to the same process as the previous commission had the constitutions, and the old codes ; that is, they were to read and correct (*elimare*) all the works of the ancient jurisconsults which were considered as authoritative, and to compose therefrom a body of jurisprudence which should contain nothing superfluous or contradictory, and which should take the place of those old works, excluding from the collection all that had not been authorized by the imperial authority, or sanctioned by usage. This work was contained in fifty volumes, and called the *Digests* or *Pandects*. It occupied the time of the commissioners three years, and when completed, Justinian prohibited any one from incumbering the work with the verbose interpretations with which the civil law had been inundated. Perhaps the caution of that sagacious emperor would not be out of place in the present age.

It is said that Mr. Butler, with great patience and persevering industry, investigated the plan upon which the Roman commissioners proceeded with their work, and applied the same process to the codes of modern Europe. It is no exaggeration to say that the works of the New York revisers are destined to exist as long as laws are respected and obeyed. The Revised Statutes have been adopted as models by many of our sister States ; “ while many of their provisions have been incorporated in the legislation of Great Britain, as will be apparent to any one who examines the British statutes.”

“ Mr. Butler’s exertions in regard to this great work were not confined to his proper task as a reviser ; for he was elected a member of the Legislature of 1828, and during the extra session, which convened September 9th of that year, for the special purpose of considering the proposed revision, he was indefatigable and prominent in regard to the subject. The only consideration which induced him to accept a seat in

the Assembly, was his desire to aid that body in its deliberations on the work which he and his colleagues had submitted to it, and his services were therefore invaluable. John C. Spencer was then a member of the Senate, and held the same relation to that body which Mr. Butler did to the Assembly.

“One of the most distinguished members of the Senate at this time, was Ambrose L. Jordan, of Hudson, N. Y. He occupied even at that early period an enviable position at the bar of the State ; his great learning and legal abilities are evinced by a long and brilliant professional career. He was peculiarly qualified for the work which was then before the Legislature, and entered upon it with great alacrity, devoting to it all his abilities and energies. The deliberations of the Senate upon the statutes were materially aided by him. Both Mr. Spencer and Mr. Butler publicly acknowledged the value of his services. This extra session closed on the 10th of December, 1828, all its proceedings having been harmonious, and all the provisions of the Revised Statutes having been adopted subject to such amendments as were incorporated in the act or acts by which they became the legal statutes of the State.”

Early in the month of February, 1829, William L. Marcy, one of the regents of the university, resigned, and Mr. Butler was soon after appointed in his place. It has been said that this is the only office he held that did not impose upon him responsible and toilsome duties.

In 1833, Mr. Marcy again gave him an opportunity for advancement. The former was then United States senator ; but having been elected governor of the State, he resigned his seat in the Senate. The friends of Mr. Butler desired him to become Mr. Marcy's successor ; but although his party was then dominant in the State, and there was no doubt of his unanimous nomination, he declined the distinguished honor, adhering rigidly to a determination which he

early adopted, "never to accept any office which would withdraw him from his professional studies and pursuits." Soon after this, he was appointed to another position, more congenial to his tastes and his profession.

During a period of fifty years, a dispute had existed as to the boundary line between New York and New Jersey. So serious was this difficulty, that frequently led to bloody collisions between the citizens residing near the disputed line. At length a commissioner was appointed by each State, with full power to adjust it. Mr. Butler was appointed such commissioner for the State of New York, and Theodore Frelinghuysen, for the State of New Jersey. The acknowledged ability, the large experience, and extensive learning of these commissioners, the similarity of their minds, and more than all, their great caution and conscientiousness, rendered their appointment exceedingly fortunate for both States. They gave the matter a patient, thorough, and impartial investigation, and then, in the spirit of an enlightened and liberal compromise, brought the difficulty to an adjustment which was satisfactory to all parties and to every conflicting interest.

In the autumn of 1833, before the labors of the New Jersey commission were terminated, Mr. Butler was appointed attorney-general of the United States, in place of the late Roger B. Taney, who was made chief justice of the United States.

This appointment was exceedingly gratifying to all parties, a fact which was manifested by the following circumstance. A few days before Mr. Butler's departure for Washington to enter upon the duties of his office, the citizens of Albany, without distinction of party, assembled and expressed their regard for his virtues as a citizen, and their admiration for his talents as a lawyer. Among those who addressed the meeting, were Stephen Van Rensselaer, Abraham Van Vechten, and Harmanus Bleecker. This circum-

stance alone, speaks volumes for the private and professional character of Mr Butler.

In October, 1836, while still discharging his duties as attorney-general, he was appointed secretary of war in the Cabinet of President Jackson, and held the two offices until the 4th of March, 1837. This last appointment was accepted by him with great reluctance, and only at the earnest solicitation of the president. In the department of war, there was at this time a large accumulation of business, owing to the Seminole war; "but Mr. Butler, by his assiduity, care, and systematic method, brought up the arrears of business, and left the department in a satisfactory state to his successor."

The legal opinions rendered by him while attorney-general, are written with much force and perspicuity, evincing an extended and intimate acquaintance with all the duties of the office. They abound in learning and research. The questions submitted to him were examined with a depth of thought and calm reflection, and with a large perception of relations which left no obscurity or vagueness. Indeed, his opinions were regarded as dignified state papers bearing the impress of an accomplished and enlightened mind, losing nothing when compared with those of his great and learned predecessors.

On the 10th of April, 1835, he gave his opinion on the acts of the postmaster-general, and how far they are conclusive. Perhaps none of his opinions attracted more attention or gave more general satisfaction than this. From the organization of the government down to that time, many of the duties and powers of the postmaster-general had remained undefined or uncertain. Mr. Butler thoroughly examined the duties, responsibilities, and powers of that officer, and his conclusions were entirely satisfactory to the large number of persons interested in the opinion. His learned and able successor, Mr. Grundy, of Tennessee, in referring to this opinion, says:

“My distinguished predecessor, Mr. Butler, of New York, has examined this question so thoroughly—has brought to the consideration of it so much legal learning, and has arrived at such equitable and reasonable conclusions, that I do not regard it necessary for me to spend a moment’s time in considering it, for I am confident that I could arrive at no conclusions which would differ from his.”

In March, 1838, he gave his opinion upon the duties of the attorney-general, in which, among other things, he decided that this officer has no authority to settle questions of fact, nor to give any decision or advice on questions of law, except for the assistance of the officer calling for his opinion on points stated; that he is obliged to take the facts of a case to be as they are stated to him, and to predicate thereon. His opinion, delivered May 20th, 1837, on the question of damages for the unlawful detention of vessels, exhibits a laborious and discriminating examination of a very large number of adjudicated cases, both in the State and Federal courts, each one of which is considered and compared with judicial wisdom and discernment.

His various opinions on pre-emption; on the question of extending relief to the sufferers by the great fire in New York; and others, are all characterized by thorough, systematic and learned examinations, and equitable conclusions.

On the 4th of March, 1837, President Van Buren entered upon the duties of his administration, and Mr. Butler resigned the office of secretary of war, but retained the position of attorney-general until January, 1838, when he resigned that office also. Soon after this, he removed to New York city, and resumed there the practice of his profession. He continued a resident of that city the remainder of his life. Within a few months after his removal to it, the office of district-attorney for the United States became vacant, and Mr. Butler was appointed to it. He discharged

its duties until the inauguration of General Harrison, when he resigned, and once more resumed the practice of his profession.

In 1844, Mr. Butler and Daniel S. Dickinson were the electors at large in the electoral college of the State, and cast their votes for James K. Polk. He tendered Mr. Butler the office of secretary of war, but the offer was respectfully declined, for reasons which were entirely satisfactory to the president. After his inauguration, he conferred upon Mr. Butler the office of United States district-attorney. This position Mr. Butler did not hesitate to accept, as it did not interfere with the duties of his profession. He continued to occupy it until the election of General Taylor, when he was removed.

Early in 1848, Mr. Butler, John C. Spencer and Alvah Worden were appointed commissioners to codify the laws of the State. It was the desire of the profession throughout the State, that these gentlemen should accept the trust thus committed to them, but both Mr. Butler and Mr. Spencer declined to act.

“In 1843, the former sustained a great calamity—the great irreparable calamity of his life. He was fond of domestic life. The felicity of his home was very great; but the time had come when it was to be invaded by the unrelenting enemy of man; the endeared companion of his life—who had cheered his toils and lightened his cares—who was the light and joy of his happy home,—was removed by death. It was a bereavement in which he had the deep sympathy of his friends; but it brought out the force of Christian principle by which he was ever actuated and guided, and he bore his affliction with serene resignation—although not without deep and abiding sadness.”

In the summer of 1856 he made a visit to England, but returned very soon to complete a professional engagement of great importance. This was his con-

nection with the great case of *Levit v. Curtis*, which had been before the courts a long time, and was then pending in the Court of Appeals. He was compelled to terminate his tour in Europe in order to conduct the argument of the case at a term of the court which was approaching. The case is reported in 15 *N. Y.* Some idea of its magnitude and importance may be inferred from the fact, that the statement and points in it made a book of over three hundred and six pages. The late Judge William Kent, who was associated with him in the case, in an address delivered after the death of Mr. Butler, said :

“I was engaged with him and two other lawyers in the conduct of a case, which for voluminous and complicated pleadings and proofs, was, perhaps, unparalleled in our courts. It was deemed necessary that a condensed statement of the evidence of the whole case, and legal points, with minute references to the proofs and authorities affecting every point, should be prepared for the Court of Appeals. Two of the associate lawyers were prevented by other engagements from undertaking the work ; I shrunk from it as utterly beyond my powers, and it fell to the self-sacrificing industry of Mr. Butler. Our conferences in relation to it were of daily occurrence ; and I observed, with alarm, its gradual effect on his health. Often I have left him bending over his desk, late of a July night, and found him the next morning in the same posture ; which had been varied in the interval by only a brief period of intermission, in which he has told me that sleep was often sought in vain. I remonstrated often, seriously, almost angrily. I remember he once answered me by repeating Wordsworth’s ‘Ode to Duty.’

“It was impossible to withdraw him from his work ; and thus health was wasted at the midnight taper—life itself consumed in the severe labors of his office—and when his task was finished to the admiration of his associates and his opponents, the anxious

eye of friendship saw too surely that the stamina of his constitution was gone. It enhanced our idea of his energy, to know that this too protracted labor was in part performed while mourning a bereavement the most affecting that could occur to a man of his domestic affections; and our admiration is increased when we think that he carried on his work, enduring in silence and composure, a heartfelt wound, which had touched a nerve where agony resided."

Mr. Butler's professional life extended through the long period of forty-one years—a period the most interesting and important in the legal history of the State. During this time, he practiced under the provisions of three different State constitutions, and under many innovations in our judicial system. He was the compeer of many of the great lights of our early jurisprudence, he saw many of them pass away, and when he was summoned from earth there were but few of them left.

"The student in pursuing his studies is surprised to find in all his books, such various memoranda of the professional labors of Mr. Butler. He finds his arguments in all the old, ingenious, and artificial rules of special pleading, both at law and in equity. He finds evidence of his professional learning and subtle distinctions of the English law of real property, and in all the doctrines which govern the creation and devolution of estates, the interpretation of devises and the construction of settlements and deeds, tracing with the erudition and intellectual subtlety of Fearne, Sugden and Preston, the rules which control real property, through numberless and bewildering cases, to their deep sources in the obscure recesses of the mediæval law. The books are filled with his arguments on the ordinary law questions which occupy our courts, exhibiting the extent of his studies in constitutional and commercial law.

"It is a pleasure for me to allude to his treatment of the junior members of the bar. His briefs, his

memoranda, all the treasures of his learning and fruits of his investigation were offered to his associates. He encouraged the young lawyer in his timid efforts, and unrestrainedly presented all he knew to the compeer counsel who was associated with him. He was indifferent to his position in the argument, aiding the lawyer who preceded him with suggestions or with citations of authorities; with briefs, which, perhaps, had cost him hours of studious labor, in entire abnegation of his own interests, and, indeed, unconscious of vanity or selfishness."

Mr. Butler's sense of justice and morality governed and guided him in all the duties of his profession. No reward, however great, could induce him to undertake a case which he believed corrupt or dishonest.

He was once applied to by a lady of great wealth to aid her in procuring a divorce from her husband. The application was in writing, and contained a carefully drawn statement of the facts on which she relied for success. It was accompanied by an exceedingly liberal fee. The statement convinced Mr. Butler that the lady's case had little merit in it, and that she expected to succeed by certain adroitly laid plans. Within a few days after the receipt of this proposal he returned it, inclosing in it the fee, and also a beautiful letter in which he declined to engage in the case and advised her to abandon her design.

"Even in the event of success," said he, "there will be a time in your life, when the gayety, fashion, and, pardon me, the follies and sin by which you are surrounded, will pass away with your youth, and in the eventide of your life, as you meditate upon the past, the voice of conscience will come to you, overwhelming you with sorrow and regret. I pray you, therefore, do not now in the summer of your life sow those seeds which in its autumn will produce a profusion of miseries. . . . As has been said by one wiser than myself, it must be

carefully remembered that the general happiness of the married life is secured by its indissolubility. When persons understand that they *must* live together, except for a very few reasons known to the law, they learn to suffer, by mutual accommodation, that yoke which they know they cannot shake off; they become good wives and good husbands — for necessity is a powerful master in teaching the duties which it imposes. I therefore decline to undertake your case, and trust that my words will dissuade you from making any further effort in a case which I am sure you will upon mature reflection abandon.”

This letter had its effect; it brought the lady to reflect seriously upon the step she proposed to take, and in after years she blessed the day that she submitted her case to a man like Mr. Butler.

In the year 1835, the council of the University of the City of New York, having decided to establish a faculty of law in that institution, Mr. Butler was requested to prepare a plan for its organization. He complied with the request, and on the 29th day of May, 1835, submitted to Rev. J. M. Mathews, then the chancellor of the University, a document entitled “A Plan for the Organization of a Law Faculty, and for a System of Instruction in the Legal Science in the University of the City of New York.”

Very soon after this, the council met, and adopted the following resolution:

“*Resolved*, That this council do fully approve of the plan now submitted by the Honorable Benjamin F. Butler, for the organization of the law faculty, and that the same be and hereby is adopted by this council; subject to such modifications as may hereafter be deemed advisable.”

This resolution was accompanied by the following statement of Chancellor Mathews.

“From their first incorporation, the council had very generally cherished a strong desire to place the law department of the University under the charge of

Mr. Butler. They were led to this selection both from their own conviction of this gentleman's eminent qualifications for the duties and responsibilities of the station, and from the knowledge that his appointment would meet the cordial approbation, not only of the bench and the bar in this State, but also of distinguished lawyers throughout the nation.

“This desire was naturally increased by the adoption of the plan proposed by him; and although it was well understood that his engagement as attorney-general of the United States would not permit him immediately to enter upon the duties of the professorship, it was thought that the advantage to be derived from his services, if they could be secured within a reasonable time, would justify some delay in their commencement. Under these impressions, he was therefore unanimously elected principal professor; and, as will be seen by the following communication, has accepted the appointment, and will enter upon his duties in March, 1837.”

The ability and learning with which this plan was prepared, is fully attested by the foregoing resolution and statement.

Mr. Butler's plan recommended, among other things, a course of three years' study before graduating; a certain proportion of that time, if spent in a law office, to be deducted from the course. It also recommended departments, as primary and secondary. Among the studies proposed for the third year, were forensic duties and professional ethics.

The following comments of Mr. Butler upon the last branch of study, are of the highest importance to the student, the lawyer, and the private citizen. They are entirely characteristic of him in his professional as well as in his private character.

“Under this head, the advantages of diligence and integrity may also be enforced; and the true method of acquiring public esteem, and of rising to eminence in the profession, may be pointed out and

recommended. On this subject, early and sound instruction is of the first importance. It is true that our courts, by their rules and decisions, carefully inculcate on gentlemen of the bar the high obligation of fidelity and justice, and, when occasion requires, they enforce these precepts by appropriate penal sanctions. But there are cases of chicanery and illiberality in practice, and sometimes of professional delinquency of a more serious character, which cannot be brought to the notice of courts, and therefore, pass without judicial censure.

“One of the most effectual methods of promoting so desirable an end, is to combine moral training with professional education, and to imbue the mind of the student with correct notions of the nature and purposes of his calling, and of the responsibilities which belong to it. He should be taught that though many of its duties grow out of the misfortunes, the errors, and the vices of mankind, the great object of his profession is not, as is supposed by many without, and some within its pale, to derive wealth or livelihood from those evils, but to mitigate and correct them. He should also be informed that the display of rare ingenuity or of great intellectual power, in forensic discussions, is by no means the most useful of professional labors. On the contrary, he should be instructed that it is an important and very honorable part of the business of a lawyer, by his learning, skill, and sound advice, to aid his fellow-citizens in the correct transaction of their affairs, in the solution of difficult questions without resort to litigation, and in the amicable settlement of angry controversies. Above all, he should be impressed with the conviction that in conducting such legal proceedings either in or out of court, as may be necessary to the interest of his clients, he is called to the high dignity of ministering in the sanctuary of justice, and that it behooves him to come to the altar ‘with clean hands’, and ‘a pure heart,’—that frankness and integrity towards his an-

tagonists are perfectly compatible with the manly support of the rights of his employers—that chicanery and artifice are not only in the long run injurious to professional success, but utterly inconsistent with the first principles of a science whose grand basis is to ‘command what is right, and to prohibit what is wrong’—and that to form the character of a great jurist, it is necessary, first of all, TO BE A GOOD MAN.”

In the year 1834, John C. Spencer was invited to prepare a plan for the organization of a law school on the Maynard endowment, at Hamilton College, by the trustees of that institution. He accepted the invitation and submitted a plan worthy his rare talents and unrivaled industry. He was afterwards invited to execute in the law professorship of Hamilton College, the plan so prepared by him; but he was compelled by his numerous engagements to decline. Thus it will be seen that both Mr. Butler, and Mr. Spencer, who were so intimately connected in remodeling the statute law of the State, were also engaged in preparing a course of instruction on the common law.

Some time previous to Mr. Butler’s commencing his labors of preparing his plan for the University of New York City, he received from the Baron De Roenne a full translation of Savigny’s celebrated essays on the state of the German universities, including copious extracts from lectures delivered in those universities on various branches of juridical science, among which were lectures on the Digests or Pandects, which included the whole system of the Roman law in its detail; also on the forms of judicial proceedings (process) founded upon the Roman and ecclesiastical law, and upon the statutes of the German empire. The value and importance of this work to Mr. Butler was very great, and its instruction materially aided him in other duties which he was called upon to discharge.

“His love of literature and his cultivation of it,

amid all the demands of his profession, were remarkable." By intense application and study, he made himself a thorough scholar. From the time of leaving the academy at Hudson, to the close of his life, he continued a student of the languages, so that he read his favorite authors of antiquity in the original with great facility.

He possessed a poetic fervor which underlaid his apparently prosaic and literal nature, and which was exhibited in conversation with his familiar friends in beautifully expressed thoughts, or pleasing quotations from his most admired poets. This was illustrated, in a happy manner, on the occasion when Judge Kent remonstrated with him against his habits of excessive professional labor. In his writings, particularly in his letters to his clerical friends, he exhibited great familiarity with the Bible, especially with its great poets, whose lofty conceptions were both the offspring of human genius and emanations from heaven. He believed that poetry had a higher end than mere amusement; that in the hands of genius, it tended to advance truth, philosophy, and religion—that it laid aside the severity of the preceptor, and displayed as in a picture, "the practice, the actions, the manners, the pursuits, and the passions of men; that by the force of imitation and fancy, by the harmony of numbers, by the taste and variety of imagery, it captivates the affections of the readers; and imperceptibly—perhaps reluctantly, impels him to the pursuit of virtue."

As a lawyer, Mr. Butler read with pleasure in the writings of the Hebrews, the regulations of their commonwealth, the structure of their codes, and their ratification; their manner of administering justice, and all their relations of civil and domestic life.

His consistent religious principles were the most attractive features of his character, for they were just to his own understanding—they spoke with a tone of reality—with a genuine sensibility—with an ingenious

and deep sincerity. They were sustained by the high cultivation and full development of his intellectual nature. Instead of thinking that religion was a system of dullness, and tame submission to sullen dogmas, that crush the light, generous, and pleasing emotions of the soul, he believed it opened new fields for the intellect—gave it a new consciousness of its own powers and of its divine original; that it raises the statesman and the lawyer to the discovery of the true interest of the State, causing them to seek without fear or favor the common good, teaching them to understand that “a nation’s mind is more valuable than its soil, and prompting them to originate and give stability to institutions by which society is carried forward, and to confide in justice and virtue as the only foundation of a wise policy and of public prosperity.”

It has already been said that Mr. Butler was fond of domestic life. This attachment undoubtedly caused him to refuse those eminent positions which were so frequently tendered to him, for his attachment to home was paramount with him. “It would be injustice to his memory and the memory of his affections, not to allude to that amiable and happy partner with whom he lived from early manhood to that very recent period when he was bereaved of the graces of a beautiful woman, whose strong sense, warm affection, and accomplishments, charmed his home, who encouraged and adorned his labors and lessened the fatigues of a studious and rightly ambitious life. His house was the seat of elegant hospitality; a place in which to find men of the highest distinction in the State, and his door was never shut to persons of the most modest pretensions, whose merits were merits of the heart.”

Mr. Butler continued to devote his entire energies to the duties of his profession, until the autumn of 1868, when his friends prevailed upon him to visit Europe again. Accordingly, on the 16th day of Oc-

tober, 1868, he embarked at New York in the steamship *Arago*, bound for Havre, intending to remain abroad two years. On the 29th of October, he landed at Havre. He then visited Harfleur and Rouen, and on the third of November, arrived at Paris. The next day he wrote a long and interesting letter to his son, William Allen Butler, Esq. "In the evening of that day he was taken ill, and notwithstanding all that kindness, attention, and medical skill could do, the disease progressed rapidly. He retained his consciousness, however, until noon of Monday, November 8th. In the evening of that day, his earthly career terminated."

Judge Kent thus describes his last interview with Mr. Butler :

"A few days before he sailed, I met him in Nassau-street, and heard with unmingled pleasure the anticipations he had formed of his tour. He spoke of Italy and Rome, of the Tiber and the Anio, the haunts of his favorite Horace; of the Tusculan retreat of Cicero, and sportively promised to write me a letter from the ruins of the Forum. I spoke to him of England, which he hoped to revisit,—and anticipated the pleasure of his wanderings in the homes of the great jurists whose works had been his life-long study, and who, like him, had mused on the common law, and brought philosophy and learning to aid in its progress and improvement; of HARGRAVE, and CHARLES BUTLER, MANSFIELD, and ROMILY. Why think of death, was my reflection, to one so full of joyous hope and expectation! I left him in a pleasant delusion as to his health and future life—to be suddenly startled by the intelligence that his earthly career was ended, and that his gentle and generous spirit, worn by toil, had sunk on the highway of life."

It has been said with much truth that the legal profession has produced two men whose characters and acquirements were similar to Mr. Butler's, and that these were Sir Samuel Romily, and William Wirt;

that "no two men have been in the profession whose merits were more extensive, or whose memories were more deeply cherished; that in the character of the latter, the proportion of his virtues was that of harmony in all their relations." And yet he had enemies who saw, or pretended they saw, many moral blemishes on his character. Such is the corruption of party, that no character, however pure, is free from censorious attacks. That he shared in whatever there was erroneous in the principles of the party with which he was connected, is certain,—that he did not pass through the vicissitudes which attended his own political fortunes and those of his friends, unscathed by their political faults, is equally certain; but that his moral character was tainted cannot be proven.

His connection with the Washington and Warren Bank, in the earlier years of his life, has been the subject of bitter reproach, in which even his religious principles were attacked. And yet, when it is remembered that this attack fell upon him in the course of a heated political contest, intensified by the recriminations of a disappointed adventurer, it must be regarded only as partizan and private malice.

A dispassionate estimate of the character, talents, and services of an eminent man, may, however, disarm partizan feelings which are often proof against all the eloquence of enthusiastic admiration. "The great poet of human nature has taught us that it is in the power of the honest chronicler alone to preserve the honor of the illustrious dead from corruption, and to extort from the most prejudiced enemy the confession that

" ' Whom I most hated living, thou hast made me
With thy religious truths and honesty,
Now in his ashes honor.' "

E. J. H.