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L I V E S

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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VOLUME I.

NEW YORK:

S. S. PELOUBET & COMPANY,

LAW BOOK PUBLISHERS.

1892.

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GEORGE HOSMER.

His Ancestors.—A Son of Dr. Timothy Hosmer.—Oliver Phelps.—Description of Western New York in Early Days.—First Court in Ontario County.—The Lawyers in Attendance.—The Trial.—Amusing Charge of Judge Timothy Hosmer to the Jury.—Highly Gratifying to the Ladies.—George Hosmer's Early Education.—Preparation for the Bar.—Admitted to Practice.—Opens Law Office at Avon.—Moses Hayden.—Hosmer Appointed District-Attorney.—Successful Practice of the Young Advocate.—Engaged in a Great Murder Trial at Batavia.—Defends the Murderers.—Singular Verdict.—Uncertainty of the Jury System.—Remarks of Luther C. Peck Concerning Petit Jurors.—Mr. Hosmer as an Advocate and Speaker.—Singular Defense of a Young Girl at Batavia.—Retained for the Plaintiff in the Great Case of *Pratt v. Price*.—John C. Spencer Opposed.—Speech of Mr. Hosmer.—Charles M. Lee.—John Dickson.—Judge Gardner.—His Character.—Hosmer Engaged in the Morgan Trials.—Defends Roberts, Editor of the *Craftsman*.—Hosmer's Speech to the Jury on Behalf of a Very Poor Client.—Money in the Jury Box.—Elected to the Legislature.—His Career in the Assembly.—Characteristics.—Death.

THE name of George Hosmer was for many years identified with the legal interests of western New York, and his career at the bar has passed into its history. He was a lawyer of eminent abilities, possessing many solid and shining acquirements, a mind naturally strong and comprehensive, improved by the usual classical studies, a critical acquaintance with English *belles lettres*, and a laborious and systematic study of the common and statute law. Hence, the high position which he attained in his profession was the legitimate and proper reward of real merit, of untiring industry, diligent research, and not the result of any adventitious circumstances. The wreath which he wore was not won in contests with plebeian competitors, for it was his fortune to commence and continue his professional struggles with those gigantic intellects which composed the bar of western New

York ; noble and generous rivals, who yielded him with cheerfulness and pride the honors he had achieved.

George Hosmer was born in Farmington, Conn., August 30th, 1781. He was a descendant of Colonel Thomas Hosmer, of Hawkworth, England, a strong and vigorous supporter of Cromwell : sustaining him with undaunted valor in the field, and aiding in those deep laid ambitious schemes which elevated that singular man to the position of lord protector of England, and upholding the protectorate with all his power and influence. When at length the sun of Cromwell descended forever, and Charles II. returned "to his own again," Colonel Hosmer, with the fugitive regicides, Goff, Walley and Dixwell, was compelled to leave England and secure an asylum from royal vengeance in the wilds of New England. He settled at Middletown Connecticut.

George was a nephew of Hon. Titus Hosmer, of Middletown, a distinguished scholar, statesman, judge and lawyer. The elegant poem or elegy on his death, written by the pen of Joel Barlow, will long be remembered as a beautiful and scholarly production. The father of the subject of this sketch was Timothy Hosmer, one of the earliest settlers of Ontario county, a man of liberal education, a physician by profession, and a true gentleman of the old school.

At the commencement of the revolutionary war, he entered the Continental army as surgeon of a Connecticut regiment, in which capacity he served during the war, with the exception of two years, during which time he served as surgeon on the staff of Washington. He was present at the battles of Monmouth, White Plains, Brandywine, Princeton and Trenton. At the execution of Andre he was one of the attending surgeons, and no event which he witnessed during the progress of the whole war made so deep and lasting an impression on his mind as did the death of that elegant and accomplished soldier. In after

years, while relating the circumstances of this execution, he was "often beguiled of his tears."

In October, 1798, he was appointed by Governor George Clinton, first judge of Ontario county. Oliver Phelps, with whom he came to western New York, had previously been appointed to that office, but such was the condition of the county that no courts were held or organized by Judge Phelps, and his many important business relations compelled him to resign, and Dr. Hosmer was appointed in his place. Mr. Phelps was a native of Windsor, Connecticut, and with Nathaniel Gorham was one of the earliest landholders in the then far off Genesee country. He was active, high-minded, enterprising and intelligent. When he first visited western New York, that now highly cultivated and splendid section of the State was an unbroken wilderness, save the few settlements or openings made by the Indians. But the sheen of its beautiful lakes and rivers, the legendary hunting grounds of the red man, and the natural beauty of the country, had many charms for the intrepid pioneer, and as if by prophetic vision he saw something of its future greatness, though he could not realize that within a period of time less than a century it would attain a position in civilization, wealth and refinement equal to realms known in history for ages.

Mr. Phelps first visited Geneva, then called Kanadesaga, in the year 1788. In the spring of 1789, under his auspices, a large company from Connecticut and Massachusetts commenced a settlement in the country of the Genesee; after encountering many hardships and adjusting many difficulties with rival companies and the Indians, a settlement was permanently commenced. Canandaigua, or Canadargua, as it was first called, was the headquarters of Mr. Phelps. The beautiful location of that village, or trading post as it was then, had been previously described by tourists and adventurers who had occasionally found their

way to this distant country. As early as 1765, a traveler by the name of Kirtland, visited Kanadesaga, or Geneva, and in a letter to Sir William Johnson, under whose auspices the journey was undertaken, he bitterly complained of the fare he found.

“Could I have plenty of fresh venison and bear’s flesh,” he said, “I could do without bread, y^e staff of life; but to have little of either, and y^e most part of it rotten, I think may be called coarse food.”

In another part of this letter, he says he finds “nothing but y^e Indians here.” And this only a hundred and four years ago.

Soon after the settlements under Phelps and Gorham were commenced, several distinguished tourists from the Atlantic cities and from Europe, visited western New York, and the poetic description which they gave of the country attracted great attention. *The Gentleman’s Magazine*, a well known quarterly of much literary merit, then published in London, contains a letter written from Geneva in 1790, by a young nobleman, who made the tour of “these western wilds,” as he called the country.

“The scenery about Kanadesaga,” he says, “is beautiful and as enchanting as any Italian landscape, or the shores of classic seas, while the whole country about Canandaigua is as enchanting as the Vale of Tempe, and as beautiful as the garden of Hesperides. There are, however, but one or two families of whites at either place, to enjoy the Eden-like beauties of the situation.”

The county of Ontario was set off from Montgomery in the year 1789, and included all the territory known as the Genesee country, and now known as western New York. Mr. Phelps was elected to Congress from Ontario county in the year 1803. He served in that body two years. After retiring from Congress, he embarked in certain speculations, which resulted disastrously, and he became greatly embarrassed, notwithstanding that his wealth was once estimated at a mill-

ion dollars. He died at Canandaigua in the year 1803. The names of Oliver Phelps and Nathaniel Gorham are indelibly inscribed in the history of western New York; while their descendants are known among the most respectable and distinguished citizens of the State.

Judge Hosmer presided at the first county court ever held in Ontario county. His associates were Charles Williamson and Enos Boughton. This court was held at Nathaniel Sanborn's hotel, in Canandaigua, November, 1794. Among the lawyers present were Vincent Mathews, James Wadsworth, John Wickham, and Thomas Morris. There were several causes on the calendar, but no jury cases were tried—the principal business being the organization of the court. The next term was held in June, 1795. At this court, occurred the first jury trial which ever took place west of Herkimer county. It was the trial of a man indicted for stealing a cow-bell. The culprit was defended by Vincent Mathews and Peter B. Porter; while the prosecution was conducted by Nathaniel W. Howell, afterwards Judge Howell. The cause was tried with all the adherence to strict legal rules, with all the conformity to great principles of justice, which characterizes legal proceedings in the most gorgeous temple of justice, or under the domes where law, in scholastic robes, has been for ages dispensed. After a close, legal contest, and an able charge to the jury from Judge Hosmer, the prisoner was acquitted. The first Circuit Court, and Court of Oyer and Terminer, held west of Montgomery county, took place at Patterson's tavern, Geneva, June, 1793. John Sloss Hobert, one of the three justices of the Supreme Court, appointed after the organization of the judiciary in 1777, presided. A grand jury was impaneled and charged, but no indictments were found.

Judge Hosmer was not bred to the bar, yet his strong, practical, good sense, his finished education, extensive reading, his love of justice and equity, rendered him well qualified for his judicial position, and

his decisions were always acceptable to the bar and the public. The following anecdote illustrates his natural love of justice :

During one of the terms of his court, a woman was brought to the bar for trial, on an indictment charging her with a violent assault and battery upon a man by the name of Scrope. The evidence developed the fact, that Scrope had intruded himself into the kitchen of the lady, and grossly insulted her. Seizing an old fashioned splint broom, a formidable weapon, by the way, she drove him from the house, inflicting several very severe blows upon his head with the broom, which considerably injured him.

The district-attorney, having proved the assault and the injury resulting from it, rested his case, confident that the woman would be convicted. Her counsel seemed to take this view of the case, and made but little effort to save her. Then came the charge of the judge ; he was, as we have seen, a gentleman of the olden time, too refined and chivalrous to see a lady convicted under such circumstances ; especially as he believed the acts of the complainant were a perfect justification for the assault.

“Gentlemen of the jury,” said he, “the evidence in this case, clearly shows that an assault and battery has been committed upon this man, and unless there is some justification for the assault, you must convict the defendant. But, gentlemen, in my view, there are extenuating circumstances in the case, which you must take into consideration. Among which, are the sex of the defendant, the place where the assault was committed, and the circumstances which led to the assault. Gentlemen, bear in mind that the kitchen is a woman’s empire, the broomstick a legalized, and therefore legitimate weapon, her honor the corner-stone of society, nay, its superstructure. The wretch who invades her empire and there wantonly insults her, should never complain if quick, heavy, repeated blows given with her proper weapon should in fury descend upon

his head. If he escapes with his life, he should make no other demonstration than thanking God for it. But when he goes further, when, as in this case, he asks redress from a jury; if there is a juror in the box who has a wife, mother, daughter, sister, or female friend of any kind, that cannot see in the provocation a justification of this act, and of the whole act, his name ought to be stricken from the jury box forever. Go out, gentlemen, and return with such a verdict as will not, when you go to your homes, bring upon you the condemnation of every virtuous woman."

This charge, although not entirely balanced by strict legal rules, rendered the judge very popular, especially with the ladies.

Having finished his classical education, George Hosmer entered the office of Hon. Nathaniel W. Howell, of Canandaigua, as a student at law. Judge Howell was then a prominent lawyer and jurist, whose life appears in another part of these sketches. Mr. Hosmer continued with Judge H. until he completed his legal studies, when he was duly admitted to the bar. He commenced practice at Canandaigua.

The first cause in which he was engaged, was tried before his father, who, during the trial, frequently forgetting the dignity which his son had acquired, would frequently say to him, "George, you are wrong;" "George, see here, you misapprehend the point;" and as the young lawyer became somewhat persistent, "George, sit down," said the judge, and he was obeyed.

After practicing at Canandaigua until the year 1808, Mr. Hosmer moved to Avon, opened an office, and commenced practice at that place, meeting with much success. After the commencement of the war with England, he accepted the position of aid to General Hall, and joined the American army on the western frontier.

After serving some time in the army, Mr. Hosmer's health becoming impaired, he resigned his commission

and returned to the practice of his profession, in which he rapidly arose to eminence.

In the year 1820, the county of Livingston was erected. Hon. Moses Hayden was immediately appointed first judge of the new county, and Mr. Hosmer district-attorney. At that period, district-attorneys were appointed by the Court of Common Pleas, and the most experienced and able members of the bar were always selected for that office. The position tendered to Mr. Hosmer in this instance, was highly complimentary to him as an advocate. He continued to discharge the duties of his office with marked ability until 1824, when he was succeeded by the late Orlando Hastings, of Rochester, but who then resided in Genesee, and whose life appears in this work.

Mr. Hosmer was now in the zenith of his professional prosperity and success. He appeared in all the courts of western New York and was recognized as an able and successful lawyer, and an ornament to the bar. One of the earliest cases in which he appeared as counsel, was that of the People against the two Robertses—father and son—charged with the murder of J. A. Davis, a hotel keeper at Leroy. This trial took place at Batavia, and created great interest. The defense of Mr. Hosmer was considered able and ingenious, and won for him the highest commendations. The father was acquitted, but the son convicted.

In alluding to this trial in after years, Mr. Hosmer remarked that the result of this trial convinced him of the doubts and uncertainty of trials by jury, for, in this case, said he, "they hung the innocent man and acquitted the guilty one."

The Hon. Luther C. Peck, now one of the oldest and most distinguished lawyers of the Livingston bar, once remarked, "if there is anything beyond the comprehension of Deity, it is the action and decision of a petit jury."

De Tocqueville, the eminent French jurist and author, in commenting upon our jury system, while he admits the uncertainty of it, says :

“The jury contributes most powerfully to form the judgment, and to increase the natural intelligence of the American people. It may be regarded as a gratuitous public school, ever open, in which the juror learns to exercise his rights, enters into communication with those learned in the law, and thereby becomes practically acquainted with the laws of the country, which are brought within the reach of his capacity, by the efforts of the bar and the advice of the judge.”

As an advocate, Mr. Hosmer was eminently successful. His manner before a jury was impressive, and his language convincing. He was sometimes vehement, yet his vehemence was tempered to the occasion. Before the court alone, in the argument of purely legal questions, he was calm, deliberate, self-possessed, and always had his case fully and thoroughly prepared ; hence, he never failed to commend and retain the attention of the judge.

As a speaker in the popular assembly, he was always a favorite with the people, always drew their attention and attendance whenever he appeared before them. The strong sympathies of his nature were ever enlisted for his client, and, as was ever remarked of him, “Hosmer always thinks his own client in the right.” He often undertook the defense of persons charged with crime, prompted alone by his sympathy. On one occasion, while attending court at Batavia, he volunteered to defend a young girl who had been indicted for grand larceny, after the lawyer whom the court had appointed to defend her advised a plea of guilty. He was led to believe by the looks and manners of the girl that she was not really guilty. She had all the appearance of artless innocence, and when her lawyer proposed to enter her plea of guilt, there was a look about her that denied the plea.

“I cannot believe,” said Hosmer to the court, while begging for a few moments’ conversation with the prisoner before the plea was entered, “that such a casket contains corruption;” and after a short interview with the girl and her friends, he determined to defend her. She was charged with stealing silver spoons, and other silver-ware. The daughter of a poor and widowed mother, who lived at a distance, she had been bound to a wretch who cruelly misused her, overtaxing her strength, almost beyond her endurance, by excessive labor and unremitting toil. Her poor heart yearned for the humble home, the gentle and tender care of that mother who had often soothed the sorrows of her childhood, and clandestinely leaving her master, she sought her home.

Alone and on foot she commenced her weary journey. But her flight was soon discovered; the silver-ware was missed, she was pursued, overtaken, and brought back to her master. A part of the property was found secreted at the side of the road over which she had traveled. Such was the evidence elicited on the trial, on which the public prosecutor confidently expected the conviction of the poor girl. The situation of the prisoner, and all her sufferings, were adroitly drawn out, the character of her master placed before the jury, the absence of any proof that she had taken the property was strongly dwelt upon. Her attempted flight to her mother and its course, was touchingly described.

“She was not fleeing to conceal her guilt, as the public prosecutor contends,” said her counsel; “she was escaping from oppression, from a cruel and bitter fate, from a wretch whose heart is harder than the nether millstone, and who would turn the tears of the orphan into money. It is true that this paltry treasure was found near where this girl had passed, and this is all the account they can give of the matter. Gentlemen, until the prosecution prove that this girl placed it there, you must not convict her; nay, you will not

convict her, and the God of the fatherless will approve the verdict which will snatch this unsheltered lamb from a fate worse than death and restore her to that mother whose life almost depends upon your decision."

The jury retired under the charge of the judge, and soon returned with a verdict of acquittal, which was received by the spectators and bar with great applause, notwithstanding the efforts of the court to repress it.

Among the many important civil cases in which Hosmer was retained, was that of Abner Pratt against Peter Price. Mr. Pratt was a lawyer practicing at Rush, in the county of Monroe, and Mr. Price was a judge of the Common Pleas of that county, and a man of considerable political and social standing. A bitter feud existed between these men, and upon a certain occasion, Judge Price said to a client of Mr. Pratt's, "Yes, Pratt will collect your money, and then steal it, as he has often done for others," or words to that effect.

Upon these words an action for defamation was commenced against the judge, which came on to be tried at a circuit court held at Rochester, April 28th, 1834, Hon. Addison Gardner, then one of the circuit judges, presiding. Mr. Hosmer appeared for the plaintiff; he was ably assisted on the trial by Hon. E. Darwin Smith, then a young and promising lawyer of the Monroe bar, residing at Rochester, now and for many years a justice of the Supreme Court for the seventh judicial district. Judge Price was defended by Hon. John C. Spencer, of Canandaigua, Charles M. Lee, of Rochester, and John Dixon, of Bloomfield. The high position of the parties, the hostility and bitter animosities which this quarrel engendered, the malignity of the words complained of, the ingenuity and ability of the defense, imparted a deep interest to the cause. Mr. Hosmer's address to the jury was not surpassed, even by the grand and majestic ora-

tory of the strong and gifted Spencer, who threw the whole power of his great mind into the contest. In this trial there was a collision of mind with mind, seldom witnessed at the bar. But Hosmer's position and logic could not be overthrown.

After a clear, learned and impartial charge from Judge Gardner, the jury retired, and returned into court with the verdict of one thousand dollars for the plaintiff.

This was one of the heaviest verdicts ever given in an action of slander, in the county of Monroe. Mr. Pratt subsequently removed to Rochester, was appointed District-Attorney of Monroe county, after the expiration of his official term, removed to Michigan, was appointed judge of the Supreme Court of that State, and died while in the discharge of the duties of that office. Judge Price died some years after the trial. And thus the grave has closed over the parties litigant in that suit; all the contesting lawyers, except Judge Smith, and most of the jurymen. How short and earlest are the strifes, the sorrows and the joys of life! Well and truthfully has the beautiful and sublime poetry of the Bible compared the whole career of man to "the path of an arrow," which is immediately closed behind it.

The presiding judge still survives. Having attained the highest professional, judicial and political honors of the State, he retired to private life, distinguished for his many virtues, a stainless Christian character, eminent learning and abilities, reposing in peace, after duties well done, energies, thought and will tranquilized by submission to the Giver of all Good.

George Hosmer was one of the counsel engaged with Hon. Ebenezer Griffin, in the defense of the Morgan abducters, tried before Hon. Enos T. Throop, at Canandaigua, in the year 1826. He was a Mason, and during all the terrible crusade against the mem-

bers of that order, he was their intrepid defender and eloquent champion.

Soon after the trial of the Morgan abducters, he was retained to defend E. J. Roberts, then the editor of the *Craftsman*, a Masonic journal, who was indicted for having published a libel. The interest felt in this case extended throughout the State. All the bitter antagonisms of the day entered into it. Such was the nature of the alleged libel, that in striking down Roberts, its author, Masonry itself would be in a measure prostrated, and, of course, this state of things engendered a fierce contest.

The great legal abilities of Mr. Spencer were again put in requisition, subservient to Anti-Masonry. After a long and closely contested trial, Roberts was acquitted. This result added new laurels to Mr. Hosmer's reputation as a lawyer, while it gratified his dislike to the Anti-Masonic party.

He was once called upon to defend a very poor man against an oppressive suit brought by an overbearing and wealthy citizen, not particularly distinguished for ability or attainments, and who believed that money was more powerful than either. The counsel had reason to believe that some of the jury had heard the ring of the plaintiff's dollars, in a way that would tell on their verdict, and he administered a most withering rebuke against the use of money as controlling juries.

"Gentlemen," said he, "I once believed that the jury box was a sacred place. I know it was so once; but I fear that it is now sometimes desecrated by the hand of bribery. In this case, though, my client has right and justice on his side, and, as it would seem by the evidence, there should be nothing to deprive him of his rights—that he must succeed in his defense; yet my classic reading has taught me that it was an ass, a miserable jackass, whose panniers were laden with gold, that found its way through the gates of Athens, when an armed and powerful foe could not

effect an entrance ; and if your verdict is against my client to-day, it will be because the money of a jack-ass has found its way to some of your pockets. I allude to only a part of the panel before me. Gentlemen, let them be weighed in the balance ; let corruption to-day put on incorruption, and the right will triumph."

The poor man succeeded, and the right did triumph. Are not the voice and sarcasm of an Hosmer demanded to administer a wholesome rebuke to juries of this day ? Who shall say that they are not ?

The political arena never afforded any attractions for Mr. Hosmer. He was ambitious, but his ambition was confined entirely to his profession. But in the fall of 1823, he was persuaded to accept the nomination for member of Assembly from Livingston county, which, at that time, elected two members. He was elected, took his seat in the Legislature of 1824, and was honored with the position of chairman of the Judiciary Committee. His colleague was Hon. George Smith. This was in many respects one of the most memorable sessions of the Legislature which ever took place in this State.

At this session Silas Wright first appeared before the people as Senator from the then fourth senatorial district, which consisted of nine counties, including the county of St. Lawrence, his own county. Although he had been a resident of that county but five years, yet, in the fall of 1823, he was put in nomination for Senator, and triumphantly elected over his opponent, General Moers, of Jefferson county.

Among the important measures proposed in this Legislature, was a bill providing for the choice of presidential electors by the people, who at this time were elected by the Legislature, which, in each presidential canvass, met early in November, for the purpose of choosing electors for President and Vice-President. The bill was introduced as a political move-

ment, to defeat Mr. C. Crawford, who, with Jackson, Clay, Adams and Calhoun, was a candidate for the presidency. Mr. Crawford, through Mr. Van Buren, was confident of securing the New York electors if they should, as usual, be chosen by the Legislature; and hence the introduction of the bill allowing the choice of electors by the people. The measure became at once very popular; therefore the friends of Mr. Crawford did not venture an open opposition to it. Mr. Flagg, a warm supporter of Crawford, introduced a resolution into the House, favoring the proposed new electoral law; but he annexed conditions to it, which, in certain emergencies, would give the choice of electors to the Legislature. The introduction of Mr. Flagg's resolution let loose the fury of legislative warfare, and a contest ensued which had never been equaled in either branch of the Legislature. In the discussion which followed, Mr. Hosmer took an important part. He was a ready, sagacious and eloquent debater, and his clear reasoning powers gave him a high and influential position. He supported Mr. Flagg's resolution, and in March, 1824, delivered his great speech in the House in its favor. It is seldom that a speech on a proposed bill or resolution in a legislative body produced the effect which this speech of Mr. Hosmer's did. It was a profound and statesman-like, a calm and philosophic review of the whole great question. Soon after its delivery the vote on the resolution of Mr. Flagg was taken, and the measure sustained by a vote of 76 to 47.

In the Senate, the Electoral bill passed through several amendments. Mr. Wright favored the choice of electors by the people, and introduced a bill into the Senate to that effect; but his bill was defeated. At length Hon. Edward P. Livingston introduced a resolution postponing the further consideration of the whole matter until the first Monday of the ensuing November, being the day beyond the extra session, when the electors would be chosen by the Legislature.

This resolution passed the Senate, and gave the State of New York to Mr. Crawford. Mr. Wright and sixteen other Senators voted for this resolution, thereby subjecting themselves to severe and bitter censure. They were immediately characterized as the famous "seventeen Senators."

At the close of his legislative term, Mr. Hosmer returned again to the practice of his profession. Declining another nomination, he left the political field forever, so far as entertaining any desire for official position.

He died in the 80th year of his age, March, 1861, at Chicago, while visiting his daughter, Mrs. Wells, of that city.

His highly cultivated literary taste and acquirements rendered him the life of a refined and an intellectual social circle. He possessed a mental energy which awakened and kindled a like energy in those with whom he conversed. The same love of sarcasm and satire which rendered him a formidable antagonist at the bar, tempered by the calm and pleasant amenities of society, rendered his conversation attractive, while he possessed the rare qualification of being an excellent listener to the conversation of others, which is often the talisman of fascination.

In his domestic relations, as husband and father, he was happy. Several children survive him, among whom is the distinguished poet and author, W. H. C. Hosmer, known as the Bard of Avon.