

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.

VOLUME II.

NEW YORK:
S. S. PELOUBET & COMPANY,
LAW BOOK PUBLISHERS.
1882.

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Rec. June 5, 1902.

DUDLEY MARVIN.

Scene in the Court Room at Batavia in 1827.—Dudley Marvin and John W. Hurlbert.—Description of them.—Their Persons and Characters as Lawyers.—Marvin's Birth and Parentage.—A Student at Colchester Academy.—His Taste and Abilities.—Amusing Anecdote.—In Danger of Expulsion.—The Imprisoned Professor.—Marvin before the Faculty as a Culprit.—The Defense.—The Witty Turn.—The Discharge.—Marvin Refuses to Declaim.—Interesting Conversation with Dr. Hawks, regarding the Choice of a Profession.—Marvin visits Canandaigua.—Enters the Office of Howell & Gregg as a Law Student.—His Admission to the Bar.—His First Case.—Manner at the Bar.—Remark of B. Davis Noxon.—His Manner of Cross-examining a Witness illustrated in the Trial of the People *v.* Newman.—Interesting and Amusing Cross-examination of a Lady.—The Case of the People *v.* Bostwick—Amusing Incident.—Result of the Trial.—Marvin Elected to Congress.—His Career in Congress.—His Dislike for Public Speaking.—His Reception at a Convention in Canandaigua.—The Vote of Thanks.—Amusing Speech of a Constituent.—Marvin is Compelled to make a Speech.—Has an Application for a Law Student.—Rare Qualifications of the Proposed Student.—Doubting Scene between J. C. Spencer and Marvin.—Doubt if you Dare.—Spencer Prosecuted.—Marvin Retained as his Counsel.—The Trial.—Extract from Marvin's Speech.—The Result.—Marvin again in Congress.—His Report on Manufactures.—Celebrated Case of the People *v.* Gray.—Marvin Appointed by the Governor to assist the District-Attorney.—Prisoners apply to him to defend them.—The Short but Prophetic Reply.—The Trial.—Its Singular Result.—Hosmer's Remarks Concerning it.—Marvin's Connection with the Anti-Masonic Trials.—Trial of Ganson.—Examination of the Stage Driver.—His Final Answer True.—Marvin Removes to Chautauque County.—Attempted Assassination of Lowrey.—Marvin Engaged in the Great Trial of the People *v.* Newman.—The Trial.—The last important Case in which he is Engaged.—Retires from the Bar.—His Habits.—Elected to Congress.—His personal appearance more fully described.—His Characteristics.—Mark H. Sibley.—Amusing Business Transaction between him and Marvin.—Death of Marvin.

“Who is that rather large, portly man, with such a fine eye and head, not far from Mr. Chandler, in the bar? He must be a lawyer, I think; at least he looks like one, and a good one, too.”

This remark was addressed to a law student who sat next to the speaker in the court house at Batavia, one morning in June, 1827, during a session of the

Circuit Court. The business of the day had not yet commenced, though the lawyers, jurors, witnesses, and spectators had assembled.

“That is Dudley Marvin, of Canandaigua, one of the most eminent lawyers in the State; he is eloquent, witty, sarcastic or pathetic, as the occasion requires,” said the student.

“And that is Dudley Marvin; I have often heard of him as a famous advocate, but I never saw him until now. Who is that small man, dressed in black, with dark eyes and hair, and such an expressive face; the one who is sitting by himself at the other end of the bar?”

“That is John W. Hurlbert, of Auburn; he is as gifted, though perhaps not as close a lawyer as Marvin. As a criminal lawyer, he has no equal in the State. I have heard him address juries on several occasions; at times his small form seemed looming up to the proportions of a giant, with the big glowing thoughts he uttered,” was the reply.

“John W. Hurlbert? he is the lawyer who defended Medad McKay on his last trial, and he cleared the Indian chief who was tried at Bath for shooting Stephens, near Hornellsville. I have heard that he made everybody in the court house cry except the sheriff, and he was obliged to cough several times to keep on the stern look which he felt himself obliged to assume; and I believe Hurlbert defended Mary Green for murdering her own child, did he not?” asked the first speaker.

“Yes,” replied the student, “I heard that trial. Heavens, what a talk he made to that jury! His language, his gestures, and his whole appearance were full of sincerity and candor, he spoke so touchingly of the poor girl’s misfortune (he always calls crime a misfortune, when he is defending a criminal) that the hearts of the jury opened and let him in. When once there he remained. But when he came down upon the witnesses against her, who, as he contended, de-

sired her conviction to subserve certain vile purposes of their own, I never listened to such terrible, such scathing language; it seemed as though his tongue was a two-edged sword, and the witnesses criminals on trial, instead of Mary Green. It was amusing to see them endeavor to brave it out, and appear unconcerned, but they might as well have undertaken to disregard the thunders of Jove."

"Well, what did the jury do?"

"What did the jury do?" said the student. "Why they acquitted the woman almost as soon as they were organized, though more than half of the community where she lives, believed her guilty, and they would like to hang little Hurlbert, as they call him, for saving her; but he did his duty I suppose, and no more."

The conversation was here interrupted by the crier making the usual morning proclamation. It truthfully describes the appearance and the popularity of two eminent and highly distinguished lawyers of the past.

In many respects their minds were similar; both of them too often indulged in the pomp and glare of rhetoric—redundancy and excess of ornament. Both minds glowed with the fires of intellect and imagination; though perhaps they acquiesced too readily in first thoughts, and came to their conclusions by a rapid and penetrating glance, instead of verifying their impressions by a close and vigilant induction. Yet it was impossible not to be impressed with their rare qualities. Mr. Marvin, however, possessed the additional capacity of illustrating common thoughts and subjects, with beauty and interest, of explaining them with a grace which gave them new force, vigor, and vivacity; a rare quality in a speaker—the secret of success in a writer.

As deep, reasoning, logical, emotionless lawyers, neither Marvin, nor Hurlbert compared with John C. Spencer, Marcus T. Reynolds or Nicholas Hill, when before the court in banc; but before the jury, the former were the superiors.

Mr. Hurlbert and Mr. Marvin were at Batavia on the occasion which has been referred to, as opposing counsel in the important case of the People v. Bostwick and Graves, which will be described hereafter. This sketch, however, is devoted to the life of Dudley Marvin.

He was born at Lyme, New London county, Connecticut, on the 6th day of May, 1786. His father, who was a respectable merchant, placed him, when twelve years of age, at the Colchester seminary. Here he soon attracted the attention of his fellow students and his teachers, as a boy of the highest promise ; the precocity with which some of his mental powers were manifested, might be regarded as extraordinary. Subservient to his early taste, however, he surrendered much of his time to poetry, belles lettres and mental philosophy. He also developed some of those exhaustless stores of wit, vivacity and humor, for which he was afterwards so distinguished.

Among the many anecdotes that are related of his student-days, the following will illustrate his native sagacity and wit :

On one occasion, with the aid of a less gifted class-mate by the name of Sabin, he imprisoned a certain irritable, prying, pug-nosed professor of mathematics, in one of the distant rooms connected with the seminary, where he was compelled to remain five or six hours—until he made night hideous with his cries for relief. Terribly enraged at this indignity, the professor commenced the work of detecting the culprits, threatening instant expulsion to the guilty ones. Young Marvin, who was keenly watching the movement of matters, fearing that some confession might be extorted from Sabin, instructed him, when summoned before the faculty, to make no confession, and to answer as few questions as possible. In due time both Marvin and his companions were ordered to appear before the dreaded tribunal. Sabin was at

first terribly frightened ; as soon as he received notice to appear, he rushed into Marvin's room, exclaiming :

"O dear ! O dear ! I shall break down ! I know I shall ! Old Hunks (ain't he properly named, though ?) he'll look right through me. I can't lie !"

"Lie, you fool. Nobody wants you to lie. You don't know enough to lie, so don't undertake it. Say as little as possible ; don't say anything if you can help it. I'll take care of you if you will only do as I tell you ; so don't be frightened," said Marvin. Sabin, becoming more composed, promised to do as he was directed, and in a few moments they were in the presence of the assembled faculty.

Sabin was first interrogated, but so faithfully did he obey the instructions of his friend that nothing of importance was elicited from him, though his manner in some measure confirmed the suspicion against him. Then came Marvin's turn, and he was plied with all manner of questions, which he managed to answer so adroitly that nothing positive was established against him.

"Marvin," said the pug-nosed professor, in his peculiar, snarling manner, "this great crime, sir, my cruel imprisonment—it makes my very blood boil to think of it, lies between you and that young man,"—pointing to Sabin—"and now what have you to say to that, I should like to know."

"I am delighted with what you have said, Professor," said Marvin.

"And so you glory in your iniquity, do you ? What do you mean, sir ?" said the excited tutor.

"I mean that I am delighted to hear you say that the great crime of which you speak lies *between* Sabin and myself. I was only fearful that you suspected it *laid on* one or both of us," said the student, with a ludicrous composure.

This answer was equivalent to the ablest defense. It convulsed all in the room with laughter, except the astonished professor, who looked like an old-fash-

ioned exclamation point, in italics—a mark of wonder, surprise, and, in this case, indignation. Marvin and his friend were acquitted; even the sharp eyes of Doctor Hawks, the preceptor, twinkled with merriment, as he pronounced their discharge.

One of the rules of this institution required the students to declaim, at least once in two weeks. It is remarkable that Marvin, who was so distinguished in his future years for his eloquence, should persistently refuse to comply with this rule. He was once urged by a blatant, mouthing, and conceited professor of elocution to attend one of his oratorical displays, and he replied in the language of Hamlet, “‘O, it offends me to the soul, to hear a robustious, perriwig pated fellow tear a passion to tatters,—to very rags—to split the ears of the groundlings; who, for the most part, are capable of nothing but inexplicable dumb show, and hideous noises.’ Professor, do you recite Hamlet much in your exhibitions?”

A few days before Marvin left Colchester Seminary, Doctor Hawks, who was much attached to him, inquired what occupation he intended to follow.

“I think of studying law,” was the reply.

“Studying law? why, Dudley, you will never succeed as a lawyer; you have no capacity for public speaking, and without that, you cannot succeed at the bar,” said the doctor.

“I have persuaded myself that I have some qualifications for a lawyer, and as for oratorical power, I shall get on quite well with that, I have no doubt. I do not believe there will be any difficulty in telling to others that which has been closely impressed upon my own mind. The great question with a lawyer should be, to learn something to talk about, before he undertakes to talk.”

“But Dudley, can’t you conceive of a man’s knowing more than he can explain? Have you not known persons who had splendid ideas, but no language to communicate them?”

“That often happens, but the reverse is more frequent. There are students here, and men everywhere, who have more language than ideas, more talk than thoughts. Hence the truth of the old poet,—

“ ‘Distrustful sense, with modest caution speaks,
It still looks home and short excursions makes,
But rattling nonsense in full volleys break.’ ”

“A most sensible answer, young man. Why, you can talk, and to some purpose, too. You are as voluble as you are sensible. I like your ideas. He who attempts to speak in public, or write for the public, without research or ideas, is like a soldier firing blank cartridges—very noisy and very ineffectual. I think, Dudley, you may as well turn lawyer. There may be a small matter of honesty in the question, but you will get along with that. I am a minister, and have always thought that honesty and lawyers—well, never mind what I thought; go ahead and be a lawyer, Dudley, and be as honest as you can and be a good lawyer.”

After leaving Colchester, he was induced to accompany a gentleman on a tour through western New York, in the course of which he visited Canandaigua. Here he remained some time, making the acquaintance of the late Judge Howell and John Gregg, then distinguished lawyers, composing the eminent firm of Howell & Gregg. He perfected an arrangement with these gentlemen for pursuing his studies in their office; and in October, 1807, was regularly entered as a student at law.

Such was the progress which he made in his studies, such was the capacity and skill which he exhibited as a special pleader and draftsman, that his preceptors proposed to pay him a liberal salary, provided he would agree to remain with them until admitted to the bar. To this he consented, and he remained with them until September, 1811, when he was called to the bar.

“What of all things is the best?” asked Chilon of the Oracle.

“To know thyself, and the laws that govern thee,” was the reply.

The most frequent obstacle to the success of lawyers is forming too exalted notions of law, as a system of acquired, practical dexterity, and too humble notions of it as mental energy, logic, reason, learning. Hence, there is a wide distinction between a lawyer, skilled through the medium of research and learning, and the dexterous, shrewd, cunning practitioner who, with no systematic knowledge of the law, yet in a certain sphere becomes successful, because he is simply sharp. With the one, we have the idea of strength, sagacity, power; with the other, small cunning, arch trickery, and all the devices of the mere empirical sharper.

When Dudley Marvin came to the bar his legal acquirements were of the highest order; in all things pertaining to his profession, except experience, he was an accomplished lawyer. Immediately opening an office at Canandaigua, he commenced practice in that village. About this time he was retained to defend a case brought by his early friend and preceptor, Judge Howell. On the trial he exhibited much acumen, knowledge and skill, but extended to his eminent opponent all the amenities and professional courtesy which characterize a liberal mind.

When the evidence was closed, he entered upon the duty of addressing the jury. Up to this period no one at Canandaigua had ever heard him attempt any oral effort. On this occasion his manner was so natural, so self-possessed, his case so thoroughly prepared, that he gained much in reputation as a lawyer, and he passed rapidly into a successful practice. Within a very few years he was distinguished throughout the State for those powerful and ofttimes thrilling speeches at the bar, which were regarded as specimens of consummate legal authority.

His manner at the bar was generally dignified and

courteous, though occasionally, when ruffled or displeased, he was uncivil—even rough. He spoke with great deliberation but with ease; when excited, he spoke more rapidly. His speeches were usually short, brilliant, and impressive. He spoke with the force of a man confident of great powers; possessed of ample materials, he pronounced his opinions with authority, and expected his hearers to qualify and apply them. His extreme subtlety of observation rendered him powerful on cross-examination—he probed to the quick—he penetrated to the bottom of the subject, and yet he seldom left a sting in the mind of the witness.

The celebrated advocate and eminent civilian, B. Davis Noxon, of Syracuse, once remarked that, “Dudley Marvin is the strongest lawyer on the cross-examination that I ever met, because he himself never gets cross.”

This was illustrated in the trial of the important and memorable case of the People *v.* Newman, at Mayville, many years ago. The prisoner was indicted for stabbing a prominent merchant one evening as he was entering his own gate. One of the principal questions in the case was the identification of the prisoner. For this purpose, the prosecution introduced a very sensible and prepossessing woman, about thirty years of age, who testified very closely to matters tending to connect the prisoner with the offense. Marvin, who was on the defense, had learned that the woman was living with a man who was not her husband, a fact which was unknown in the community where she resided. Aware that this circumstance alone would not destroy the weight of her testimony, he shrewdly decided not to touch that matter, but laid a plan to impeach her memory, which would, if successful, be a very strong point against her evidence.

Commencing with that plausible manner so natural to him, he asked her if she distinctly remembered the circumstances which she had related on the direct examination.

"Certainly I do, sir," was the prompt reply.

"Madam, is your memory good?"

"Yes, sir, very."

"May I ask you if it is as good in recollection of days and dates as it is in events?"

"It is equally correct in both cases, sir."

"Is it as good in the recollection of the countenances of persons?"

"I think it is, sir."

"Well then, madam, can you recollect the date of your marriage to the man with whom you are now living?"

The witness reflected a moment, then replied that she could not remember the exact date. The question was shrewdly answered.

"Can you remember about the time, madam? Not to be very particular, can you tell me what month of the year it was?"

The lady saw she was caught, but rather than disclose the manner in which she was living, did just what Marvin expected she would, answered that she could not remember even that circumstance, and she was permitted to leave the stand. Nothing could exceed the chagrin of the counsel for the prosecution at this utter failure of one of their most reliable witnesses.

The case of the People *v.* Bostwick and Graves, which has already been mentioned, was one of the most important criminal cases in which Mr. Marvin was engaged. The defendants were highly respectable citizens of Auburn, who were connected with one of the great lotteries then in existence in the State. A heavy prize had been drawn by a citizen of Genesee county. The defendants having retained, under some rule of the concern, a per centage on the amount drawn, an action in equity was commenced against them to compel a specific performance of the conditions under which the ticket was purchased. In swearing to the truth of their answer to the bill filed, perjury was charged. As it was sworn to in Genesee

county, they were duly indicted there, and, as we have seen, Messrs. Marvin and Hurlbert were retained, the former to aid the prosecution, and the latter, with Michael S. Myers, Esq., of Auburn, to defend.

Such was the anxiety of the complainants to convict the defendants that Marvin had been retained at a heavy expense, a large portion of his fee having been provided for by subscription. In the course of the trial the sheriff of the county was introduced as a witness for the people. Hurlbert ascertained that the sheriff was a subscriber to this fund.

“Sheriff,” said he, on the cross-examination, “are you not considerably interested in favor of the people in this case?”

“No, sir, not much.”

“Did you not subscribe, with others, towards raising the money to fee Mr. Marvin?”

“I object to that question, if your honor pleases,” said Marvin; “it is irrelevant.”

“I understand that my friend has strong personal reasons for his objection, and out of consideration for him I shall waive the answer,” replied Hurlbert, with great gravity.

Marvin, a little puzzled, cast a quick glance at the solemn face of his opponent, and fearing the jury would believe matters much worse than they really were, said:

“I shall insist upon an answer to the question—I desire the answer.”

“Ah, I see—I see now; I was mistaken at first, but I see now that the counsel has very strong reasons for desiring the answer, and it may be answered. I am happy to aid the counsel—very happy. Go on, sheriff.”

“Happy to aid me, sir? What do you mean?” said Marvin.

“Why, the counsel is fearful that the sheriff will deny his signature to the subscription when pay is demanded of him, and my friend proposes to extort a

confession from him here, in open court, that will bind him to it. Well managed, Mr. Marvin—exceedingly well managed, sir; you have really got the sheriff now; he'll be obliged to help pay your fees, sir. I congratulate you."

It was difficult to tell which felt this sharp cut most keenly, Marvin or the sheriff; but the laugh which ran through the court-room told how much it was enjoyed by the bench, the bar, and the spectators; and for once, Dudley Marvin had nothing to say.

The trial consumed several days—each point was closely contested, and each day the interest in it increased.

At length the evidence was closed, and the counsel prepared to address the jury; it was a case which elicited all their intellectual powers, and afforded a rich mental treat for those who were fortunate enough to be present.

One of the counsel was straggling "to protect an outraged community against a dark and insidious crime, easily perpetrated, but difficult to detect." The other was laboring "to protect innocence from an undeserved punishment, to disentangle unsuspecting worth from the meshes of craft, subtlety, and a dishonest complaint."

After the arguments of counsel, the jury listened to the charge of the judge, and then retired for deliberation.

An hour elapsed, and they returned into court with a verdict of not guilty. Thus ended one of the most interesting criminal cases ever tried in the county of Genesee.

Though Mr. Marvin had little taste for politics, yet it was impossible for him to stand entirely aloof from the political excitement which surrounded him. Very early in life he identified himself with the Federal party, and he continued true to its fortunes until it was merged in another organization.

In the year 1823 he represented the twenty-sixth

Congressional district in Congress. At the opening of that session, Mr. Clay and Mr. Barbour, of Virginia, were rival candidates for speaker.

The former was chosen by a vote of 139 against 42, exhibiting his great popularity at that period. Mr. Marvin, who had long been a friend and admirer of Mr. Clay, warmly sustained him in this contest, and that great statesman recognized his abilities and friendship by giving him a respectable position on three important standing committees in the House.

One of the questions before Congress that session, was the modification and revision of the then existing tariff. The debate in the House on this question created great interest in the nation. It was continued through several weeks. Mr. Marvin, however, occupied the floor but once during the discussion, and then only for the brief period of a half hour; but brief as were his remarks, he established his reputation as an able and accomplished debater. Like many successful speakers, conscious of their powers, he seldom claimed the attention of the House. It was a remarkable feature in his character, that when at home it was next to an impossibility to persuade him to address a popular assemblage; and what renders such refusal still more singular, whenever he did appear before the public as a speaker, he never failed to captivate and charm his audience.

It is related of him that soon after his return from one of the sessions of Congress, a convention assembled at Canandaigua, consisting of his political friends. In the course of its proceedings, a resolution was unanimously adopted, approving of the course of the Hon. Dudley Marvin in Congress. Mr. Marvin was not present, but a committee immediately waited upon him, gave him a copy of the resolution, and invited him to address the convention. He accompanied the committee to the court-house, where the convention was sitting. On entering the room, he

was received with cheers, and then loudly called upon for a speech. He immediately arose, and in a few words expressed the satisfaction which the resolution gave him,—acknowledged the deep obligation which he felt himself under to his generous friends who had so highly honored him,—and took his seat.

This meager speech from an orator so celebrated, fell rather coldly upon the enthusiasm of the convention. For a moment there was a dead silence in the room. Suddenly one of the delegates, a venerable farmer from the town of Bristol, arose, and turning to him, said:

“See here, Mr. Marvin, this won’t answer. We have sent you to Congress, because you are a first-rate man to represent us there. We’ve just told you that we are satisfied with what you have done; but we want you to tell us how you did it, and how the affairs of the nation look down there for our side. I’m not one of them that likes to hear a speech on all occasions, especially from those that are always talking. Now we want some account of your stewardship from your own mouth. Now, gentlemen of the convention, I propose that Mr. Marvin address this assembly, and if he refuses to do so, then I propose that we rescind the vote of thanks we have just passed.”

Once more cries for “Marvin!” “Marvin!” rang through the room. He obeyed the call, and delivered a speech which was highly gratifying to his constituents.

During one of the recesses of Congress, he was engaged in the trial of a cause which created considerable interest. At the conclusion of one of those appeals for which he was so famous, the court adjourned for dinner. On reaching the door of the court room, he was accosted by a man who said he wished to talk with him a moment.

“Well, I will hear you,” said Marvin.

“I have a boy whom I want you to take and make a lawyer of,” said the man.

"How old is he?" asked Marvin.

"He's eighteen year old, stout and rugged; he's got a pair of lungs like a bellows," said the man.

"That is very well as far as it goes. Has he any other qualifications?" asked the lawyer.

"Yes sir, he's got the one great qualification of all," was the reply.

"Well, what is that?"

"Why, good heavens! Mr. Marvin, he's the confoundest liar in our town. If that ain't a big qualification for a lawyer, then I don't know. I thought when I heard you in the court room just now, that it wouldn't take long for Sam to come pretty nigh up to you," said the man.

Marvin assured him that his son's qualification might bring him to the bar, for a short time, before he was aware of it, and for that reason he thought the boy would get along without any of his help, and thus the matter ended.

The Canandaigua bar at this time consisted of such lawyers as Spencer, Sibley, Worden, Wilson, Howard, Gregg, Norton, Strong and others, all of whom possessed more than ordinary abilities.

In speaking of John C. Spencer, Marvin often said: "Spencer was constituted for a lawyer, just as some men are constituted for mathematicians or as engineers, &c. He is all lawyer, and whatever intellectual effort he attempts, has the stamp of the lawyer upon it. If he should undertake to talk, or, as the saying is, use his liberty, in a religious meeting, he would give a disquisition on reversionary interest, contingent remainders or resulting trusts, by way of illustrating the rewards of just men made perfect."

Though Spencer was less vulnerable to the keen sarcasm of Marvin, than many others; yet even he was often the victim of a sharp repartee, which gave the former a decided advantage in a contest.

This was once illustrated in a case in which they were opposed to each other. In the course of the

trial, an argument on some legal question occurred, in the course of which, Marvin asserted very strongly a certain proposition, and concluded by saying, that it was undoubted authority.

"I doubt it, I doubt it," said his opponent.

"Well, doubt, if you dare take the consequences," said Marvin.

"What are the consequences, sir?" asked Spencer.

"Why, he that doubts shall be damned," was the quick reply.

The color of Spencer's face proved that the shaft had taken effect.

In the year 1819, after a bitter political contest, in which Mr. Spencer had been very active, he was prosecuted by some opposing partizans, in an action growing out of matters which occurred during the campaign. The case was planned with singular skill, and prosecuted with great determination and ability.

As the consequences of defeat would be extremely disastrous to him, he had some cause for alarm, though really no cause of action existed against him. After mature deliberation with his friends, Dudley Marvin was retained to try the cause for him.

It was understood that Spencer was to plan the defense, and that Marvin should conduct it at the bar without the least assistance from any person.

On the day of trial, Mr. Spencer, attended by his counsel, entered the court house, in the character of a defendant; taking his seat in the bar, the trial commenced. Though opposed by Elisha Williams, who withheld none of his great legal abilities, never did Marvin appear to better advantage; never did he evince more indubitable evidence of his commanding powers as an advocate, than on this occasion.

His invective against the partizan malice which instigated the action was most withering.

"Gentlemen," said he, "I can excuse the heat and anger engendered by party strife. I am ever wil-

ling to palliate some vituperation on such occasions, for forbearance at such times, is due to the weakness of human nature, to the excess of sudden passion. But I cannot excuse that bitterness which outlives the occasion—merges into cool and calculating revenge—erects its fiery crest—hisses forth its venom—pursues with its scorpion sting, private character and domestic peace, seeking the law as a means of vengeance, with all the dark malevolence—with all the hideous attributes of the assassin, without the assassin's courage.”

The defense of Mr. Marvin was triumphant, and resulted in the utter defeat of Mr. Spencer's enemies.

But to return to his Congressional life. During the Congressional session of 1825, although one of the most energetic and laborious members of that body, he seldom mingled in the debates which occurred in it. As the second on the committee to whom was referred the investigation into the amount of duties paid on imported woolen goods, and into the condition of the woolen manufactures of the nation, in the absence of the chairman, Mr. Penstock, of Pennsylvania, Mr. Marvin submitted an elaborate and able report, which Mr. Mallory, of Vermont, in the succeeding session of Congress, as chairman of the Committee on Manufactures, asserted aided him materially in preparing his report on the “alteration of the acts imposing duties on imports,” commonly called the “Woolen bill.”

It is certainly safe to say, that Mr. Marvin's career in the eighteenth Congress, if it was not brilliant, was highly creditable to him, and as an indication of the satisfaction which it gave his constituents, he was unanimously renominated to represent them in the succeeding Congress.

With the close of the nineteenth Congress, he retired from the political field to the duties of a private citizen.

In the month of October, 1829, the celebrated trial of Richard and James Gray occurred at Batavia. The defendants had been indicted for the murder of Harvey Davis, an innkeeper at Le Roy, New York. The accused were father and son. This fact, and the singular circumstances attending the homicide, created intense interest, rendering it one of the most important cases ever tried in the county of Genesee.

Levi Rumsey, a very reputable member of the Batavia bar, was then district-attorney. The case was so important that the governor was solicited to send the attorney-general to assist the prosecution. That officer having another engagement, the governor directed that Dudley Marvin should be retained in his place; and Mr. Rumsey immediately wrote to him in obedience to the instructions of the executive.

Before receiving this note, he had been written to by the friends of the Grays, inquiring on what terms he would undertake their defense; and accordingly he replied to the district-attorney by saying that he could not give him a definite answer until he heard further from the prisoners. Thus the matter rested. In the mean time, he happened to be at Batavia on business. The Grays, learning that he was in town, sent a friend to him for the purpose of ascertaining precisely what his charge would be for undertaking their defense.

“Two hundred and fifty dollars and expenses,” was the reply to the Grays.

The agent repaired to the jail for the purpose of repeating this answer. He soon returned.

“Well, Mr. Marvin,” said he, “they say you charge too much, and that they will be hanged if they will pay any such sum.”

“Very well; tell them they shall have their choice, for they shall be hanged,” was the reply.

Accordingly, he accepted the retainer of Mr. Rumsey. The trial took place, and one of the defendants—the son—was convicted of murder, and executed;

while the father was convicted of manslaughter, and sentenced to the State prison during his natural life.

The prosecution of this case involved the difficult task of grouping and combining a mass of apparently incongruous and unimportant circumstances, a close and critical examination of several difficult and technical legal questions, and of drawing from unwilling witnesses circumstances within their knowledge. But with the perseverance, fidelity and pertinacity of an explorer after some occult truth—some fascinating mystery—Marvin followed the prisoners through every labyrinth of the law, through the devious windings of the circumstances, until he fixed upon them the sure and certain mark of blood—the indubitable evidence of their guilt.

His address to the jury was powerful, convincing, and eminently successful. Like Webster, in the trial of the younger Knapp, he was accused of convicting the prisoners by the force of his eloquence alone, by a brilliant and powerful radiation of light on remote and doubtful circumstances.

The prisoners were defended by George Hosmer, then in the midst of his professional success. His defense was one of the most powerful ever made by that eminent lawyer. In speaking of this trial in after years, Mr. Hosmer remarked that “it was not the evidence that convicted the Grays; it was Marvin’s thrilling and terrible appeal; it was so overpowering that nothing could withstand it. Such efforts misdirected, or directed against innocence, are fearful, and I have sometimes thought that a public prosecutor of such abilities should not be permitted to appear where the prisoner’s guilt is doubtful.”

Some time after the execution of the young man, circumstances were developed which indicated that the father alone was guilty.

Mr. Marvin was connected with many of the important and exciting trials resulting from the abduc-

tion of Morgan. One of the most important was the defense of Ganson, a wealthy stage proprietor, at Batavia, who was indicted for being concerned in the removal of Morgan. Marvin conducted the defense in this case. It appeared in evidence that one of the defendant's coaches was used for the purpose of the abduction, but by whose authority or direction the coach was thus used, did not appear, though a powerful effort was made to connect Ganson with the matter.

The person who drove the stage was placed upon the stand.

"Who gave you the way bill, that night?" asked the public prosecutor.

"I don't remember."

"Who was in the coach when you started from Batavia?"

"I think there was three men; one of them, I think, was Morgan."

"Who shut the coach door?"

"I can't tell."

"Did you receive directions from any person?"

There was an objection to this question, but the court allowed the answer.

"Yes; somebody told me to drive like hell, for there was a man inside that was bound for that place."

"Did you obey orders?"

"*I think one of the men went through,*" was the reply.

This was all that could be elicited from the driver, and as there was no proof that Ganson had any knowledge that Morgan was in the coach, he was acquitted by the jury.

Mr. Marvin continued to practice his profession until the year 1835, when he removed to the city of New York, formed a partnership with William Austen, Esq., an accomplished lawyer, and commenced the practice of law in that city under many advantageous circumstances. His reputation preceded him, and he

immediately took a high position as an advocate at the New York bar. He continued to practice with increasing success, until he became engaged in a certain patent right, which for a time promised much success, and even wealth; this attracted his attention from his profession, and his practice began to decline. At length his patent right failed, causing the loss of large sums of money and many of his clients. His friends in the city offered to guarantee that his practice should be re-established, provided he would remain in the city. For a time he proposed to do so; but certain interests which he had in lands in the county of Chautauque, rendered it necessary for him to remove there.

Accordingly, in autumn of the year 1835, he became a resident of Ripley, in that county. Here, he did not design to devote much time to his profession; but so high was his reputation as a lawyer, that retainers came to him from all parts of western New York.

Among the important cases in which he was engaged at the Chautauque bar, was that of the People *v.* Newman, tried in Mayville, in January, 1846.

Newman had been indicted for attempting to stab Nathaniel A. Lowrey, a prominent citizen of Chautauque county, in November, 1845.

On the evening before the election of that year, Mr. Lowrey left his store for his residence; on reaching his gate, a man, whom he supposed to be Newman, came up with him, accosting him with the accustomed salutation, "Good evening." The next instant he received a blow from the man, who, in giving it, stumbled, and partly fell, and at the same time dropped something upon the walk: recovering himself, he ran rapidly away.

On entering his house, Lowrey discovered that he was bleeding profusely from a wound in his side, made with some sharp instrument. Recollecting that he heard something fall upon the walk, he caused

search to be made for it, which resulted in finding a large heavy knife, having a two-edged blade, which was covered with blood.

It was soon ascertained that Newman owned a knife similar to this; but it was also known that one of the merchants in the village once had a package containing a dozen of these knives, which had been disposed of to various persons about the country.

One of the most embarrassing questions for the prosecution, was the entire absence of motive in the mind of Newman for the commission of so fearful a crime, or, indeed, for the commission of any act of violence against Lowrey. However, some slight proof tended to establish the fact that the accused committed the crime at the instigation of other parties, enemies of Lowrey, now out of the jurisdiction of the court. But the principal question in the case was that of the identity of the prisoner. The whole case, however, created a legal contest seldom equaled in western New York.

The prosecution was conducted by Abner Hazleton, a distinguished member of the Chautauque bar, then district-attorney, and subsequently county judge of that county, assisted by Richard P. Marvin, now one of the justices of the Supreme Court for the eighth judicial district, and John B. Skinner, of Buffalo. Mr. Marvin was assisted by the late Judge Mullett. Seldom do the records of our State courts present such an array of distinguished and brilliant lawyers as appeared on the trial of this case. Seldom has there been a case which so thoroughly stimulated them to the exertion of their every faculty. During a whole week, the court-room at Mayville was the scene of a close, able, and at times thrilling contest, each side contending with a determination which would not brook the idea of defeat. At length, after addresses of almost unparalleled ability from the respective counsel, the jury retired. A lengthy deliberation followed, and they returned into court amid the most breathless

silence from the vast crowd of spectators present, and rendered a verdict of guilty.

This was the last case of any importance in which Marvin was engaged; other matters claimed his attention and drew him from the bar, though he could not entirely emancipate himself from the claims which his old clients believed they had upon him.

Previous to his removal to Ripley, he became somewhat dissipated in his habits; he was one of those genial, social, pleasing, gifted persons, upon whom the blight of intemperance naturally falls, leaving the cold-hearted, the callous, and the sordid, to that negative virtue, which, while it is commendable, possesses none of those heroic qualities which inspires him who with lofty sentiments, generous emotions, and liberality, unites many faults, which require fortitude, self-denial, and philosophy to overcome.

Whenever the genial sunbeam falls upon rich and generous soil, noxious weeds will spring into existence with useful and ornamental vegetation, while in the cold shadows of the rock, in the arid sand, all may be pure and free from weeds, but no beautiful flowers spring up to spread their fragrance through the surrounding air—no luxuriant fruit gives pleasure, happiness, and benefit to man.

When Mr. Marvin became fully aware of his dangerous condition, he suddenly resolved upon reformation, and he sternly and heroically carried that resolution into effect. He united with the Presbyterian Church, at Ripley, and from that event, through the remainder of his life, he exhibited the example of an undeviating Christian.

In the autumn of 1846, he was elected by the Whigs of the thirtieth Congressional district a representative in Congress. Early in December, 1847, he delivered a speech on that part of the president's message which referred to the Mexican war. Some of his remarks, particularly those in connection with the question of slavery in the territories, will long be

remembered as almost prophetic, and imbued with an astonishing prescience.

After serving through the session of 1847-8,—discharging his duties with great ability and exactness,—he retired from the cares of office, and from the political field, to the duties of private life.

Dudley Marvin was, as has already been stated, above the middle size, rather portly, but with a figure finely proportioned. His countenance was indicative of his gifted mind—handsome, open, and intelligent. He had a remarkable presence, in which dignity and urbanity combined. One of his talents, the one which most distinguished him in private life, was a rare turn of pleasantry, which was delicately ironical, and which tinged his vast fund of anecdote with a most pleasing interest.

He was fond of the society of literary men, with whom he always felt himself at home. He was deeply read in history, ancient and modern, possessing a critical and refined taste. His favorite poets were Spenser, Shakespeare, and Ariosto. He used to say of Pope, that he was the most Roman of all the British poets, and the least offensive in his Romanisms.

With the odes and satires of Horace, he was perfectly familiar, from which he often, in his speeches and conversation, made natural and pleasing quotations, among which was the following: “Prometheus was obliged to add to that original clay with which he formed mankind, some ingredient taken from every animal, and, thus he applied the vehemence of the raging lion to the human breast; and hence,” said he, “we have soldiers, warriors, laws, and—lawsuits, &c.”

The kindness and generosity of Mr. Marvin overcame all acquisitiveness, rendering him extremely loose in his financial affairs. During a portion of his life, he paid but little attention to his pecuniary

engagements, forgetting them in the demands which his profession or the cares of office made upon him.

The late Mark H. Sibley, who always held Mr. Marvin in high esteem, used to relate an amusing incident illustrative of this feature in his character.

"On one occasion," said Mr. Sibley, "at a time when he was much embarrassed in his money matters, he came to me with a note against a man residing in one of the western counties, which amounted to five or six hundred dollars, and which had several months to run before it would become due, desiring me to take the note and advance him the money upon it. Believing the maker to be responsible, I did so. Some time after the note came to maturity, I wrote to the payor requesting payment; he replied by pleading the pressure of the times, and requesting some further time for payment. Time passed on, and payment continued to be delayed.

"At length, learning that Marvin was about to visit the place where the maker resided, on professional business, I called upon him, and requested him to take my note and collect it for me, which he readily consented to do. Amid the multiplicity of my professional engagements, the matter nearly passed out of my mind. One day, however, I met Mr. Marvin, and it occurred to me.

" 'General,' said I, 'what about the note against Emerson? How did you succeed with it?'

" 'O, admirably; admirably. I saved the debt for you, Mr. Sibley, and it's all right.'

" 'I am glad to hear you say so. Where are the funds?' I asked.

" 'Why, I took the money, and used it as occasion required,' was the reply.

" 'Yes, General, I see. But you do not call that securing my debt, do you?'

" 'Why, certainly.'

" 'In what way?' I inquired.

" 'By changing securities, to be sure. You hold

me now for the demand, instead of the maker of that note, and I think I am entitled to considerable credit for the manner in which I managed that matter for you. When you have more debts of the kind to collect, I will cheerfully aid you to the extent of my ability,' said he.

"The sincere and business-like manner in which he said this, was perfectly amusing to me; and although, from the general's circumstances just then, my security was not the most satisfactory, I replied to him :

" 'General Marvin, you are a most excellent financier—I think you are improving—but allow me to inquire to what length of time the new security extends the payment?'

" 'O, indefinitely, indefinitely, Mr. Sibley, with usual interest.'

"More prosperous times in his affairs came round at last, and my debt, principal and interest, was fully paid, for he was an honest, high-souled man."

Dudley Marvin was always highly esteemed by his professional brethren, and by the judiciary throughout the State. Whenever he arose to address the court or jury, he commanded the most profound attention. Always dignified and composed; always master of himself and his case.

He died at Ripley, in June, 1858, in the 71st year of his age. The intelligence of his death was announced in the various courts, and by the press of the State, in language that exhibited the high position which he held in the mind of the public.