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Book



In Memory of

Samuel J. GILDEN.



Samuel J. Tilden.



Memorial

READ BEFORE THE

ASSOCIATION OF THE BAR OF THE CITY
OF NEW YORK,

TUESDAY, DECEMBER 14th, 1886,

BY

WILLIAM ALLEN BUTLER.

Printed from the Memorial Book of the Association.

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Memorial.

IN presenting, at the request of the Executive Committee, a memorial of the life and character of our deceased fellow member, SAMUEL J. TILDEN, I recognize the propriety and necessity of the rule of our body which limits these commemorative sketches to a few pages of the Memorial Book. This requirement must be observed in the present instance, notwithstanding the wide field which might otherwise be occupied in the survey of a character and career of unusual importance in their relations to State and National affairs, aside from the special interest which attaches to them for us in view of the professional life of Mr. Tilden, the part taken by him in forming this Association, and the remarkable way in which, in a great public emergency, he aided in giving practical effect to the main purposes of its organization.

In the briefest retrospect of the life of Mr. Tilden we are arrested by certain sharp and striking contrasts which in his case, as in that of many men of mark, seem to come into prominence only when the whole life is looked at across the interval by which Death separates it from the current interests and intercourse of men.

With him the sovereign element of self-reliance, the main-spring of the largest success, was hampered by physical ailments which deprived him of the benefit of a completed academic course of study, and which often interfered with his capacity for active service, yet his years of life, from his birth on February 4, 1814, to his death on August 14,

1886, outran the prescribed limit, were crowded with the most varied labors, and were never clouded by any abatement of intellectual vigor. Beginning life with scanty means, and for many years contenting himself with the simplest arrangements for his personal comfort and convenience, he came to possess, as the result of his sagacity and financial skill, the amplest means for the gratification of the cultivated tastes and the love of Nature exhibited so liberally both in his city and his country homes. As a lawyer, never identified with the general practice of the profession, or seeking a large clientage, he became a master of the law as a science and an acknowledged authority in one of its branches most closely allied with the main sources of our national prosperity. Without special forensic ability, he gained, in conspicuous cases, signal victories at the Bar. Without any gift of oratory or of what, for want of better words, we call personal magnetism, he came to be the acknowledged head of a great party; the Chief Executive of his native State; the recipient of a majority of the popular vote for the Presidency, and, according to the final arbitrament of the Electoral Commission, of 184 against 185 votes in the Electoral Colleges; and in his voluntary retirement he retained to the end of his life a potent influence in public affairs.

The lights and shadows which belong to this many-sided life must not tempt us from the view, to which we are confined, of that part of Mr. Tilden's career, which belongs more closely to our own professional sphere. And yet his activities as a lawyer and as a public man, were in an unusual degree coincident, and it was his legal training which qualified him for the best discharge of civic trusts. He was always an intensely interested actor in public affairs; always a power in the political party into which he was born and in which he was nurtured. He had a natural bent and zest for politics as one of the great factors in human affairs and human progress. His native fondness for study, quickened by intercourse with superior minds, and turned, by the cir-

cumstances which interrupted his college course, into the channel of secluded thought and individual research, seized upon history, the course of political opinion, the problems of government, and the great economic questions which they involve, and he was always a serious, careful and laborious student in these fields. To him "the years which bring the philosophic mind" came very early. In my acquaintance with him, dating from my boyhood and continuing through the friendship of nearly half a century, I found him unchanged, from first to last, in this absorbing interest in public affairs, specially directed to their right administration, according to the ideas which were, to him, the true embodiment of the principles of good government. He brought the same rare capacity and gift of patient search and exploration to bear on every subject which engaged his attention. If in his reading, which he pursued with avidity, he took up as a special topic of study some period of history, such as the English Revolution, he would embrace in his investigation whatever was necessary to the complete mastery of the subject, however wide the range of research it involved, pursuing the favorite topic without regard to time, or rest, or thought of other things.

The same habit he brought into his private affairs, his professional work and his political activities. Alike to all objects which engrossed him he gave the whole of his intellectual capacity, all the energy of his will and the full measure of his physical strength. He had a persistence which was more than perseverance and a faculty of adhesion to the main purpose in view, and of reaching it by discussion, by investigation, and by all means of possible solution, which exhausted the powers and the patience of everyone but himself. Under none of the limitations which the domestic relations impose, with more or less stringency upon even the busiest men, this concentrated absorption became his fixed habit, and was largely at once the method and the means of his success. In the case of Giles against Flagg, in which the question was which of the parties to

the action had been elected Comptroller of this City, Mr. Tilden, as counsel for Mr. Flagg, went behind the returns, and by a most minute, painstaking and exhaustive process possessed himself of all the facts relating to the constituency, the poll lists and the actual vote, and the statement to the jury of the results of this investigation, in his opening on behalf of his client, was, in itself an absolute and conclusive demonstration, and practically an end of the case.

This is only a single illustration of his general and habitual methods. He believed in the potency of definite facts as the best means of producing conviction in the minds of men, and would say that to this end he would rather have one fact than a column of rhetoric. But it was the facts underlying and out of sight, and undiscoverable, except by long and patient labor, which seemed specially to attract him and to furnish a kind of native stimulus to his keen perceptions which he trained for service in the dark. This gave him a rare and in some respects unequalled power. To most men there are insuperable barriers of time and circumstance and necessity which forbid their entering the labyrinthine paths which he pursued in professional investigation or in political forecast and combination, even if they have the genius to guide them in the unaccustomed way. Along with this resource of indefatigable research came a caution which was not timidity, but the master faculty which applies Lord Bacon's rule, and sees all dangers in council and none in action. He was, as he declared in one of his speeches during the great municipal crisis of 1871, "willing to follow where anyone would lead or to lead where anyone would follow," but if he was to have the responsibility of leadership he would undertake no advance until he knew the ground to be occupied and could measure in the balance of his own judgment the forces of encounter and resistance.

With all these deliberative characteristics, and in spite of the lack of that physical robustness which by its in-

stinctive force aids in bringing men to leadership, Mr. Tilden was bold as well as cautious, when he knew his ground. I recall an exploit of his at the Presidential election of 1844, which had in it a certain dash and vigor which commanded admiration. At that time, the election in Pennsylvania ended before that in New York began. It was one of the political sayings of the time, "as goes Pennsylvania, so goes the Union." Mr. Tilden formed and executed a plan for getting in Philadelphia at the last moment before the election in New York, the complete returns, so far as to be decisive of the result in Pennsylvania, and of bringing them to New York in time for publication on the eve of the election in this State. At that time, before the era of the telegraph or the lightning express, this was no easy task. Mr. Tilden, however, organized his plan, went to Philadelphia, secured the returns which were unmistakably favorable to his side, and brought them in the night, by a locomotive driven at the highest rate of speed, reaching New York in good time for publishing the desired intelligence, with the inspiring effect which such a prognostic of success could not fail to impart to the adherents of the cause for which he had done this special and hazardous service.

It has been noted as a peculiarity of Mr. Tilden's career, that he did not come to public office until late in life. With the exception of the post of Corporation Attorney of the City of New York, and his service in the Assembly of 1845-6, and in the Constitutional Convention of 1846, he held no office until 1871, and followed his profession, according to an elective method as to the cases he undertook, which would have been fatal to men of less ability. His clients must bide his time for examination and action, and he must have his own way of dealing with the cause. This made him less conversant with the Courts than with the consultation room, and yet, on occasion, as in the famous Burdell case, he was found fully equipped for the active conflicts of the bar. It was only under the pressure of the

great exigency which made plain the necessity of extraordinary remedies for unparalleled public evils that he came to the front in official service. His forty years of preparation gave him here unsurpassed advantages. He entered upon his strictly public life through the door of the profession. The beginning of this Association may almost be said to have been the inauguration of his public career. The conspiracy by which the most important public trusts in municipal and judicial administration in this city were turned into instruments of corrupt private greed was thoroughly organized and the conspirators were entrenched in the places of power. Mr. Tilden had refused retainers from men whose alliance with corrupt schemes and corrupt judges was notorious. They had said to him, "We don't want anybody else; we want you." Against personal and partisan associates, he stood for honesty in administration and integrity on the Bench. At this critical moment the call was issued for the meeting at which this Association was formed. Those of our number who were present at that meeting at the Studio Building (Fifth Avenue and Twenty-sixth Street), on the evening of February 1, 1870, may recall the circumstances under which Mr. Tilden spoke, quite late in the evening, and when as he was about quitting the room he was called back by general acclamation, and standing near the door made the most stirring speech of the hour, unpremeditated, as he afterwards said, but striking the keynote of the effective denunciation which aroused and quickened public sentiment to the need of instant action.

He said, "If the Bar is to become merely a mode of making money, making it in the most convenient way possible, but making it at all hazards, then the Bar is degraded. If the Bar is to be merely an institution that seeks to win causes, and win them by back door access to the judiciary, then it is not only degraded, but it is corrupt. * * *

"The Bar, if it is to continue to exist, if it would restore itself to the dignity and honor which it once possessed.

must be bold in aggression. If it will do its duty to itself, if it will do its duty to the profession which it follows, and to which it is devoted, the Bar can do everything else. It can have reformed constitutions, it can have a reformed judiciary, it can have the administration of justice made pure and honorable, and can restore both the Judiciary and the Bar, until it shall be once more, as it formerly was, an honorable and elevated calling."

Following upon this was the long contest with the Ring and its final overthrow, and the impeachment proceedings which arrested and put to an end the judicial malfeasance which had dishonored the Bench. The share of Mr. Tilden in this struggle is matter of history written in the records of our Association, of which he was one, and the first on the list, of its Vice-Presidents, elected February 15, 1870. His affidavit of October 24, 1871, disclosing the results of his personal investigation of the dealings through the Broadway Bank of the members of the Board of Audit, brought their shameless transactions into as clear a light for judicial condemnation and sentence as his analysis of the Giles and Flagg vote had made that case easy of decision. At a personal sacrifice, which he alone of the leading members of our body who united in this crusade against crime in high places was able to make, he went to the Assembly to carry against organized opposition, and the desperate struggle of detected conspirators, the necessary measures of impeachment. Respecting this, we have the testimony of Mr. O'Connor, that it "was all Tilden's work and no one's else. Tilden," he said, as reported by Mr. Bigelow, to whom the remark was made (with the addition that upon this point he was a competent witness), "went to the Legislature and forced the impeachment against every imaginable obstacle, open and covert, political and personal."

On taking the chair at a meeting of our Association on May 28, 1872, at a time when apprehension as to the result was very generally felt, he declared that he did not share in those fears, and he gave a summary of the work already

accomplished, and of the cause of congratulation which existed that while everything else in the way of reform had failed, this indispensable measure of impeachment had been adopted against "obstructions under every pretext" which had to "be met at every step and overcome."

The result justified his assurances. The purification of the Judiciary was accomplished by the efforts of the Bar. Within these walls there can never be a question as to the singleness of purpose, the disinterestedness and the true professional zeal which marked the service of every one of our number who in private council or in public prosecution aided in the work.

It is quite true that without an aroused public sentiment, without untiring and fearless activity on the part of the Press, without the constant co-operation and aid of public spirited citizens, the desired end could not have been secured; but, as lawyers, we know that only the due processes of the law, put in motion and kept in motion by the most sagacious, vigilant and experienced ministers of the law, could bring to full exposure and to final judgment the wrongs and the wrong-doers. It is of little avail to attempt to measure the relative value of any one of the forces which conspired to accomplish the common purpose, or to adjust with exactness the precise rewards of merit where so many gave their best endeavors, but in the retrospect, and in a just view, it is hard to overestimate the service which Mr. Tilden rendered in this crisis of our municipal and civic life, either as to its quality and degree of professional skill or its purity of purpose.

I have given emphasis to this point of his career because it was its turning point, making him, by means of the prominence it gave him and the power he came to wield within his own political party and against powerful and organized opposition within its ranks, the most conspicuous and effective of its leaders.

It gave him the fullest opportunity of putting into practice and of insisting in public speech and in executive action

upon those ideas as to the administration of affairs which were, in his view, the supreme concern of citizenship. He was thoroughly imbued with the great principles of popular government and with a keen sense of the evils which beset their practical exercise.

Certainly no public man of our day was ever more thoroughly furnished by natural or acquired aptitude to deal with those weighty problems and like the burdens of the old prophets they were his constant theme, whether men would hear or whether they would forbear.

The same energy was conspicuous in his service as Governor. He initiated at once a war against the powerful combination which had made that branch of the public service which dealt with the Canal system of the State a central source of corruption. A secret scrutiny into the methods of the contractors, undertaken and carried on by his direction, at his personal expense, disclosed the facts which his Canal message of 1875 spread before the Legislature and the People. The complete ascendancy over the hostile forces which were arrayed against him as the result of this aggressive movement in the interest of reform and economy was gained by the same patient and indefatigable course of dealing which had already served him so well. Going behind the opposing Legislators and their immediate backers among the local constituencies they represented, he made his direct appeal to the individual voter and so effectually maintained his supremacy that his nomination for the Presidency was the necessary outcome of his established pre-eminence.

Other incidents and details are foreign to my purpose and forbidden by the prescribed limits of this brief sketch. The fierce, unsparring warfare of a Presidential campaign, with its poisoned arrows, its mercenaries and its secret service of character assassination we may leave out of view as we look back over the professional life and the service in places honorably filled. The scars of a veteran soldier adorn, or disfigure, according to the medium of sympathy or aversion through which they are observed. The leader-

ship of a party is not a place in which to win the common suffrage of consenting approbation as to personal traits any more than the common suffrage as to public trusts. Success in attaining the highest place in the gift of the people might have given a wider field for the display of statesmanship, tempered the criticism of rivals or opponents and heightened the admiration of friends, but failure, under circumstances which were in themselves an unexampled test and trial of character, was borne with an equanimity worthy of praise.

“ *Alteram sortem bene preparatum*
“ *Pectus —.* ”

The mind prepared for either fortune, received the commendation of the Roman poet in his ode to an ill-fated friend who fell a victim to a political accusation. In the case of Mr. Tilden this temper was exhibited, without ostentation and without bitterness, and may well serve as a shield, were any needed, against detraction or disparagement.

But whatever differences of political sentiment or affiliation may enter into our estimate of his character and work, it is a duty as well as a privilege within our own circle to assert his claim to the respect and gratitude of his brethren of the Bar and of the community at large, in those matters as to which we speak what we know and testify what we have seen. In the rush of events and especially in the ever recurring struggles with present wrong-doing, public and private, we are too apt to be forgetful of past dangers and past deliverances and of the work of those by whom the deliverances were wrought. It is in the retrospect of the great public peril which summoned Mr. Tilden to aid in the rescue of the State and of the peculiar service which he gave with unselfish and untiring fidelity and with full success, that we find as in a focus, the converging force and radiance of his best faculties and gifts; a cheering and guiding light, unobscured and inextinguishable.



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