

military. Judges, senators, representatives in Congress, ministers and consuls of other governments; governors and ex-governors of the New England States; literary men, presidents and fellows of college, and ministers of the gospel,—all came to do his memory reverence. The road to the mansion-house for a mile and a half was lined

upon either side by surviving veterans of the Army of the Republic. As the long procession started, escorted by the Ancient and Honorable Artillery Company, cannon resounded from the hill-top, and a solemn funeral dirge was played by the bands. It was a scene such as Massachusetts never before witnessed.

*Stephen M. Allen.*

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SOME RECOLLECTIONS OF CHARLES O'CONOR.

THE death of Mr. O'Conor has left a large vacancy in the American bar, larger perhaps than was ever created before by the death of any single individual. For a period of nearly half a century he was the professional feature of almost every important litigation in the great commercial center of the nation. Indeed, he conferred importance upon any case in which he was engaged, and the reports of the judicial decisions of the State of New York will bear to remote generations abundant testimony of his extraordinary industry and professional learning and skill. It may be assumed that his profession will furnish a competent biography of one who lent it so much distinction, and whose example commended itself in so many ways to the admiration and imitation of his professional brethren wherever the administration of the law has attained the dignity of a science.

It was my good fortune in early life to experience a very great and most seasonable kindness at the hands of Mr. O'Conor, a kindness which modesty only forbids my referring to more in detail. His life, however, was so full of such benefactions that the suppression of one of them requires no apology. The incident, to which I only venture to allude, established relations which, if not more intimate, were in some respects different from those which are ripened by ordinary professional intercourse, and countenance me in making a permanent record of such recollections of him as seem to possess some public interest, and of which there may be no other witness.

While at the bar I had known Mr. O'Conor about as intimately as it was possible for a young man at the base of the profession to know one who was nearing its summit. We had been on bar committees together; we had both taken a lively interest in the discussions which preceded and followed the Constitutional Convention of 1846, of which he was a member, and, at one time and another, we had interchanged opinions upon most of the contested questions discussed in that body.

We were not in close sympathy with each other on all nor even on many of these questions, while in politics we were separated by an impassable gulf. Though both of us professed to be Democrats, he belonged to the tribe then known in New York as "Hunkers," and I to that then known as "Barnburners." But we were both in earnest; both fancied that we were disinterested and patriotic; and our debates, though they tended to separate us wider and wider on questions of party policy, proved favorable rather than otherwise to the growth of our friendship. This is all I need to say by way of introduction to some reminiscences which death seems to have made it my privilege, some think my duty, to share with the public.

Early in the summer of 1882 I received from Mr. O'Conor an invitation to visit him at his new island home in Nantucket. In the following summer I was invited again. I was fortunately able to accept both invitations, and on each occasion I spent with him several days. As I was old enough to remember him at the bar long before he had reached the primacy of his profession, his conversation, which never flagged during his waking hours either in volume or in interest, was confined mostly to the incidents of his youth and active professional life.

When I first arrived at "The Cliff," about the 1st of July, 1882, his new house was but just finished. The carpenters had left it only the night before, and we were the first guests to whom he had had an opportunity of extending its hospitality. His territory embraced only about two hundred feet square, situated on one of the bluffs overlooking the sea which separates the island from the Massachusetts shore. The ground around his house, or the sand rather, was not graded, and it seemed doubtful if it ever could be, as the wind would displace one day what the shovel had placed the day preceding. It was strewn with boxes, boards, and lumber-rubbish which had survived their usefulness, and were awaiting the proprietor's convenience to be consigned to

some less conspicuous repository. Whether they were removed or not was the least of all possible concerns to Mr. O'Connor. He had the air and the climate which had tempted him to make his home in this remote and rock-bound region; he had a wide piazza along three sides of his spacious dwelling, on which he could walk in all weathers, at all seasons; and he had his precious library, which he prized above all his earthly treasures. In these he had all that he required for his personal comfort, and neither the disorder nor the sand without gave him a moment's concern.

The motive Mr. O'Connor assigned to me for seeking that out-of-the-way home at his advanced age was, that in 1880 he broke down in the midst of an important piece of professional work, and his physicians, becoming discouraged, finally suggested that he go to Nantucket, that island being the nearest portion of North America to the Gulf Stream, and enjoying the most temperate climate on the coast at all seasons. Following their advice, he took lodgings in the town for the winter of that year. He found he could prosecute his work with unimpaired vigor. The experiment proved so satisfactory that he decided to build a house there, and make himself as comfortable as possible for what time he had to remain on the earth, be it longer or shorter. His nephew, Mr. Sloan, who was ingenious and intelligent, and, "like all Irishmen," said O'Connor, "never hesitates to undertake anything from doubt of his ability to execute it, offered to boss the job," O'Connor himself hardly looking at it or thinking of it until it was finished, the night before we arrived. Referring afterward to the Irishman's way of never admitting his inability to do whatever is asked of him, he said, "I have it myself. I should never hesitate to undertake anything from doubt of my ability to do it. I might have a good deal of trouble about it, but I would manage it some way." One day, when he had been telling me how he came to enter the legal profession, I made a remark which implied that he was specially fitted by nature for the profession which he adopted, and that no other would have proved so congenial to him. He said he did not think it would have made any difference what profession he had adopted; that he would have attained about the same relative success whether he had been bred a blacksmith, a doctor, a theologian, or a lawyer. He was just as fit and as unfit for one thing as for another. With hard work, for which he had sufficient capacity, he could master almost anything, after some fashion.

Mr. O'Connor did not provide for his library in his house, which is a frame building, but

built an edifice some twenty feet from the main building of brick, one story high, about fifty feet long and twenty-five broad, with an arched roof and as nearly incombustible as possible. By arranging his shelves perpendicularly to the walls instead of parallel with them, he secured accommodations for about eighteen thousand volumes. He here spent most of the working hours of every day when not occupied with guests or walking on his spacious piazza, his favorite and practically his only exercise. He could not ride with comfort, and therefore he kept no horses. While not professing to practice law, he was frequently appealed to by his professional brethren for aid in knotty and troublesome cases, which gave him quite as much intellectual occupation as he required. His habits of daily life were regulated by the exigencies of his health. He always retired at nine in the evening; he breakfasted at seven, dined at two, and supped at seven. To this programme he adhered with almost fanatical precision.

To some expressions of curiosity about his early educational privileges which dropped from me one day, he replied that he hardly had any. When a lad he attended a school kept by a sort of relative or namesake in Barclay street for about two months. That was all the schooling he had ever received. His mother, of whom he spoke in terms of great affection, died when he was only eleven years old. After that he had but little parental supervision. His father, who was a decayed gentleman, anything but thrifty, and usually surrounded with a set of old-country ne'er-do-weels, took it into his head one day to put his son with one of these acquaintances whose business was the manufacture of tar, pitch, turpentine, lampblack, etc. Charles was with this man about a year, and became perfectly familiar with all the processes of his manufacture. "I could to-day," he said, "conduct any of them." At the end of the year, during which period he received no pay but his board, he was put up by some of his young comrades to think he had no occasion to work any longer without compensation, for a person to whom he was under no obligation and for whom he had no particular esteem. He therefore gave notice of his intent to leave, and seek some remunerative employment. His master then said to him, "Charles, you had better stay with me, and if you do I will give you the same wages that I give —," naming the only one of the men beside himself who was privileged to live in the family. This was highly satisfactory, and Charles consented to remain. When, however, it transpired that he, a stripling, was getting a man's wages, there was a wild commotion among the other

workmen, who all must receive an immediate increase of pay or quit. The result was that Charles retired, and whatever hopes he may have indulged of becoming an eminent manufacturer of lampblack were abandoned forever.

O'Connor's father then conceived the notion that his son was intended for a lawyer, and, full of this conviction, took him, in his thirteenth year, to another of his ne'er-do-weel acquaintances named Stannard, who professed to practice law, and placed Charles in his office. Stannard had no law-books and almost as little business. Charles got hold of a copy of Blackstone somehow, and read it through two or three times, but did not comprehend it at all. His mind, he said, was then entirely too immature to grasp the principles of legal science. In his fifteenth year he was transferred to the office of a West Indian named Lemoyne, who also professed to practice law a little. He was "a jolly sort of fellow," who would put several bottles of brandy under his waistcoat every day without much inconvenience, and who used to take Charles with him occasionally, as he expressed it, "to see the world." Lemoyne had a partner named Thompson, a son of Judge Thompson, of the United States Circuit Court, and clerk of his court. O'Connor used occasionally to go there to assist in the copying and other work. Thompson was heard to remark that there seemed to be a curious increase in the amount of his fees when O'Connor was in the office. Thus early his character began to shape his fortunes.

When O'Connor had reached his eighteenth year he made another change, this time to the office of Mr. Joseph Fay, the father of Mr. Theodore Fay, at one time minister resident to Switzerland, but at present residing in Prussia. None of these men had any law-books to speak of, the most eminent lawyers in those days having very few. Perhaps this was no misfortune to Charles, for it may have led him to read those he did have access to more thoroughly than he might have done had his pasture been larger.

In the fullness of time O'Connor was admitted to the bar. With that self-reliance which never forsook him, he sallied forth at once with just twenty-five dollars in his pocket, hired a small office, purchased a desk, two or three old chairs, and some stationery, put up "a little tin sign," and then sat him down to wait for clients.

But, more even than clients, he now needed a library. While with Fay he had re-read Blackstone, and "then," said he, "I comprehended it as thoroughly as I do now." He had also devoured every law-book, including

"Digests," upon which he had since then been able to lay his hands. But he did not own a single law-book; he had no money to buy any, and yet he could not get on without some. While struggling with this lion in his path, he remarked one day a notice posted up in the office of Mr. Woodward, then the county clerk, of a library of one hundred and fifty-six volumes for sale somewhere in town, at the moderate price of two dollars a volume. He looked up these books; they were just what he wanted, and he wanted them sadly, but he had no money, and, as he supposed, no credit. One of his comrades who knew of the struggle going on in O'Connor's mind, and who believed already in the young lawyer's star, recommended him to take his note for the price of the books to Mr. Pardow, and ask him to indorse it. Mr. Pardow was a respectable merchant who had been in the habit of dropping into Mr. Fay's office from time to time, and who had, of course, often seen O'Connor there, though they had no particular acquaintance with each other. O'Connor at first ridiculed the idea of any one indorsing his note; but after hearing his friend's arguments and turning the suggestion over in his mind for a day or two,—rendered a little reckless, too, by his necessities,—he determined to take the chances. Mr. Pardow heard his request, but, without making any reply, went his way. O'Connor feared that he had been too bold, that he had, perhaps, taken a liberty, and felt humiliated. At the end of a week or so, however, Mr. Pardow came into his office and told him he would indorse his note for the books, which he did then and there. With the indorsed note in his hands, and with his heart swelling with a gratitude his lips tried in vain to express, O'Connor rushed down to the shop for the books. The owner soon satisfied himself of the responsibility of the indorser, and handed over the long-coveted treasures to O'Connor, who from that day forth never knew what it was to lack books from a want of the means to purchase them.

Mr. O'Connor then went on to tell me what became of the descendants of this Mr. Pardow, over whom and whose interests he always exercised a watchful supervision. He closed his story by saying, "That young lady in the other room whom I now call my adopted daughter is Mr. Pardow's great-granddaughter." As he said this, it first flashed across my mind that he was repaying in this princely way, to the great-granddaughter, the debt of gratitude which in such a seemingly providential way he had contracted to the great-grandfather. The young lady to whom he referred, and who sat at the head of his table, was Miss

Julia Pardow Mullaney, who I trust will not be offended by this use of her name in referring to a transaction which to her is equivalent to a title of nobility.\*

The advantage to O'Conor of the timely succor rendered him by Mr. Pardow left upon his character a profound impression, and helped to make it difficult for him to turn his back upon any one, and especially upon any young person, appearing to stand in need of assistance. His life was full of acts of beneficence, inspired, no doubt, by the reflection that his own career might have been disastrously modified had Mr. Pardow in this crisis of his fortunes declined to stand by him. Only the day after my arrival at Nantucket, he repeated to me the substance of a letter he had received the week previous from Virginia. By this letter it appeared that some thirty years previous the writer, who was then living in New York, found things going against him so persistently that he was at his wits' ends, not knowing which way to turn. One day, while in the last stage of despondency, he chanced to be standing in front of Delmonico's, on the corner of Beaver and William streets, when the thought suddenly entered his head to ask a gentleman who was approaching with his head down and apparently absorbed in his own reflections to lend him five dollars. The person accosted, without a question or hesitation, put his hand in one of his pockets, took out the desired sum, and handed it to him. The individual thus befriended asked a man who chanced to be standing near if he knew the name of the gentleman who had just left him. "That was Charles O'Conor, the lawyer," was the reply. The letter reciting these facts contained a check for the amount of the money so strangely bestowed, and a promise that if the writer was ever able, he would send the thirty years' interest which had accumulated on it. O'Conor said he wrote the poor fellow that he had no recollection of the circumstance to which he referred; that he would accept the money sent, for that would seem necessary to make him feel easy, but he must decline the interest, and begged him never to allude to or think of

that, as he could never under any circumstances consent to accept it.

It was O'Conor's rule to give to all who professed to be needy. It must have been a very barefaced impostor whom he sent empty away. Of course he was sometimes imposed upon, but he felt that he was the better for what he gave if the receiver was not. It never worried nor soured him to learn that any of his charity had miscarried.

While a student with Fay and Thompson O'Conor wrote a wretched hand, and he discovered that he could be much more useful to himself and others if he were a more accomplished penman. One day his attention was arrested by an advertisement of some Yankee who undertook to teach writing in six lessons for one dollar. "The writing in six lessons," said he, "was just what I wanted, but where was I to get the dollar? Well, I managed to get it somehow. The man and his system proved to be all he represented them, and since then I have had no trouble with my penmanship."

His first chancery suit yielded him his first considerable professional triumph. It is known to the profession as the case of *Bowen vs. Idley*. Idley, the defendant, was a Hessian. He had married the illegitimate daughter of Bowen, the plaintiff, with whom the mother of Mrs. Idley had once been a domestic,—facts perfectly well known to all the parties to this litigation, but supposed to be not susceptible of proof. As some property was depending upon establishing the illegitimacy of Mrs. Idley, O'Conor applied in behalf of the one whom he supposed to be the legitimate heir for a change of the guardian *ad litem*, who happened to be the venerable Peter A. Jay. This seemed an act of great and inexcusable presumption for a young lawyer just chipping his professional shell; but the court was compelled, very reluctantly, to grant the motion, and William Kent, the son of the chancellor, was named in Mr. Jay's place. This incident established relations between Mr. O'Conor and that noble and accomplished jurist which ripened into a life-long friendship.

\* O'Conor's kindness to Miss Mullaney did not terminate with his life. In his will, after some legacies, in the aggregate less than one hundred thousand dollars, by the sixth clause he provided as follows:

"All the rest, residue, and remainder of my estate, real and personal, whatsoever and wheresoever, I give, devise, and bequeath as follows: Two-thirds thereof to my sister, Eliza Margaret Sloan, or to her sons in case she should not survive me. From respect for my sister's adoption and in grateful memory of my early friend, George Pardow, I give the other third of the same to Miss Julia Pardow Mullaney, a great-granddaughter of that gentleman."

In a codicil to this will made April 28, 1884, only a few weeks before his death, he adds to his previous benefactions as follows:

"To Julia Mullaney I leave my watch and the picture of an unknown young lady which is hung up in my parlor. All my lands and real estate in Massachusetts I give to said Julia Mullaney, her heirs and assigns forever. And I also give her absolutely my books, papers, documents, goods, and chattels whatever not otherwise disposed of that may be in said Massachusetts at my death."

Thus Miss Mullaney is endowed with Mr. O'Conor's superb residence and its furniture at Nantucket, his valuable library, and a third of the rest of his large and productive estate.

In due time the question of the legitimacy of Mrs. Idley came on for trial before the late Thomas Addis Emmet, to whom the issue had been referred by the chancellor. David A. Jones, "a somewhat pompous but very respectable lawyer," and then a leader at the bar, appeared for the Idley party. O'Connor had in some way managed to find the real mother of Mrs. Idley, a plain, ignorant, and common sort of person, and when the proper time had arrived in the progress of the trial, she was brought in and sworn. It was twilight; the candles which had just been brought in shed a demi-obscure light around the room producing, said O'Connor, a weird effect strangely calculated to increase the impressiveness of the scene which was to follow. Robert Emmet and one other, whose name, if he gave it, I have forgotten, were the only persons present besides the referee, the counsel, and the parties to the record. Mrs. Idley had never seen her mother. When the latter was called to the stand, no one but O'Connor knew who she was nor what she was expected to prove. Nor did the witness herself know why she was called nor suspect the bearing or importance of her testimony. After the usual preliminary questions, O'Connor went on:

Q. Madam, do you know the father of Mrs. Idley?

A. Yes.

Q. Who is it?

A. Mr. Bowen.

Q. Do you know her mother?

A. Yes.

Q. Who was she?

A. I suppose I must answer (she said, a little embarrassed).

Q. Yes, you must answer.

A. (After a short silence and increased embarrassment.) Well, I am her mother.

The effect was startling. A cross-examination was waived, the counsel tied up their papers, and the referee reported, of course, for O'Connor's client.

Mr. O'Connor's professional relations with Edwin Forrest, whose unsuccessful suit for a divorce from his wife, instituted some thirty-five years ago, is one of the American *causes célèbres*, did not begin with the divorce case. On the contrary, he had already been counsel for Forrest in a suit where Forrest was the defendant.\* It happened in this wise. Forrest,

in recognition of his obligations to William Leggett, who had done more than any one else to persuade the public of his merits as an actor, built a house at New Rochelle, in Westchester County, for Leggett to live in, at a nominal or very moderate rental. Kissam, a brother-in-law of Leggett, contracted to build the house for \$4000. When finished, Kissam claimed \$6000. Forrest refused to pay the additional sum of \$2000. Kissam sued him. The case was sent to a referee, and Leggett was put upon the stand as a witness. He swore very strongly on Forrest's side. Between the time of his direct and the time fixed for his cross-examination Leggett died. The court below sustained the referee in excluding the testimony of Leggett, because, in consequence of his death, the plaintiff had had no opportunity of cross-examining him. Jesse Oakley, a brother of the late Judge Oakley, and the counsel for Forrest, wished to appeal, but experiencing some difficulty in getting the record before the Court of Appeals, then just organized under the new Constitution of 1846, retained O'Connor to assist him. O'Connor, who often insisted to me that he was a better attorney than jurist, and did not disguise his conviction that in questions of practice or procedure he had no superior in the country, took hold of the case and soon accomplished the desired result. Naturally, he was asked to argue the appeal. He did so and won it, and a new trial was ordered.

While talking of this case, my eyes fell upon a series of books occupying several shelves, all bound uniformly in law calf, and each entitled on its back, "My Own Cases." I asked what that meant. He said those were a collection of the cases of most importance for one reason or another in which he had been employed as counsel. There were more than one hundred of these volumes.† Among them he called my attention to the case of Kissam *vs.* Forrest, at the close of which was a memorandum in O'Connor's handwriting to the effect that on the new trial Forrest was beaten, for the reason, as was rumored, that the jury did not believe Leggett. Up to this time O'Connor had no acquaintance with Forrest.

When he first engaged in the Forrest *vs.* Forrest‡ case, he invited John Van Buren, who had then recently opened an office in

\* It is a coincidence quite worth noting here that Cicero had Catiline for his client before he made him immortal by his prosecution of him.

† These volumes, which abound with MS. notes of the greatest interest to the profession, Mr. O'Connor, by his will, has given, with a liberal sum in money, to the New York Law Institute.

‡ Mr. Forrest married Mrs. Forrest in England in January, 1837. Cross suits for divorce were commenced in the Superior Court, before Judge Oakley, in 1850, resulting in a verdict for Mrs. Forrest on all the issues. The succeeding ten or eleven years were consumed by Mr. Forrest in ineffectual attempts, by appeals and interlocutory motions, to avoid paying the alimony awarded to Mrs. Forrest by the court, and to impeach the justice and validity of the verdict.

the city of New York for the practice of his profession, to be associated with him, an invitation which was promptly accepted. O'Connor intended to send for him when the suit was sufficiently far advanced to furnish Van Buren, what he wanted more than anything else, an opportunity of being seen and heard in a case of popular interest. Meanwhile Forrest sent Van Buren a retainer. Van Buren wrote to O'Connor to ask whether there would be any inconvenience or impropriety in his accepting it. O'Connor replied that there would be none whatever; for, as it happened, he had not yet had occasion to put Van Buren in possession of any information by which the adversary could profit. Besides, he really wanted no assistance from Van Buren or any one else; he had felt sure of the case, he said, from the outset.

Van Buren's argument on the appeal from the court below for a new trial in this case, O'Connor said, was as injudicious for his client as it could possibly have been. He attacked the character of Judge Oakley, of the New York Superior Court, before whom the cause had been tried, and before he finished managed to get every judge on the bench of the Court of Appeals so completely against him that, to use O'Connor's energetic language, "they were ready to devour him."

Some time after the divorce was granted, Forrest tried to escape the payment of the alimony decreed to Mrs. Forrest upon the pretext that she was leading a loose and abandoned life. O'Connor then showed me the points he made for the court on this argument, in which he presented the flagitious conduct of Forrest with savage eloquence. It is a remarkable circumstance, perhaps unique in the whole experience of the legal profession, that during this desperate litigation, in which the passions as well as the talents of some half dozen of the most eminent members of the New York bar were enlisted, and which was protracted for a period of twelve years, the unsuccessful defendant was so unfortunate or so wrong that no exception taken by his counsel to any of the proceedings was ever sustained, no motion they made in his behalf was granted, and the only change in any order made against him was an increase, from time to time, by the courts, of the allowance he was directed to make to Mrs. Forrest.

I asked Mr. O'Connor how he accounted for Forrest's infatuation in instituting proceedings for a divorce, knowing, as he did, the vitreous character of the house he occupied himself, and with no definite proof upon which he could rely to establish Mrs. Forrest's guilt. His explanation surprised me. He said

that in 1847 Forrest bought for \$12,000 a site on the east bank of the Hudson River near New York, on which he proceeded to erect a very pretentious castellated structure for a country residence. In January, 1849, this building was mainly but not wholly completed. In fact, he never completed it. A vast sum had been expended on it—more than he could afford. The cost of maintaining such an establishment when completed would have been enormous, and would have condemned him to incessant professional servitude at a time of life—he was then over forty—when his hold upon the public was beginning to wane, while his taste and need for repose were growing upon him. He realized at last that "he had bit off more than he could chew." He wanted an excuse for not occupying his castle and a pretext for selling it. He had no children, and, if rid of Mrs. Forrest, no one would question the propriety of disembarrassing himself of this elephant. It so happened that the first dispute between Forrest and his wife in which his purpose to put her away was developed occurred in this same month of January, 1849. The place was sold six years later, and immediately after the affirmation of the judgment of the court below by the General Term. "Forrest was notoriously parsimonious," said O'Connor, "and I have no doubt that the desire to reduce his expenses first put into his head the idea of putting away his wife."

Nothing in the whole course of his professional life probably wounded O'Connor so deeply as the attempt made a few years since to cast reproach upon the motives which impelled him to undertake the defense of Mrs. Forrest. Till then I doubt if any one, however hostile his relations to O'Connor, had ever attributed to him a base motive. There was no man in the profession upon whose sense of justice and magnanimity the bar relied with more entire confidence. The exaggerated importance which he attached to that calumny left upon the minds of some of his brethren the impression that the disease, so nearly fatal, from which he had but recently and partially recovered, had taken serious liberties with his nervous system. He testified his gratitude to General Dix for accepting a place on the committee appointed at his solicitation to investigate the matter, by inviting the general to sit to Mr. Huntington for his portrait, which when finished he presented to the New York Historical Society, and which now ornaments its walls.

His quarrel with John Van Buren (I say quarrel, for no milder term would express the extent of their alienation) did not begin

in the Forrest case, said Mr. O'Conor, but at the famous Union meeting held at Castle Garden when the compromise bills of 1850 were before Congress. At that meeting O'Conor in his speech said among other things that events seemed to portend the ultimate union and coalition of Van Buren and Seward. This was carried by some one to Van Buren, who, with two or three of his familiars, was biding in an oyster cellar not far away, awaiting news of the meeting. When Van Buren heard what O'Conor had said about him and Seward, he exclaimed with an oath that O'Conor might be correct in what he had predicted, but that he would never forget nor forgive him for saying so. In other words, their quarrel was originally more political than personal or professional.

The fact that O'Conor gratuitously defended the grandson of Chancellor Walworth under indictment for the murder of his father, and made zealous efforts to procure his pardon after he had been some time in prison, lends interest to the following curious anecdote which dropped from him one day in the course of a conversation about the old Court of Chancery and its presiding officers.

Reuben Walworth, in his address to the bar on taking his seat as chancellor, spoke of it as the highest judicial position in the State. Aaron Burr walked home from the court with Walworth after his speech, and ventured to suggest that such a statement coming from him was in questionable taste, and advised him either not to print his speech at all or to omit that passage of it. Burr, in talking of this to O'Conor, said that Walworth never forgave him that advice. He did publish the speech, which may be found in the first volume of "Paige's Reports,"\* and Burr's cases were thenceforth all decided against him, as Burr thought, because of his unwelcome suggestion. Apropos of Walworth's intoxication

with his new position as chancellor, O'Conor quoted these lines from Defoe's "True-born Englishman," where they are put into the mouth of a magistrate—Jeffries, probably:

"With clouted iron shoes and sheepskin breeches,  
More rags than manners and more dirt than riches,  
From driving cows and calves to Laton Market,  
While of my greatness there appeared no spark yet,  
Behold, I come to let you see the pride  
With which exalted beggars always ride."

Speaking of a somewhat conspicuous member of the bar, who professed to be one of his most ardent friends, and who was also a frequent aspirant for political preferment, which he failed to attain, I attempted to explain his disappointment in part by the inordinateness of his ambition, which made him an unreliable ally and friend. O'Conor said that an incident in his experience tended to confirm what I said. During the "Greeley campaign," a highly eulogistic article about himself appeared in one of the New York morning papers. He was ill at the time, but some six months later, when he had sufficiently recovered to go into the city, it occurred to him to make an inquiry about the authorship of the article in question. He accordingly called upon the editor of the paper with a copy of the article in question, and asked who wrote it. The name of the writer was given. To illustrate O'Conor's generosity of character and freedom from religious bigotry, the writer had dwelt upon a conversation alleged to have taken place between O'Conor and some Episcopalian minister from the South or West, who asked help for a college or church, or something of that sort, in distress. The applicant was represented in the article as being especially grateful to O'Conor because, being a Catholic, he was ready to give so liberally to the suffering institutions of a rival denomination. "This," said O'Conor, "was entirely false. There was not a word

\*As the Chancellor's address has at least the merit of being short, I venture to give it at length. It should reassure the *laudatores temporis acti* who are wont to bewail the degeneration of our judiciary. The man who could make such a speech of course could not see the wisdom of Burr's advice.

*Chancellor Walworth's address to the Chancery Bar of the State of New York, on assuming the duties of his office, April 28, 1828.*

"GENTLEMEN OF THE BAR: In assuming the duties of this highly responsible station, which at some future day would have been the highest object of my ambition, permit me to say that the solicitations of my too-partial friends, rather than my own inclination or my own judgment, have induced me to consent to occupy it at this time.

"Brought up a farmer until the age of seventeen, deprived of all the advantages of a classical education, and with a very limited knowledge of Chancery law, I find myself, at the age of thirty-eight, suddenly and unexpectedly placed at the head of the judiciary of the State—a situation which heretofore has been filled by the most able and experienced members of the profession.

"Under such circumstances, and where those able and intelligent judges who for the last five years have done honor to the bench of the Supreme Court all decline the arduous and responsible duties of this station, it would be an excess of vanity in me, or any one in my situation, to suppose he could discharge those duties to the satisfaction even of the most indulgent friends. But the uniform kindness and civility with which I have been treated by every member of the profession, and, in fact, by all classes of citizens, while I occupied a seat on the bench of the Circuit Court, afford the strongest assurance that your best wishes for my success will follow me here. And, in return, I can only assure you that I will spare no exertions in endeavoring to deserve the approbation of an enlightened bar and an intelligent community."

said about my religion or any one else's. The man asked me for money, and I gave him some,—I was then making money very fast,—and there was no reason whatever to suppose from anything that passed between us that I was any more or less a Catholic than he was." O'Connor then said he supposed this story was inserted, that, in fact, the whole article was written by this precious friend, to spread the information that he was a Roman Catholic, and to prejudice him as a candidate for the Presidency, to which office some friends in the West had taken a fancy to nominate him.

He was very much annoyed that people persisted in regarding him as an Irishman, though himself, and, I think he said, his father, and his grandfather were born Americans. "But," I said to him one day, "has not this impression stood you in good stead in a professional and worldly point of view?" "By no means," he replied; "so far from being an advantage, the reputation of being an Irishman and a Catholic has been to me a most serious political, social, and professional disadvantage." He then proceeded to enumerate important cases from which his religion excluded him, of which I remember only two. Bishop Onderdonk, he said, wished him retained to defend him, but the friends of the bishop said it would never do to commit his defense to a Catholic. President Johnson also wished him employed in the impeachment case. That, however, was overruled on political rather than sectarian or ethnical grounds. He insisted, with some emotion, that his supposed nationality and his faith had always obstructed his path. I inferred from what he said that he attributed his comparative want of success in public life more to this cause than to any other.

He thought well of the abolition of the old system of "pleading" and "forms of action." He said they were the devices of a by-gone age to get a simple issue when jurymen, though commonly taken from the better classes, were nearly always illiterate and wholly unable to deal with the complicated issues of a case presented in its unfermented state. To cover the inconveniences resulting from these methods, the Court of Chancery was invented, the real function of which was to provide one jurymen sufficiently intelligent to do the work which twelve ignorant jurymen could not be trusted with. He said that, as far as he knew, he as much as any one was entitled to the credit of originating the reform of our system of procedure in 1847-8, the abolition of forms of action, and the abolition of the Court of Chancery. He said he made the plea for those reforms in the Constitutional Convention of 1846. He would on no

account, he said, claim for himself or have any one claim for him the credit of these, but he was quite willing to be instrumental in defeating the pretensions of any other person to their authorship. This line of remark had been suggested by the news then just received that Governor Cornell had vetoed the Field-Throop Civil Code—an act on the governor's part with which he repeatedly expressed the greatest satisfaction. Recurring to this subject of codification later, he said he doubted whether our civil law could be codified successfully; he inclined to think it could not, and proceeded to place his doubts upon grounds substantially the same as those which have been more recently set forth in Mr. James C. Carter's exhaustive and masterly discussion of that subject. He concluded by telling the following story, leaving me to make its application:

The late John C. Spencer came to him one day and asked him to join the late Benjamin F. Butler and himself in a commission to codify our civil law. He could think of no third person in the State, Mr. Spencer said to O'Connor, so fit as he for such a task. The conditions which attached to the appointment were:

*First.* That O'Connor was to give up his practice for at least six years, the time which it was supposed would be required for the proper execution of such a work, and which O'Connor said at that time he could as well do as not.

*Second.* That they should undertake it in full recognition of the strong probability that, when done, they would conclude that the fruits of their labor would not be worth reporting to the Legislature.

Spencer's influence at that time was such that there was no doubt the commission would be made up when and as he should desire it. At a meeting of the three proposed codifiers the subject was carefully canvassed, and they severally and collectively came to the conclusion that when they had done their best they would not be able conscientiously to recommend the result of their labors to the Legislature for its adoption. The scheme was therefore very deliberately abandoned.

O'Connor considered himself a very expert special pleader; he doubted if he had his superior in the country; he knew almost by heart every line of Chitty's elaborate treatise on "Pleading"; and in speaking of a certain suit in which his aid had been invoked, he said he never knew a case in which the parties had been pleading for an issue a year that he could not find a defect of sufficient gravity to set their proceedings aside. He thought, however, that the time of a young



lawyer could now be better employed than in trying to master the literature and art of special pleading.

He spoke of the case in which Giles, the Know-Nothing candidate for comptroller, attempted to set aside the election of Flagg, the incumbent, in the year 1854. Tilden and Evarts were associated with him as counsel for Flagg, and James T. Brady, Ambrose L. Jordan, Judge Edmonds, and two others whose names were not mentioned, were the counsel for Giles. But, said he, the case was won by Tilden. Giles had proved his case, and proved it completely. When Tilden rose to open for Flagg, he had not a witness to produce that could testify to the merits of the case. Tilden spoke some time before his line of defense began to appear; the audience began to yawn and those specially interested for Flagg to despair. After he had spoken some half hour or more, the clouds began to lift and the sunlight to appear. Within two minutes after the audience had struck his trail they were still as mice, and their attention was riveted upon him until he took his seat. He had been up all night preparing a series of tables from the tally-lists of the poll as proven by Giles, by the aid of which he reconstructed a tally-list which had been lost or stolen, and was thus enabled to demonstrate from internal evidence that the vote of one ward had been corruptly given to Giles. These tables were printed and handed to the judge, jury, and counsel, who were thus enabled to follow, step by step, the march of his inexorable logic. Mr. O'Conor described the speech as "exquisite." "It was perfect; it was as fine an argument as I ever heard." "When Tilden sat down," continued Mr. O'Conor, "the case was won. Evarts and I said a few words, but Flagg was comptroller when Tilden finished, and nothing that any one could have said would have made him more or less so."

After his retreat to Nantucket Mr. O'Conor tried to take very little interest in the current affairs of the world, which he had in a great measure left behind him. To the question when he expected to be again in New York, he replied that he did not know that he should ever go. If anything should occur to require it he would go, but he did not then anticipate any occasion for again leaving the island of Nantucket. He found such occasions, however, for he visited the city repeatedly after this declaration was made. He had received the degree of LL.D. from Harvard College at the commencement just passed. An eminent member of the college direction sent him a special invitation to attend the commencement, and be his guest. O'Conor declined,

and assigned as a reason that he had prescribed for himself the rule to form no public relations of any sort in his new home, and he could not conveniently make an exception of the occasion to which he was invited. He probably was not conscious himself of the delusion under which he was laboring in supposing himself so absolutely dead to the world as he tried to believe and to make others believe him to be. His answer unconsciously betrayed his unwillingness to divide or sacrifice any portion of his birthright as a New Yorker and as the *bâtonnier* of its bar.

One day, while we were sitting together in his library, he asked me if I would like to know the origin of the ring system of New York. Of course I promptly said I would. He proceeded to take down a volume of "My Own Cases," and read to me a very carefully written and pungent commentary upon the case of Clark *vs.* The City of New York. The facts, as I remember them, were in general that Clark contracted to execute a piece of work on the Croton aqueduct, in the manner to be prescribed by the engineer in charge, for a specified sum. The first plans were modified by the engineer in a way to increase the cost of the work, but, as the city insisted, within the limits prescribed by the contract. When the work was done Clark sent in a bill for several thousand dollars more than the stipulated price. The city refused to pay the excess, and Clark brought a suit to recover it, laying his venue in Albany, which O'Conor described as the "paradise for contractors." John Leveridge, who was counsel for the corporation at that time, strangely omitted to have the venue changed to New York. Before the suit came on for trial, Henry E. Davies succeeded Leveridge as corporation counsel. He retained Mr. O'Conor for the city, and placed the entire charge of this particular case in his hands. The history of its numerous vicissitudes and the final triumph of the contractor is fully set forth in the memorandum to which I was invited to listen. The success of this suit had the same effect upon the predatory horde which always infest the State capital that the wine and oil of Italy had upon the Goths and Vandals when they first wandered across the mountains into the plains of Lombardy. They immediately struck hands with the freebooters of the metropolis and marked its wealth and credit for their own. It is to be hoped that this paper may be given to the public, for it throws new light upon the mazy processes by which justice is baffled and the treasury plundered directly or by the connivance of officers specially selected to administer the one and to guard the other.

O'Conor for many years had a large income from his profession, but he was noted always among his brethren for the moderation of his charges. It was not his habit to ask retaining fees, nor, indeed, any pay on account of his services in a case till the work was done, then receiving all his pay in a lump. He did not pretend that this was the more profitable, nor did he presume to commend his example to others; all he could say for it was, it was somehow more to his taste. The day before he told me this he had forwarded to New York for deposit a check that had just come to hand for the last piece of work he had been engaged in before retiring from the profession some three years before. He had worked in litigated cases sometimes for twenty years before receiving a cent of compensation. He usually fixed his price at the close, and told his clients that while he thought he had named the sum which his services were worth, they might give him what they thought right or felt they could afford. He added that he never had his bill cut down but once, and that was by a very prominent citizen of our metropolis. The bill was one thousand dollars, which, for reasons that he stated to me, seemed to him very moderate, but, as usual, he left it with the client to say what would be satisfactory to him if that was not. The client sent him seven hundred and fifty dollars, with the remark that he thought that was *about the sum he expected*. It was clear from the manner and tone of O'Conor in telling this incident that there was no danger of his outliving the recollection of it.

He was a great admirer of De Witt Clinton, and in early life shared all the prejudices current among the Clintonians, besides those he inherited from his father against Van Buren, whom, however, he told me, he subsequently learned to respect and appreciate. Clinton's Celtic origin had, no doubt, much to do with O'Conor's youthful passion for him. Had Clinton, however, been a contemporary of O'Conor's, I doubt if they could have sat together in a committee two hours without quarreling. Both had a partiality for their own particular ways and opinions which made every other seem unreasonable, and both, like David Copperfield's aunt, "could break, but not bend."

O'Conor's miscellaneous library, though tolerably rich and well selected, bore but a small proportion to his professional books. As if he thought the disproportion required some explanation, he remarked that he had never been much of a reader outside of his profession. He said a lad once wrote to him for advice about a course of reading, at the same time enumerating a long list of books

which he had already read. O'Conor replied to him that he not only had not read, but had not known even by name, one-half of the books his correspondent appeared to have read. He would not, therefore, undertake to advise him what to read, but he could safely advise him to read less and to think more. He thought the cheapness of printing in America had made overmuch reading one of the most pernicious forms of modern dissipation, an opinion with which I fully concurred.

Speaking of the impeachment of the Tweed Ring judges, he said that was all Tilden's work and no one's else. He repeated this several times, very emphatically adding that upon that point he was a competent witness. Tilden, he said, went to the Legislature and forced the impeachment against every imaginable obstacle, open and covert, political and personal.

In illustration of the terror of his own name as an adversary, to which one of us had made some casual allusion, he told the following story:

When he was ill in 1876, a man who had no claim upon him whatever asked of him the loan of \$25,000. He yielded to the man's solicitation without much reflection, taking such security as the man had to offer. Not long after, the borrower called upon him again to say that he had an opportunity of selling out his business at a profit, and for some reasons which appeared to have grown out of the trade proposed to give O'Conor some Indiana railway bonds then paying six per cent. as security in place of the bonds he had previously left with him. To this also O'Conor was too ill to make any objections. The first semi-annual interest was paid, but when the next payment fell due, the company made default. Three or four years elapsed, and the company showing no signs of resuming payment, O'Conor, who by this time had got settled at Nantucket, took up these bonds one day and resolved to ascertain their value. He procured the address of a law firm in Indianapolis, and wrote for such information as they had and could procure about his defaulted bonds. They sent him a very discouraging report. He then directed them to sue the company on their bonds and get judgment. The lawyers wrote him in reply that they thought they could sell the bonds for twenty-five per cent. of their face, if he would take that amount. He declined the offer and again directed them to bring suit upon the bonds. After waiting some time without hearing from them, he wrote again. At length he received from them a letter stating that the mortgage had been foreclosed and the road sold for a comparatively small sum. Mr. O'Conor wrote again,

reproaching them for not advising him of the foreclosure proceedings and directing them in imperative terms to go on and get judgment upon the bonds. They wrote him that they thought the bonds might now be disposed of on somewhat better terms than before, and asked if they should negotiate. He wrote them promptly that he would take nothing less than the entire principal and interest, and as soon as they had entered up judgment against the company they must telegraph him and then he would go out there himself and direct what further should be done. In a few days he received a check for the full amount of principal, interest, and costs. When he concluded this story, he said: "That is one instance in which my reputation as a persistent fighter was of use to me." He presumed the company had in some way learned in the progress of the affair that he was a troublesome adversary in a lawsuit.

A part of the Tuesday and Wednesday prior to Mr. O'Connor's last and fatal illness he spent in professional consultations at the residence of Governor Tilden in Gramercy Park. At these consultations his memory of cases and of the minutest judicial and statutory distinctions, for which he was always so famous, seemed unimpaired, and he threw himself into the questions submitted to him with all the intensity and confidence of his professional prime. This, I presume, was the last embrace he ever received from the profession of which he was so fond. The following day, which was Thursday, he departed for his island home. I have since learned, through a note from Miss Elma Folger—who to the distinction of being descended from the maternal ancestors of the illustrious Dr. Franklin enjoyed the further distinction of holding the confidential relation of private secretary to Mr. O'Connor during the last three or four years of his life, and who accompanied him on his last visit to New York—that it was in consequence of a cold taken early in March, which had impaired Mr. O'Connor's appetite and aggravated certain troubles with which he had been afflicted for fifteen years or more, that he came to New York to consult a physician.

"Several times last winter," says Miss Folger, "Mr. O'Connor spoke of the peaceful year that he had passed in Nantucket, saying that he had never in his life, *i. e.*, since he had commenced the practice of law, been so quiet and undisturbed. He was afraid something awful was going to happen to him before summer; this quiet was too unnatural. He repeated this remark to a visitor in New York. Once he said he was almost spoil-

ing for a fight with some one. We left Nantucket in April at 5:30 A. M., which obliged him to rise at about four o'clock in the morning. We traveled through to New York in one day, arriving there about 7 P. M. Although he had eaten nothing through the day, and was suffering greatly from the trouble which had taken him to New York to consult Dr. Keyes, yet he had an angry war of words with a hack-driver whose carriage he had taken for us, which astonished me very much, and resulted in our leaving the man's carriage and hiring another.

"After we were seated in the second carriage, he said, 'I feel better already; it was worth coming to New York to beat that fellow.' I do not mean to insinuate that Mr. O'Connor was quarrelsome,—far from it,—but the fear that things were going on too well with him seemed to hang over him as something that must be put an end to. On the tiresome journey he was in a lovely, gentle mood, as indeed he always was with me. In the Providence depot, where we waited quite a while, I suggested that we should give some sandwiches we had brought with us to some children also waiting. He was delighted, and insisted that I should buy some oranges to add to the attractions of the repast. We went into the waiting-room, spread out our things on one of the settees, and then invited the little ones to the feast. I cannot tell you his delight at their enjoyment and appetite, and he watched them until all the eatables had vanished, pacing up and down the length of the room meanwhile. . . . While in the city," she added, "he seemed brighter and better, and ate better than I had seen him all winter. But the journey home was full of discomforts, and the weather grew cold and stormy, so that he arrived here much the worse for the exposure. We arrived in Nantucket on Friday. On Monday following he went to the bed from which he never rose again."\*

MR. O'CONNOR was in many respects without a peer at the American bar. I once heard Governor Tilden say of him that he thought he had a more precise knowledge of the science of jurisprudence than any other person living of the English-speaking race. His powers of analysis were Aristotelian in their proportions, his resources inexhaustible and surprising. His industry and endurance seemed to defy all the claims and protestations of nature. He was never known or even suspected of appearing in a case in which his preparation was not thorough. As a lawyer, the public estimate of him was always above his own estimate, though not above his merits; and hence it was for a period of fifty years

\* Charles O'Connor was born in New York, January 22, 1804, and died May 12, 1884.

that he was employed on one side or the other of pretty much every important case that was litigated in the great commercial capital of the nation.

Mr. O'Connor never understood nor became entirely reconciled to his want of success in public life. Why every one loved to recognize and do homage to his professional and personal supremacy, and so few cared to accept him as their political guide, was a problem which always puzzled him, and contributed not a little, I think, to weaken his faith in popular judgments. The true solution of it probably is that the very qualities which gave him his pre-eminence at the bar in a corresponding degree unfitted him for the representative duties of a statesman. He went so deeply into the philosophy or the *rationale* of every subject that he naturally had little respect for the superficial and often puerile reasons which the mass of mankind would assign even for the best inspired actions. He could never pool his opinions in a committee or in any representative body, and be content as every statesman, in a democracy at least, is required to be, with the resultant decisions of a majority. Thus it happened that in the Convention of 1846, to which he was chosen more especially to secure his aid in remodeling our judiciary, he usually voted alone on committees, and opposed almost alone the Constitution as finally adopted. The logic of his mind was so

inexorable that he could not bow to those subtle forces or instincts which go to make up public opinion, nor recognize the soundness of Talleyrand's famous saying that "There is one person wiser than Anybody, and that is Everybody." He was so thoroughly loyal to the conclusions of his own mind when they had been deliberately formed that it seemed to him pusillanimous to surrender them to mere numbers or because of any possible consequences that might result to himself or others from adhering to them.

A mental nature of such imperious habits and such imperial powers was not calculated to submit to the restraints of the political harness. In public affairs he was the iron pot of the fable; the earthen pots were afraid to go to sea in his company. They knew he would not care how often they jostled against him, but that a single collision might dash them to pieces. Had Mr. O'Connor possessed the ability to subordinate his opinions to the opinion of a party, and to represent its enlightened and deliberate judgment with that cordiality and good faith which are due to the superiority of Everybody's wisdom to Anybody's, he would probably have filled as large and honorable a place in the political as in the professional annals of his country. As it is, his fame must rest upon his achievements as a barrister, and there it is as impregnable as the barrister's fame can ever be.

John Bigelow.



### GROWN OLD WITH NATURE.

IF true there be another, better land,  
 A fairer than this humble mother shore,  
 Hoping to meet the blessed gone before,  
 I fain would go. But may no angel hand  
 Lead on so far along the shining sand,  
 So wide within the everlasting door,  
 'Twill shut away this good, green world. *No more*  
*Of Earth!*—Let me not hear that dread command.

Then must I mourn, unsoothed by harps of gold,  
 For sighing boughs, and birds of simple song,  
 For hush of night within the forest fold;  
 Yea, must bemoan, amid the joyous throng,  
 Mine early loves. The heart that has grown old  
 With Nature cannot, happy, leave her long.

John Vance Cheney.



*Ch. Coust*