

CHAPTER III.

HIS SUCCESS AT THE BAR.

FRANKLIN PIERCE'S earliest effort at the bar, as we have already observed, was an unsuccessful one; but instead of discouraging him, the failure had only served to awaken the consciousness of latent power, and the resolution to bring it out. Since those days, he had indeed gained reputation as a lawyer. So much, however, was the tenor of his legal life broken up by the months of public service subtracted from each year, and such was the inevitable tendency of his thoughts towards political subjects, that he could but very partially avail himself of the opportunities of professional advancement. But on retiring from the Senate, he appears to have started immediately into full practice. Though the people of New Hampshire already knew him well, yet his brilliant achievements as an advocate brought him more into their view, and into closer relations with them, than he had ever before been. He now met his countrymen, as represented in the jury box, face to face, and made them feel what manner of man he was. Their sentiment towards him soon grew to be nothing short of enthusiasm; love, pride, the sense of brother-

hood, affectionate sympathy, and perfect trust, all mingled in it. It was the influence of a great heart pervading the general heart, and throbbing with it in the same pulsation.

It has never been the writer's good fortune to listen to one of Franklin Pierce's public speeches, whether at the bar or elsewhere; nor, by diligent inquiry, has he been able to gain a very definite idea of the mode in which he produces his effects. To me, therefore, his forensic displays are in the same category with those of Patrick Henry, or any other orator whose tongue, beyond the memory of man, has mouldered into dust. His power results, no doubt, in great measure, from the earnestness with which he imbues himself with the conception of his client's cause; insomuch that he makes it entirely his own, and, never undertaking a case which he believes to be unjust, contends with his whole heart and conscience, as well as intellectual force, for victory. His labor in the preparation of his cases is said to be unremitting; and he throws himself with such energy into a trial of importance, as wholly to exhaust his strength.

Few lawyers, probably, have been interested in a wider variety of business than he; its scope comprehends the great causes where immense pecuniary interests are concerned — from which, however, he is always ready to turn aside, to defend the humble rights of the poor man, or give his protection to one unjustly accused. As one of my

correspondents observes, "When an applicant has interested him by a recital of oppression, fraud, or wrong, General Pierce never investigates the man's estate before engaging in his business; neither does he calculate whose path he may cross. I have been privy to several instances of the noblest independence on his part, in pursuing, to the disrepute of those who stood well in the community, the weal of an obscure client with a good cause."

In the practice of the law, as Pierce pursued it, in one or another of the court houses of New Hampshire, the rumor of each successive struggle and success resounded over the rugged hills, and perished without a record. Those mighty efforts, into which he put all his strength, before a county court, and addressing a jury of yeomen, have necessarily been, as regards the evanescent memory of any particular trial, like the eloquence that is sometimes poured out in a dream. In other spheres of action, with no greater expenditure of mental energy, words have been spoken that endure from age to age — deeds done that harden into history. But this, perhaps the most earnest portion of Franklin Pierce's life, has left few materials from which it can be written. There is before me only one report of a case in which he was engaged — the defence of the Wentworths, at a preliminary examination, on a charge of murder. His speech occupied four hours in the delivery, and handles a confused medley of facts with masterly skill, bringing them to bear one

upon another, and making the entire mass, as it were, transparent, so that the truth may be seen through it. The whole hangs together too closely to permit the quotation of passages.

The writer has been favored with communications from two individuals, who have enjoyed the best of opportunities to become acquainted with General Pierce's character as a lawyer. The following is the graceful and generous tribute of a gentleman, who, of late, more frequently than any other, has been opposed to him, at the bar:—

“General Pierce cannot be said to have commenced his career at the bar, in earnest, until after his resignation of the office of senator, in 1842. And it is a convincing proof of his eminent powers, that he at once placed himself in the very first rank at a bar so distinguished for ability as that of New Hampshire. It is confessed by all, who have the means of knowledge and judgment on this subject, that in no state of the Union are causes tried with more industry of preparation, skill, perseverance, energy, or vehement effort to succeed.

“During much of this time, my practice in our courts was suspended; and it is only within three or four years that I have had opportunities of intimately knowing his powers as an advocate, by being associated with him at the bar; and, most of all, of appreciating and feeling that power, by being opposed to him in the trial of causes before juries. Far more than any other man, whom it

has been my fortune to meet, he makes himself *felt* by one who tries a case against him. From the first, he impresses on his opponent a consciousness of the necessity of a deadly struggle, not only in order to win the victory, but to avoid defeat.

“His vigilance and perseverance, omitting nothing in the preparation and introduction of testimony, even to the minutest details, which can be useful to his clients; his watchful attention, seizing on every weak point in the opposite case; his quickness and readiness; his sound and excellent judgment; his keen insight into character and motives, his almost intuitive knowledge of men; his ingenious and powerful cross examinations; his adroitness in turning aside troublesome testimony, and availing himself of every favorable point; his quick sense of the ridiculous; his pathetic appeals to the feelings; his sustained eloquence, and remarkably energetic declamation,—all mark him for a ‘leader.’

“From the beginning to the end of the trial of a case, nothing with him is neglected, which can by possibility honorably conduce to success. His manner is always respectful and deferential to the court, captivating to the jury, and calculated to conciliate the good will even of those who would be otherwise indifferent spectators. In short, he plays the part of a successful actor; successful, because he always identifies himself with his part, and in him it is not acting.

"Perhaps, as would be expected by those who know his generosity of heart, and his scorn of every thing like oppression or extortion, he is most powerful in his indignant denunciations of fraud or injustice, and his addresses to the feelings in behalf of the poor and lowly, and the sufferers under wrong. I remember to have heard of his extraordinary power on one occasion, when a person, who had offered to procure arrears of a pension for revolutionary services, had appropriated to himself a most unreasonable share of the money. General Pierce spoke of the frequency of these instances, and, before the numerous audience, offered his aid, freely and gratuitously, to redress the wrongs of any widow or representative of a revolutionary officer or soldier, who had been made the subject of such extortion.

"The reply of the poor man, in the anecdote related by Lord Campbell, of Harry Erskine, would be applicable, as exhibiting a feeling kindred to that with which General Pierce is regarded: 'There's no a puir man in a' Scotland need to want a friend or fear an enemy, sae lang as Harry Erskine lives!'"

We next give his aspect as seen from the bench, in the following carefully-prepared and discriminating article, from the chief justice of New Hampshire:—

"In attempting to estimate the character and qualifications of Mr. Pierce as a lawyer and an

advocate, we undertake a delicate, but, at the same time, an agreeable task. The profession of the law, practised by men of liberal and enlightened minds, and unstained by the sordidness which more or less affects all human pursuits, invariably confers honor upon, and is honored by its followers. An integrity above suspicion, an eloquence alike vigorous and persuasive, and an intuitive sagacity have earned for Mr. Pierce the reputation that always follows them.

"The last case of paramount importance in which he was engaged as counsel was that of *Morrison v. Philbrick*, tried in the month of February, 1852, at the Court of Common Pleas for the county of Belknap. There was on both sides an array of eminent professional talent, Messrs. Pierce, Bell, and Bellows appearing for the defendant, and Messrs. Atherton and Whipple for the plaintiff. The case was one of almost unequalled interest to the public generally, and to the inhabitants of the country lying around the lower part of Lake Winnipiseogee. A company, commonly called the Lake Company, had become the owners of many of the outlets of the streams supplying the lake, and by means of their works at such places, and at Union Bridge, a few miles below, were enabled to keep back the waters of the lake, and to use them, as occasion should require, to supply the mills at Lowell. The plaintiff alleged that the dam at Union Bridge had caused the water to rise higher than

was done by the dam that existed in the year 1828, and that he was essentially injured thereby. The case had been on trial nearly seven weeks. Evidence equivalent to the testimony of one hundred and eighty witnesses had been laid before the jury. Upon this immense mass of facts, involving a great number of issues, Mr. Pierce was to meet his most formidable opponent in the state, Mr. Atherton. In that gentleman are united many of the rarest qualifications of an advocate. Of inimitable self-possession; with a coolness and clearness of intellect which no sudden emergencies can disturb; with that confidence in his resources which nothing but native strength, aided by the most thorough training, can bestow; with a felicity and fertility of illustration, the result alike of an exquisite natural taste and a cultivation of those studies which refine while they strengthen the mind for forensic contests,—Mr. Atherton's argument was listened to with an earnestness and interest which showed the conviction of his audience that no ordinary man was addressing them.

"No one who witnessed that memorable trial will soon forget the argument of Mr. Pierce on that occasion. He was the counsel for the defendant, and was therefore to precede Mr. Atherton. He was to analyze and unfold to the jury this vast body of evidence under the watchful eyes of an opponent at once enterprising and cautious, and before whom it was necessary to be both bold and skilful.

He was to place himself in the position of the jury, to see the evidence as they would be likely to regard it, to understand the character of their minds, and what views would be the most likely to impress them. He was not only to be familiar with his own case, but to anticipate that of his opponent, and answer as he best might the argument of the counsel. And most admirably did he discharge the duties he had assumed on behalf of his client. Eminently graceful and attractive in his manner at all times, his demeanor was then precisely what it should have been, showing a manly confidence in himself and his case, and a courteous deference to the tribunal he was addressing. His erect and manly figure, his easy and unembarrassed air, bespoke the favorable attention of his audience. His earnest devotion to his cause, his deep emotion, evidently suppressed, but for that very reason all the more interesting, diffused themselves like electricity through his hearers. And when, as often happened, in the course of his argument, his clear and musical accents fell upon the ear in eloquent and pointed sentences, gratifying the taste while they satisfied the reason, no man could avoid turning to his neighbor, and expressing by his looks that pleasure which the very depth of his interest forbade him to express in words. And when the long trial was over, every one remembered with satisfaction that these two distinguished gentlemen had met each other during a most exciting and exhausting trial.

of seven weeks, and that no unkind words, or captious passages, had occurred between them, to diminish their mutual respect, or that in which they were held by their fellow-citizens.

“In the above remarks, we have indicated a few of Mr. Pierce’s characteristics as an advocate; but he possesses other endowments, to which we have not alluded. In the first place, as he is a perfectly fearless man, so he is a perfectly fearless advocate; and true courage is as necessary to the civilian as to the soldier, and smiles and frowns Mr. Pierce disregards alike in the undaunted discharge of his duty. He never fears to uphold his client, however unpopular his cause may seem to be for the moment. It is this courage which kindles his eloquence, inspires his conduct, and gives direction and firmness to his skill. This it is which impels him onward, at all risks, to lay bare every ‘mystery of iniquity’ which he believes is threatening his case. He does not ask himself whether his opponent be not a man of wealth and influence, of whom it might be for his interest to speak with care and circumspection, but he devotes himself with a ready zeal to his cause, careless of aught but how he may best discharge his duty. His argumentative powers are of the highest order. He never takes before the court a position which he believes untenable. He has a quick and sure perception of his points, and the power of enforcing them by apt and pertinent illustrations. He sees

the relative importance and weight of different views, and can assign to each its proper place, and brings forward the main body of his reasoning in prominent relief, without distracting the attention by unimportant particulars. And above all, he has the good sense, so rarely shown by many, to stop when he has said all that is necessary for the elucidation of his subject. With a proper confidence in his own perceptions, he states his views so pertinently, and in such precise and logical terms, that they cannot but be felt and appreciated. He never mystifies; he never attempts to pervert words from their proper and legitimate meaning, to answer a temporary purpose.

“His demeanor at the bar may be pronounced faultless. His courtesy in the court house, like his courtesy elsewhere, is that which springs from self-respect, and from a kindly heart, disposing its owner to say and do kindly things. But he would be a courageous man, who, presuming upon the affability of Mr. Pierce’s manner, would venture a second time to attack him; for he would long remember the rebuke that followed his first attack. There is a ready repartee and a quick and cutting sarcasm in his manner when he chooses to display it, which it requires a man of considerable nerve to withstand. He is peculiarly happy in the examination of witnesses — that art in which so few excel. He never browbeats, he never attempts to terrify. He is never rude or discourteous. But the equiv-

ocating witness soon discovers that his falsehood is hunted out of its recesses with an unsparing determination. If he is dogged and surly, he is met by a spirit as resolute as his own. If he is smooth and plausible, the veil is lifted from him by a firm but graceful hand. If he is pompous and vain, no ridicule was ever more perfect than that to which he listens with astonished and mortified ears.

"The eloquence of Mr. Pierce is of a character not to be easily forgotten. He understands men, their passions, and their feelings. He knows the way to their hearts, and can make them vibrate to his touch. His language always attracts the hearer. A graceful and manly carriage, bespeaking him at once the gentleman and the true man, a manner warmed by the ardent glow of an earnest belief, an enunciation ringing, distinct, and impressive beyond that of most men, a command of brilliant and expressive language, and an accurate taste, together with a sagacious and instinctive insight into the points of his case, are the secrets of his success. It is thus that audiences are moved, and truth ascertained; and he will ever be the most successful advocate who can approach the nearest to this lofty and difficult position.

"Mr. Pierce's views as a constitutional lawyer are such as have been advocated by the ablest minds of America. They are those which, taking their rise in the heroic age of the country, were transmitted to him by a noble father, worthy of the

times in which he lived, worthy of that revolution which he assisted in bringing about. He believes that the constitution was made, not to be subverted, but to be sacredly preserved; that a republic is perfectly consistent with the conservation of law, of rational submission to right authority, and of true self-government. Equally removed from that malignant hostility to order which characterizes the demagogues who are eager to rise upon the ruins even of freedom, and from that barren and bigoted narrowness which would oppose all rational freedom of opinion, he is, in its loftiest and most ennobling sense, a friend of that Union, without which the honored name of American citizen would become a by-word among the nations. And if, as we fervently pray and confidently expect he will, Mr. Pierce shall display before the great tribunals of the nation the courage, the consistency, the sagacity, and the sense of honor, which have already secured for him so many thousands of devoted friends, and which have signalized both his private and professional life, his administration will long be held in grateful remembrance as one of which the sense of right and the sagacity to perceive it, a clear insight into the true destinies of the country, and a determination to uphold them at whatever sacrifice, were the predominant characteristics."

It may appear singular that Franklin Pierce has not taken up his residence in some metropolis, where his great forensic abilities would so readily

find a more conspicuous theatre, and a far richer remuneration than heretofore. He himself, it is understood, has sometimes contemplated a removal, and, two or three years since, had almost determined on settling in Baltimore. But his native state, where he is known so well, and regarded with so much familiar affection, which he has served so faithfully, and which rewards him so generously with its confidence, New Hampshire, with its granite hills, must always be his home. He will dwell there, except when public duty, for a season, shall summon him away; he will die there, and give his dust to its soil.

It was at his option, in 1846, to accept the highest legal position in the country, setting aside the bench, and the one which, undoubtedly, would most have gratified his professional aspirations. President Polk, with whom he had been associated on the most friendly terms in Congress, now offered him the post of attorney general of the United States. "In tendering to you this position in my cabinet," writes the president, "I have been governed by the high estimate which I place upon your character and eminent qualifications to fill it." The letter, in which this proposal is declined, shows so much of the writer's real self that we quote a portion of it.

"Although the early years of my manhood were devoted to public life, it was never really suited to my taste. I longed, as I am sure you must often

have done, for the quiet and independence that belong only to the private citizen; and now, at forty, I feel that desire stronger than ever.

"Coming so unexpectedly as this offer does, it would be difficult, if not impossible, to arrange the business of an extensive practice, between this and the first of November, in a manner at all satisfactory to myself, or to those who have committed their interests to my care, and who rely on my services. Besides, you know that Mrs. Pierce's health, while at Washington, was very delicate. It is, I fear, even more so now; and the responsibilities which the proposed change would necessarily impose upon her ought, probably, in themselves, to constitute an insurmountable objection to leaving our quiet home for a public station at Washington.

"When I resigned my seat in the Senate in 1842, I did it with the fixed purpose never again to be voluntarily separated from my family for any considerable length of time, except at the call of my country in time of war; and yet this consequence, for the reason before stated, and on account of climate, would be very likely to result from my acceptance.

"These are some of the considerations which have influenced my decision. You will, I am sure, appreciate my motives. You will not believe that I have weighed my personal convenience and ease against the public interest, especially as the office

is one which, if not sought, would be readily accepted by gentlemen who could bring to your aid attainments and qualifications vastly superior to mine."

Previous to the offer of the attorney generalship, the appointment of United States senator had been tendered to Pierce by Governor Steele, and declined. It is unquestionable that, at this period, he hoped and expected to spend a life of professional toil in a private station, undistinguished except by the exercise of his great talents in peaceful pursuits. But such was not his destiny. The contingency to which he referred in the above letter, as the sole exception to his purpose of never being separated from his family, was now about to occur. Nor did he fail to comport himself as not only that intimation, but the whole tenor of his character, gave reason to anticipate.

During the years embraced in this chapter, — between 1842 and 1847, — he had constantly taken an efficient interest in the politics of the state, but had uniformly declined the honors which New Hampshire was at all times ready to confer upon him. A democratic convention nominated him for governor, but could not obtain his acquiescence. One of the occasions on which he most strenuously exerted himself was in holding the democratic party loyal to its principles, in opposition to the course of John P. Hale. This gentleman, then a representative in Congress, had broken with his party

on no less important a point than the annexation of Texas. He has never since acted with the democracy, and has long been a leader of the free soil party.

In 1844 died Frank Robert, son of Franklin Pierce, aged four years, a little boy of rare beauty and promise, and whose death was the greatest affliction that his father has experienced. His only surviving child is a son, now eleven years old.

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