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RICHARD FLETCHER.

The lives of distinguished advocates and jurists are always interesting to their professional brethren, especially to the younger members of the bar, who are seeking to learn what potent magic raises such men to eminence. It seems to us, therefore, that a brief sketch of the life and character of one who, for many years, at the bar and on the bench, bore the highest rank in Massachusetts, cannot be out of place in this journal.

Richard Fletcher was born at Cavendish, in Vermont, January 8, 1788. His father, Asaph Fletcher, was for many years a successful physician, in extensive practice in that region. He entered Dartmouth College in the year 1802, and graduated with distinction in 1806. His part, at commencement, was the valedictory oration. He was the teacher of the academy at Salisbury, N. H., for about a year after he graduated. He then went to Portsmouth, N. H., where he studied law with Daniel Webster, and was admitted to the bar in 1809 or 1810.

Mr. Fletcher commenced the practice of his profession at Salisbury, to which place he was invited by the men of business there, with whom he had become acquainted while he was teaching in the academy. Here he very rapidly gained a large if not very lucrative practice. In 1816 he delivered an oration before the Phi Beta Kappa Society of Dartmouth College, which was well received by the literati who heard it.

In 1819 he removed to Boston, and it was not long before he was recognized as an able and industrious lawyer, whose services were in frequent demand in the courts, and at his office.

Mr. Fletcher was brought very conspicuously before the public, as counsel for the defendants, in the suit of the proprietors of the Charles River Bridge against the proprietors of Warren Bridge. The plaintiffs were incorporated, in 1785, to build a bridge over Charles river, from Boston to Charlestown (at the place where there was an old ferry, of which Harvard College received the income), with a right to take tolls for a period of forty years, which was afterward, by an act passed in 1792, extended to seventy, on the occasion of a bridge being authorized higher up the river, between Boston and Cambridge. The first act required the plaintiffs to pay the college an annual sum as a compensation for the destruction of the ferry. The plaintiffs' bridge, which was the only direct avenue from Boston to a large part of the populous counties of Middlesex and Essex, proved a source of immense profit to its owners. In 1828 the legislature, after much resistance, passed an act authorizing the defendants to build a bridge from Boston to Charlestown, which, when built, was distant, on the Boston side, only nine hundred and fifteen feet, and on the Charlestown side only two hundred and sixty feet from the plaintiffs' bridge. The tolls of the new bridge were only to continue until its costs were paid, and in no event more than six years. As soon as the defendants commenced building their bridge, the plaintiffs brought a bill in equity to enjoin them against proceeding with the work. The plaintiffs, in their bill and argument before the court, urged that when the Legislature chartered their bridge with a right to take tolls for forty years, which, for good consideration, was extended to seventy, the acts created a contract that the State would not authorize another bridge to be built so near as to accommodate exactly the same line of travel, and, therefore, that the charter of the new bridge, which must seriously diminish and soon destroy the value of the old one, was a violation of the Constitution of the United States, as it directly impaired the obligation of this contract. The plaintiffs claimed to be assignees of the ferry, and con-

tended that another ferry so near the old one would be a nuisance to it, and, therefore, that the new bridge, so near the old one, must be a nuisance to the latter. The plaintiffs further contended, that to tolerate the use of the new bridge would deprive them of their property without compensation, and that the defendants' charter thus violated both the Constitution of the United States and that of Massachusetts.

It was further urged that the building of the old bridge, at the time it was undertaken, was a hazardous experiment; that the charter granted the original proprietors was no more than a fair compensation for the risk they incurred; and finally, that many of the present proprietors had bought their stock at very high prices, trusting to the faith of the State, and that it was in the highest degree unjust thus to destroy their property.

The defendants answered, that granting the right to build a bridge and take tolls implied no contract that the legislature would not authorize the building of another bridge near it, whenever the public needed one. The defendants also denied that the college owned the ferry, or that the plaintiffs were assignees of the ferry, etc. They denied that any property of the plaintiffs had been taken for public use, since their whole franchise still remained.

While the case was in progress it excited a wide interest in the profession and the public. The inhabitants of Middlesex and Essex were loudly clamoring for free access to Boston, and insisting that a chartered monopoly, of which the proprietors had been repaid the original cost of their undertaking, with interest, over and over again, ought not to be tolerated against the necessities of the people. Public meetings expressed their feelings very strongly. At one of them a vote was adopted, that free bridges were one of the natural rights of man!

The bar was very much divided on the great legal questions involved in the case. The Supreme Court of Massachusetts refused to grant an interlocutory injunction to prevent the building of the bridge at the outset. At the final hearing the court were equally divided, PARKER, C. J., and PUTNAM, J., being for the plaintiffs, and WILDE and MORTON, J. J., being for the defendants. The bill, therefore, was dismissed.

The case was then carried, by writ of error, before the Supreme Court of the United States, where it was twice argued on account of a disagreement of the court, and finally decided, in 1837, in favor of the proprietors of the new bridge. The judges were still divided, STORY giving a long and learned opinion in favor of the plaintiffs, in which THOMPSON fully concurred, and McLEAN, though he assented to the decision of the court on other grounds, taking the same view as STORY in the main question in the case: 11 Peters 420.

Mr. Fletcher conducted the defendants' cause with untiring zeal, industry and ability, before legislative committees, in order to secure a charter, and before the Supreme Court of Massachusetts.

We have given the history of this case at some length, both on account of the important principle it establishes and the weight it added to Mr. Fletcher's professional reputation. The principle settled by this decision, which has become a leading authority, is, that a legislative grant of a right to build a bridge a canal or a railroad, with the privilege of taking tolls, does not of itself create an implied contract that the legislature will not authorize another structure so near as to seriously impair or destroy the value of the original franchise.

Long before the case was ended, Mr. Fletcher was regarded as one of the leaders of the bar in Boston, in the same rank with Webster and Shaw, afterward Chief Justice, the counsel opposed to him in this case, and the other eminent lawyers of Massachusetts, whose reputation was then established.

Mr. Fletcher was for many years employed in a very large part of the most important cases which came before the courts in Boston, insurance, and other commercial cases, admiralty cases, real actions, cases of contested wills, and the construction of wills and equity suits. Indeed, he acted as counsel in all kinds of cases, except criminals, in which he very rarely took any part. Beside his business in the courts, he was very much consulted by banks, insurance companies, and men of wealth, though he was ready to counsel those in humbler circumstances.

Mr. Fletcher took a deep interest in the politics of the country, but he had no taste for public life. He could not, however,

resist the solicitations of his friends, and became a member of Congress in 1837, but in 1839 resigned his seat and resumed his professional practice.

In 1848 he was appointed an Associate Justice of the Supreme Court of Massachusetts. He did not retain the office many years, resigning it in 1853, to the deep regret of his associates on the bench, the bar and the public.

He again resumed the practice of his profession. But after this time he gradually withdrew from the bar, and for some years before his death, which took place June 21, 1869, he had given up all attention to legal business.

Judge Fletcher was never married. He acquired a handsome fortune, the bulk of which, by his will, after making suitable provisions for his relations and friends, and some charitable donations, he gave to Dartmouth College, where he was educated. One provision of his will deserves notice as illustrating his character. He directs the income of ten thousand dollars of the money given the college, as far as necessary, to be used in paying a prize of five hundred dollars biennially, for the best essay calculated to extend the practical influence of Christianity.

A few years before his death, Judge Fletcher gave his valuable law library to the University of Michigan.

Mr. Fletcher was endowed by nature with great advantages for a successful advocate, an agreeable countenance, expressive of intellect, integrity and sympathy, features finely chiseled, a clear and pleasant voice, and a form both graceful and commanding. His prepossessing appearance was a true key to his real character. He had a nervous temperament and delicate organization, scarcely capable to appearance of enduring the severe labors and exciting contests of the forum. His judgment was sound, penetrating, vigorous, and discriminating, always ready and reliable. He spoke with ease and fluency.

To other qualifications for his chosen profession, Mr. Fletcher added patient and unwearied industry, and the most careful study and training. Yet his devotion to his profession still left him time to gain a familiar and extensive knowledge of English literature. His faculties were well balanced and acted

in harmony. His great conscientiousness placed him above all professional trickery, and influenced him in all the relations of life. His manners were marked by urbanity and kindness, without the least display or assumption of superiority. His conversation was always agreeable, enriched by the stores of his learning and experience, and pervaded by playful humor.

As a counselor, he was careful and deliberate. He never, unless the occasion absolutely demanded it, would give a hasty opinion, but always examined and weighed all authorities and arguments bearing on both sides of any question submitted to him with judicial care and impartiality before giving his answer. Hence, his opinions, while at the bar, were highly prized. The length of time he often consumed before giving his answer to legal questions presented to him sometimes left the impression on careless observers that the movements of his mind were sluggish. Nothing could be more incorrect than this idea. His thoughts flowed in rapid succession, though his caution and conscience prevented him from pouring them out while crude and undigested.

Though his great success at the bar created a constant demand for his services, he was reluctant to engage in any jury trial, without investigating in the most thorough manner the facts and the law bearing on the case. His careful and critical research occasionally wearied his juniors, but he never lost a case from want of preparation. He knew beforehand his adversary's strongest and weakest points, and was always ready both for attack and defense.

Juries were charmed by his grace and dignity in addressing them, and his warm and earnest manner. He was always an agreeable and persuasive speaker, and, when occasion required, powerful and impressive. He disdained sophistry and used little mere rhetorical display. He urged and reiterated the arguments drawn from the evidence in the case, placing them in new points of view, and shedding new light on them at every repetition, till he was sure they were appreciated. His addresses to the jury were frequently enlivened by pleasant wit and humor; sometimes by trenchant sarcasm; and occasionally by appropriate anecdotes. His memory was remarkable for

accuracy and tenacity, so that everything bearing on the case he was trying, once known to him, was constantly and steadily in his recollection. This power aided him in examining and cross-examining witnesses, and he never failed to draw from them all that they knew material to the investigation. This wonderful memory enabled him to present to juries the salient points of the testimony before them with great effect.

Mr. Fletcher's arguments on questions of law before the court were forcible, well arranged, logical and exhaustive. He was never satisfied until he had become familiar with all that his law books could furnish him on the subject, and then, by patient thought, had formed a cogent chain of reasoning.

As a judge he was a great favorite with the bar. He tried cases like a master of the work; while his manner, though dignified, was courteous and encouraging. His opinions, as they appear in the report, are highly creditable to him as a jurist. They are sound, systematic and logical in reasoning, duly fortified with authorities and presented in a style of great clearness and precision. Without being loaded with a show of learning, they exhibit an intimate and exact knowledge of the subject under discussion.

Though Judge Fletcher, no doubt, had ambitious aspirations, yet his whole career, as already intimated, is marked throughout by a presiding conscientiousness. It was this, which, even when he had attained the highest rank in the profession, made him so exacting in his labors for his clients, as if he had not done enough while anything possible remained to be done. It was this same conscientiousness which made him so devout a Christian and dictated the prize proposed by his will, as if he felt that he was bound to do all in his power, even after death, to promote the general welfare of his fellow-men.

Before he went to Congress his mind had not been awakened to the real nature of American slavery. But witnessing the system in Washington, and seeing its effect on the character of slaveholders so impressed him that, after his final return to Boston, he became an outspoken and uncompromising enemy of the institution.