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RICHARD C. McMURTRIE.

Richard C. McMurtrie was born in Burlington County, New Jersey, on October 24, 1819. He died at Chestnut Hill, Philadelphia, on the 2nd of October, 1894.

Mr. McMurtrie was admitted to the Bar at Philadelphia on the 12th of November, 1840.

His character as a man and as a lawyer was most admirable and noteworthy; and it would seem to be useful to recall some of the causes, in which during his long professional life he was engaged, as in this way his characteristics may be best illustrated. Some of these cases were of high public concern, and many of them involved private interests of the greatest personal and pecuniary importance.

It may not be generally known that Mr. McMurtrie in his youth was engaged in a fugitive slave case. Quite early in his career he was retained by a southern gentleman to enforce the return of a fugitive slave. It is believed that this professional engagement did not coincide with Mr. McMurtrie's personal feelings, but he conceived it to be his duty to represent his client in the assertion of his legal rights, and, although the case was one which was opposed to the then prevailing public sentiment in the jurisdiction, where the question was determined, he did not hesitate to lend his fullest powers to the support of the contention, which he felt his duty required him to advocate.

In the prime of his life Mr. McMurtrie was engaged in very many important causes, of which three, perhaps, deserve special mention. The first is that of the City of Philadelphia v. Collins, 68 Pa. 106. It was a case really of great public moment. The particular suit, it is true, was whether a canal boatman, who had been hindered in his navigation of the canal by the city's action in drawing off the water of the Schuylkill for the purpose of securing power to the Fairmount

Water Works, could recover damages for the detention of his boat ; but the decision of this particular suit involved a consideration of the right of the city to take water of a navigable stream, not for the purpose simply of domestic use by riparian owners, but, under an agreement with the grantee of the State, in order to furnish power to pump the water into the reservoir of the water works. The contention *against* any such right on the city's part and for its liability for the wrong done was successfully supported by Mr. McMurtrie in the court below and (on a writ of error taken by the city) in the Supreme Court.

In the *Credit Mobilier v. Commonwealth*, 67 Pa. 233, Mr. McMurtrie twice secured a reversal of the decision of the Dauphin County Court, which had been in favor of the Commonwealth—the second time with an expression of opinion that binding instructions should have been given in favor of his client. The question was whether the Commonwealth was entitled to tax profits earned in building a railroad, and which, under the terms of an assignment of the contract, were to be divided among parties, who were stockholders in the *Credit Mobilier*. It was held by the Supreme Court that the profits so made were not those of the corporation and not, therefore, taxable as such.

In *Lewis, Trustee, v. United States*, 92 U. S. 118, the treasury of the general government was saved an enormous sum by the efforts of Mr. McMurtrie and his colleague in securing the priority given by the statute to debts due the United States, as against the estates of individual partners in the firm of Jay Cooke, McCullough & Company. To one of the departments of the government the importance of this victory cannot be overestimated ; and Mr. McMurtrie's forensic efforts by which this success was mainly secured were such as to display in their clearest light his great knowledge of law and his unsurpassed ability as a close and logical reasoner.

The foregoing have been selected as those causes, which brought Mr. McMurtrie most prominently before the profession and the public at large, and they illustrate better, perhaps, than can be done in any other way certain qualities of

his personal and professional character. In one or the other of these causes he showed himself to be a man absolutely fearless in the discharge of duty, capable of a most accurate construction of apparently conflicting public and private rights, one able to handle with ease the gravest questions between the State and its citizens, and, finally, one who had the capacity to determine, and enforce upon the attention of the court, the exact measure and just application of doctrines of the greatest importance both of equity and of commercial law, in a case requiring the most profound knowledge of both.

The readers of this magazine may well recall Mr. McMurtrie's contributions to its pages, and it is not necessary in this article to dwell upon his characteristics as a public-spirited citizen and a broad-minded and profound lawyer, which were displayed in these writings.

GEO. TUCKER BISPAM.

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The editors of the AMERICAN LAW REGISTER AND REVIEW cannot refrain from taking this opportunity of expressing their sense of loss in the death of Mr. Richard C. McMurtrie. As Mr. Bispham has said, Mr. McMurtrie was a great lawyer. Those of our readers who live far from the city where his life was spent, have only to read the articles which he published in this magazine to realize that fact, but it is of his personal and professional character, as seen from the standpoint of the younger members of the profession, of which we desire to speak. All young lawyers who came in contact with Mr. McMurtrie realized, in spite of a certain indifference in manner and bluntness of address, that he felt a sincere interest in the success of their professional labors, and in their acquisition of correct ideas on legal subjects. To those whom he knew were really interested in law as a science, he never failed to pay that compliment which is the highest of all compliments an old man can pay to a young one—the explaining of his own ideas and combatting the young man's opinion as if that opinion was as weighty as the decision of a learned judge. As a consequence of this characteristic, which was one of the

marks of his true simplicity of character, not only is his loss felt as a personal one by his contemporaries at the Bar, but even by those who were almost by a half a century his juniors.

It is therefore true that the influence of his professional life was not limited to those of his own age and generation, but extended throughout the profession from its oldest to its youngest member.

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After the announcement in the October number of the competition prizes offered by the *AMERICAN LAW REGISTER AND REVIEW* for the best annotation to be contributed to its pages, the attention of the Editors was called to the fact that the author of the annotation to which the first prize was awarded had drawn upon Mr. Bennett's note to his edition of Benjamin on Sales to such an extent as to deprive the annotation, in the judgment of the Editors, of that feature of originality which is essential to such a piece of work. While it is quite possible that the excessive use of the authority in question was the result of a misapprehension upon the part of the writer of the annotation with respect to the nature of the work required of him, it is nevertheless entirely clear in the minds of the Editors that no alternative is open to them but to modify the decision as announced and to award the first prize to Miss Mary Bartelme, whose annotation had secured the second prize.