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RUTHERFORD B. HAYES

IN WAR AND IN PEACE*

By GEORGE R. FARNUM

of Boston
Former Assistant Attorney General of the
United States

RUTHERFORD B. Hayes was a product of the Western Reserve of Ohio. His father had come from New England in 1817, traveling with his family in a covered wagon, and had settled in the town of Delaware, where he established himself in the business of distilling whiskey. Here, in the first brick house the community could boast, the future President was born on October 4, 1822, a few months after his father's death. A wealthy uncle came to the rescue of the family thus deprived of the breadwinner, with the result that Hayes, unlike Garfield, was never to experience the struggles and trials of early poverty. An Ohio district school, private institutions in Connecticut, and finally Kenyon College in his native state, provided his general education.

He left Kenyon with the settled determination to become a lawyer and promptly commenced reading law in a Columbus office. After struggling with Blackstone, largely on his own, for a little short of a year, he gave up in favor of classroom instruction, and entered the Harvard Law School. Here he enjoyed the rare good fortune of studying under Judge Story and Professor Greenleaf. His early impressions of these great teachers he thus recorded in his diary: "Mr. Greenleaf is very searching and logical in examination. It is impossible for one who has not faithfully studied the text to escape exposing his ignorance; he keeps the subject constantly in view, never stepping out of his way for the purpose of introducing his own experience. Judge Story, on the other hand, is very general in his ques-

tions, so that persons skilled in nods, affirmative and negative shaking of the head, need never more than glance at the text to be able to answer his interrogatories. He is very fond of digressions to introduce amusing anecdotes, high-wrought eulogies of the sages of the law, and fragments of his own experience. He is generally very interesting, and often quite eloquent."

The profound respect in which Story held Marshall must have been reflected in many a classroom allusion. As Hayes reported one, "Chief Justice Marshall was the growth of a century. Providence grants such men to the human family only on great occasions to accomplish its own great ends. Such men are found only when our need is the greatest."

From his two distinguished mentors Hayes received a lofty conception of the calling of a lawyer. He noted a remark of Story that "as a body, lawyers, so far as his observations extended, were more eminent for morality and a nice sense of honor than any other class of men," and as coming from Greenleaf the observation, "A lawyer is engaged in the highest of all human pursuits—the application of the soundest reason and purest morality to the ordinary affairs of life."

An anecdote that Story related must have had a profound influence on the ideals of young Hayes. Thus he took it down. "When a young lawyer," said Judge Story, "I was told by a member of the bar at which I practiced, who was fifteen years my senior in the profession, that he wished to consult me in a case of conscience. Said he: 'You are a young man and I can trust you. I want your opinion. The case is this:

I am engaged in an important cause; my adversary is an obstinate, self-willed, self-sufficient man, and I have him completely in my power. I can crush his whole case; it is in my hand, and he does not know it, does not suspect it. I can gain the case by taking advantage of this man's ignorance and overweening confidence. Now, the point is, Shall I do it?' I answered, 'I think not.' 'I think not, too,' he replied. 'I have determined to go into court tomorrow, show him his error, and set him right.' He did it. This was forty-five years ago, but I have never forgotten that act nor that man. He is still living, and I have looked upon him and his integrity as beyond all estimate. I would trust him with untold millions, nay, with life, with reputation, with all that is dear."

Hayes was admitted to the Ohio Bar in 1845 and hopefully hung out his shingle in Lower Sandusky (later Fremont). Clients, however, were slow in appearing and the young practitioner became despondent and restless. After remaining there for five years, which he later characterized as a waste of precious time, he removed to Cincinnati and made a new start. There he quickly achieved a considerable success, curiously enough for one of his type and temperament, largely in criminal cases. His most notable success was in the defense of a repulsive creature, Nancy Farrer, accused of wholesale poisonings. Brought to trial for the murder of her last victim Hayes rested her defense principally upon a plea of insanity. After deliberating for three days the jury returned a verdict of guilty, which Hayes succeeded in upsetting in the Supreme Court. He closed the record with the

* This is the ninth in a series of biographies of eminent soldier-lawyers written by Mr. Farnum for the JOURNAL.

diary entry, "She will now go to a lunatic asylum and so my first case involving life is ended successfully. It has been a pet case with me; has caused me much anxiety, given me some prominence in my profession, and indeed was the case which first brought me practice in this city."

In 1858 he was elected City Solicitor, and at the close of the following year, which marked the end of ten years in Cincinnati, he modestly summed up his professional accomplishments "without any extraordinary success, without that sort of success which makes men giddy sometimes, I have nevertheless found what I sought—a respectable place. Good!"

With the coming of the fateful year of 1861, Hayes put aside all other preoccupations and turned his thoughts to soldiering. As a boy he had dreamed of the high drama and romantic glamor of war. The Mexican embroglio had beckoned him to exploits of valor and the experience that might have seasoned him for the epic conflict ahead. Though confiding at the time to his diary that "I have no views about war other than those of the best Christians, and my opinion of this war with Mexico is that which is common to the Whigs of the North," this youth of twenty-four whimsically conceded, "My philosophy has no better principle than that of the old woman who, while she mourned over her neighbor's calamity, was yet rejoiced to be able to witness the conflagration." However, destiny intervened in the form of a throat affection and regretfully he abandoned his ambition to serve.

Secession came, the guns commenced firing at Sumter, Lincoln called for volunteers and Hayes enlisted "for the duration," declaring to a friend, "I would prefer to go into it if I knew I was to die or be killed in the course of it, than to live through and after it without taking any part in it." Though entirely without military training or experience, he was promptly commissioned major in the 23rd Ohio Infan-

try under the colonelcy of the famous W. S. Rosecrans and the lieutenant-colonelcy of his friend Stanley Matthews, afterwards Justice of the United States Supreme Court.

The sequel proved Hayes to be an intelligent and brave officer, inspired by a serious devotion to the cause he espoused. From beginning to end he participated in more than fifty engagements, large and small. Through successive promotions he attained the rank of major general.

At South Mountain, in the course of an assault against a strongly fortified hill, Hayes, though severely wounded, continued to direct operations until he found himself lying helpless between the opposing lines. From this perilous predicament he was ultimately rescued and carried off the field. Of the experiences of this bloody day Hayes recorded one of those little incidents which help to relieve the grim annals of the battlefields: "While I was lying down I had considerable talk with a wounded Confederate soldier lying near me. I gave him messages for my wife and friends in case I should not get up. We were right jolly and friendly. It was by no means an unpleasant experience."

As brigade commander he fought with Sheridan in the Valley. At Winchester, while Crooks' corps in which he served was held in reserve waiting orders, Crooks and Hayes and their staffs dallied of a beautiful September day in a clover field. Thus it is recorded these men with bloody work impending whiled away the time in light and cheerful banter. Crooks smilingly complained, "I cannot find a four-leaved clover, so I suppose we shall have to go in." Hayes rejoined, "I saw the moon over my left shoulder, so I suppose we must go in." A staff officer volunteered, "One of my socks is on wrong side out, so I suppose we must go in." And in they went, and many a good man and true never came back to tell the tale and rejoice in the laurels which were garnered. None fought with more gallantry that day than Hayes, who in the

thickest of the fight seemed to have a charmed life.

In 1864 Hayes received the Republican nomination for Congress from his home district. Importuned by a friend to come back and participate in the campaign, he wrote from Sheridan's camp, "Your suggestion about getting a furlough to take the stump was certainly made without reflection. An officer fit for duty who at this crisis would abandon his post to electioneer for a seat in Congress ought to be scalped. You may feel perfectly sure I shall do no such thing." Hayes was elected notwithstanding, and that letter earned him big dividends in the years to come.

With the end of the war Hayes declared, "I intend to quit public life as soon as my term in Congress ends." Therein he showed himself a poor reader of his own horoscope. In 1866 he was reelected to Congress but resigned the following year upon his nomination as Republican candidate for Governor of his state. In the election he was successful and succeeded himself two years later. Refusing to break the third term precedent, he declined a renomination in 1871. Four years later, however, he was back again in the political lists as a gubernatorial candidate, confiding to his diary, "Several suggest that if elected Governor now, I will stand well for the Presidency next year. How wild! What a queer lot we are becoming!" He was still misreading his stars!

In the year 1876, the Republican National Convention was held in his own city. Happy augury! Though the "plumed knight", James G. Blaine, as Robert G. Ingersoll characterized him in his memorable nominating speech, was a distinct favorite, on the seventh ballot Hayes received the nomination. "Friday has been a lucky day for me before," he declared.

The ensuing campaign with Tilden and the contested election constitute one of the most dramatic and important episodes in American political history. Of the creation of the extraordinary electoral commission
(Continued on page 474)

Current Events*(Continued from page 424)*

unconfined and irresponsible power, whether in private or public hands.

"The last decade of Justice Brandeis' life was saddened. Relapse of whole peoples, under Fascist influence, into a course of torment and plunder deeply offended his sense of justice, as it offends that of all right-thinking men."

Rules on Law List Standards

THE SPECIAL COMMITTEE on Law Lists of the American Bar Association has during the past year carefully reviewed the Committee's records with respect to matters arising under Rules and Standards 3 (b) and 3 (c) and has made an investigation of the practices of the various publishers in order to determine whether any violations of the Rules have existed. As a result of this investigation and the information obtained the Committee has compiled interpretations with respect to both Rules 3 (b) and 3 (c). These interpretations present the opinion of the present committee and also confirm and restate the action of previous committees as reflected by the Committee's records.

A codification of many other past and current rulings and actions of the Committee interpreting the Rules and Standards is in the process of preparation. It is hoped this compilation will be completed before the end of the year and will be available for distribution in printed form.

The Committee believes this codification will be helpful to publishers of law lists and if publicity may be obtained relative thereto in various legal publications that the members of the profession will have a better understanding of the law list problems.

Interpretations

Rule and Standard 3 (b): No certificate of compliance shall be issued to the publisher of any Law List or continue unrevoked which shall be conducted upon a basis which does not tend to promote the public interest, or which employs a practice not in

accord with a high standard of business conduct.

1. A violation occurs when any publisher fails to disclose any material fact or makes any statement or does any act which causes a listee or prospective listee to be misled as to any material fact pertaining to the list.

Rule and Standard 3 (c): No certificate of compliance shall be issued to the publisher of any Law List or continue unrevoked if the price for representation, or listing therein, is not uniform within reasonably prescribed areas.

1. "Price for representation or listing" means the charge made for a copy of a law list or the charge made for a listing therein.

2. A "reasonably prescribed area" consists of a city, town or village, including the contiguous territory using its post office address.

3. The "price for representation or listing" in a law list or for a copy of the list is uniform within a reasonably prescribed area when a consistently standard charge is made to each listee in such area for any of the following:

- (1) Listing.
- (2) A copy of the list.
- (3) Space in excess of free space, provided that any free space must be available in a consistently standard manner to all listees.

4. A violation occurs when any publisher gives without charge to any listee in a prescribed area any listing space or a copy of the list unless all listees in such area are accorded an equal opportunity for similar treatment.

5. No violation occurs when a publisher sells his list to less than all of the listees for a prescribed area if the list is available to all such listees at the same price, and if listing is not contingent on the purchase of the list and if all copies of lists distributed to listees in such area are paid for at a uniform rate.

6. It is a violation for any publisher by any means to rebate or cancel any part of the charge to a listee for a law list or listing therein unless a similar adjustment is made to all listees in the same prescribed area.

Rutherford B. Hayes*(Continued from page 436)*

Senator Morton declared in Congress, "There are no analogies for it in our Constitution or in our laws or in our history." By this means, however, the controversy was peacefully resolved, albeit not to the satisfaction of everybody in the land. Hayes eschewed any public discussion of the decision and, whatever the real merits of the matter may be, he never entertained any doubt in his own mind as to the legality or the fairness of the final result.

At the end of his term he adhered to the inflexible determination expressed during the campaign not to seek reelection, and retired to private life. His record had been a notable one. He did much to abate the sectional and race bitterness which the war and the blunders of reconstruction had engendered. He reduced the financial chaos to order. He relieved the acute unemployment. He added impetus to the movement for reform in the civil service. And, be it added, all these things and more he accomplished, as he said, "by measures and a policy which were strenuously opposed in whole or in part by most of the powerful leaders of both political parties."

The thirteen years still vouchsafed him were spent on his estate "Spiegel Grove" near Fremont. His days were preoccupied with useful and benevolent activities, including the presidency of the National Prison Association. He watched social tendencies and political developments with keen interest. Toward the end he passed this verdict on conditions. "The burning question of our time in all civilized countries is the question of wealth and poverty, of capital and labor. Small progress has yet been made toward its solution." Alas, a half century later the problem remains unsolved!

After a brief illness, on the night of January 17, 1893, in the words of a newspaper correspondent, "the faithful heart that had beaten high in battle grew faint and failed, and then the white stars watched until morning."