

Chapter 1 : The Leaders of the Old Bar of Philadelphia - [PDF Document]

*The Leaders of the Old Bar of Philadelphia* Author(s): Horace Binney Source: *The Pennsylvania Magazine of History and Biography*, Vol. 14, No. 1 (Apr., ), pp. Published.

Excerpt from *The Leaders of the Old Bar of Philadelphia* IT may be thought that I select a very narrow and local theme, when I attempt to sketch some of the personal and professional characteristics of a lawyer of the Philadelphia Bar, who was little more than a lawyer, though he was a great lawyer, and who culminated in his profession more than sixty years since. But I adopt the theme, in some degree, because it is narrow and local, and is therefore more within my compass; and because it is beyond the memory of most of the living, and therefore, in the advantages of personal recollection, is pretty much an octogenarian perquisite of my own. What I write upon the subject, cannot be of any general interest. It is too remote, and too limited. It wants the essential, and, at this day, all-engrossing attractions of the new and the various or diversified; and it will want, what alone can supply the place of these attractions, a treatment that is a substitute for the subject. But it is a debt that I would pay; the joint debt, perhaps, of several, which has fallen, according to law, upon the longest liver; and I would pay it for them and for myself. A general interest in the transaction is therefore comparatively indifferent to me. I expect, consequently, that no one out of the Pennsylvania Bar, and very few who are not of the Philadelphia Bar, will look at it; and, except to this Bar, I offer neither invitation nor inducement to put aside for it, even for an hour, the more stimulant interests of the day. Has not the modern race of lawyers everywhere undergone some change from the old times, by rising or falling into the Athenian category, the very large class of those who spend their time in telling or hearing some new thing? There are, at least, professional tendencies that way, which make them less and less curious of anything that savors of a former age. Most of the old limitations have been abridged, and the exceptions to them cut away, to save the labor of looking back. Old authorities no longer divide with old wine, the reverence of either seniors or juniors. Most of the old law books, that used to be thought almost as good a foundation for their part of the truth, as the prophets and apostles are for the whole truth, are taken away, I rather think, from the bottom of the building, and thrown into the garret. That Littleton upon whom Coke sits. About the Publisher Forgotten Books publishes hundreds of thousands of rare and classic books. Find more at [www.ForgottenBooks.com](http://www.ForgottenBooks.com). Forgotten Books uses state-of-the-art technology to digitally reconstruct the work, preserving the original format whilst repairing imperfections present in the aged copy. In rare cases, an imperfection in the original, such as a blemish or missing page, may be replicated in our edition. We do, however, repair the vast majority of imperfections successfully; any imperfections that remain are intentionally left to preserve the state of such historical works.

*The Leaders of the Old Bar of Philadelphia [Horace Binney] on [blog.quintoapp.com](http://blog.quintoapp.com) \*FREE\* shipping on qualifying offers. This work has been selected by scholars as being culturally important, and is part of the knowledge base of civilization as we know it.*

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. This content downloaded from Of the primitive Bar of the Province, we know nothing ; and next to nothing of the men who appeared at it from time to time, up to the termination of the Colonial government. The statement of Chief-Justice Tilghman, in the Bush Hill case,<sup>2</sup> reveals to us all we know, and all that probably we can ever know, in regard to the subject ; for, as the grand son of Tench Francis, who was Attorney-General in , and connected by marriage and association with the most eminent families of the Bar, he knew as much of the former Bar as any of his contemporaries, and they have all long since departed without adding anything to what he left. There were never wanting men of strong minds, very well able to conduct the business of the Courts, without much regard to form. Such in particular, was Andrew Hamil 1 In the first edition of Mr. This interesting work has now become so scarce that we feel warranted in republishing it, adding thereto portraits of the gentlemen of whose personal and professional life he writes.? Francis, and the father of the testator ; but Mr. Francis appears to have been the first of our lawyers who mastered the technical difficulties of the profession. His precedents of pleadings have been handed down to the present day ; and his commonplace book, which is in my possession, is an evidence of his great industry and accuracy. Chew succeeded to Mr. Francis, in the office of Attorney-General, and in professional eminence. Chew remained at the Bar until , and was Chief Justice of the Supreme Court from that time until the former order of things passed away ; and although there are a few other names, at the same epoch, to be added to these three, yet the narrowness of the tradition, taken altogether, the constitution of the Provincial Supreme Court, in which the Chief Justice was commonly the only lawyer, the total absence of every note of judicial decision until , and the all but total until after , had caused that Bar to disappear from nearly all memoirs at the beginning of the present century ; and therefore, in the middle of the fourth generation since the Revolution, I have taken the liberty of referring to the earliest Bar under the new order of things, as being the Old Bar of Philadelphia. From that time to the present, the Bar of this City has been an identity, superintended by competent and frequently very able judges, whose proceedings have been vouched by authoritative reports, and having, at all times, among its leaders, men of legal erudition and ability. It is not, however, to ignore the primitive Bar, so much as to give its due precedence to the first bar of the Commonwealth as a scientific Bar, and as the true ancestry of the present Bar, that I have used the language in the title-page. The description of the subjects of sketch as the leaders of the Bar, may appear to be too definite ; but although definite, it is not meant to be exclusive. It must not imply that there were no others who held the position of leaders. The three in particular were the seniors, by a few years, of all the Bar, and were generally the most prominent in the professional as well as in the public eye. My own freer association with them has induced me to select them from the body, and to pay to them a debt which, though it may have too little dignity to be called a debt to the law, is a debt or duty to their learning and ability in the law. In the new order of things introduced by the American Revolution, these gentlemen largely contributed to establish the reputation of the Bar of this City. Their professional example and learning were of great and extensive use in their day, and ought to be handed down by something better than such fugitive pages as these. A lawyer who has passed his youth and early manhood in the society of such men, is the happier for it through life, and especially in old age. On all occasions of vexation or weariness with things near at hand, he can escape at pleasure into the past of these men, which was full of their influence, full also of judicial independence and dignity, This content downloaded from It may be thought that I select a very narrow and local theme, when I attempt to sketch some of the personal and professional characteristics of a lawyer of the Philadelphia Bar, who was little more than a lawyer, though he was a great lawyer, and who culminated in his profession more than sixty years

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Most of the old law books, that used to be thought almost as good a foundation for their part of the truth, as the prophets and apostles are for the whole truth, are taken away, I rather think, from the bottom of the building, and thrown into the garret. That Littleton upon whom Coke sits, or seems to sit to the end of things, as Carlyle says, has fewer than of old, I suspect, to sit with him for long hours to alleviate the incumbrance. For the most part, as I am told, the incumbent and the succumbent lie together in the dust, which uppermost not many care to know. All the Entries, Brooke, and Coke, and Levinz, and Rastall, and the others, have made their exits some time ago, and will not appear again before the epilogue. Almost any law book that is more than twenty-one years of age, like a single lady who has attained that climacter, is said to be too old for much devotion. Indexes, Digests, and Treatises, which supply thoughts without cultivating the power of thinking, and are renewed with notes and commentaries de die in diem, to spare the fatigue of research, are supposed to be the best current society for student as well as for practitioner. Such are the rumors which float upon the air. Such is the apprehension. I ought therefore to be, and am, very shy about writing anything upon an antiquated subject, with even an apparent direction to this body of men generally; and therefore I repeat that I do not expect the perusal of what I write, either in regard to the very strong and accomplished lawyer whose name is at the head of my page, or of the two whose names are to follow, by any but a few of the lawyers of the This content downloaded from He may be led, perhaps, to seek an antidote for the appre hension ; and I can assure him that he will have no difficulty in finding it, if he " seek diligently. Lewis lived, or rather in which he came to adult age and charac ter in his profession, there was no crowd of cities in our country to prevent a marked local reputation at the Bar of a particular city, from passing freely through the length and breadth of the inhabited land ; or from being enlarged by the mist of distance, as is universally the case in such a condition of society. It happened in that day, and prob ably from this circumstance, that from Maryland to Massa chusetts, there was, in several of the States, some one name at the Bar which, in the view of persons removed a few hundred miles, loomed very large, and overshadowed all other lawyers in the same State. In one or two of the instances, the shadow disappeared altogether in coming up to the object; for, at that point, names of less general mark were found to be free from all eclipse. In all, perhaps, the shadow was, by the same ap proach, reduced to a penumbra. Parsons, of Boston, was regarded, in Philadelphia, as the first and comparatively the only great lawyer in Massachusetts. Dexter, who was also a great lawyer, was considered his equal in intellectual powers, as indeed he was equal to any one ; but in maturity and fulness of legal learning, Parsons was held to be the first. The same, perhaps, may be said in regard to Mr. Martin and one or more of his brethren at This content downloaded from Nearly the same of Mr. Lewis was the senior of the Philadelphia Bar, and was in reality a very able as well as eminent lawyer, his reputation was, from accidental circumstances, more tran scendent abroad than at home. It was very great at home ; but there was at least one at his side who, in some respects, stood out in a clearer light before the members of his own Bar, and one or two others who were near to them, by what Iago calls " the old gradation, where each second stood heir to the

first. Such a man as Richard Harison would have been deemed a great lawyer anywhere. Van Vechten, of Albany, of the old Dutch stock, stood like a sea-wall of the old country, against the irruption of any bad law into the causes he sustained. But both these gentlemen were better known at home than abroad. For large and original speculation, Hamilton was a greater lawyer than either of them ; but in legal erudition, perhaps, not the equal of either. I am not aware, therefore, of anything, accidental or otherwise, which caused any one name at the Bar of New York, in the last century, to loom so large, in the distance, in its professional dimensions, as to prejudice the pretensions of other names at the same Bar. This distant reputation was by no means a decisive test of superiority at the Bar. It proceeded as often from great public interest in the questions with which the advocate had This content downloaded from There is some proof of this in the reputation of Andrew Hamilton, of whom a word from Chief-Justice Tilghman has been said in the Preface. He was not a scientific or thoroughly-trained lawyer ; but he gained almost unlimited fame by his defence of John Peter Zenger, in the Supreme Court of New York, upon an information of libel, in the year It was the spirit of Independence, even at that early day in the Colonies, that lifted him up to general admiration, and to professional distinction. And yet his argument, which we have, it is said, from his own pen, treats of no such topic. He merely claimed to liberate the jury from the authority of some disagreeable law, and of an obnoxious Court holding its appointment from the Crown. No lawyer can read that argument without perceiving, that, while it was a spirited and vigorous, though rather overbearing, harangue, which carried the jury away from the instruction of the Court, and from the established law of both the Colony and the Mother Country, he argued elaborately what was not law anywhere, with the same confidence as he did the better points of his case. It is, however, worth remembering, and to his honor, that he was half a century before Mr. Erskine, and the Declaratory Act of Mr. Fox, in asserting the right of the jury to give a general verdict in libel as much as in murder ; and, in spite of the Court, the jury believed him, and acquitted his client. I was familiar with the praise of Mr. Parsons, in Massachusetts, while I was receiving my education at Cambridge, and am still thankful for the opportunity I enjoyed of witnessing, in the Supreme Court of that State, in a session at Cambridge, for the County of Middlesex, in or , an exhibition of intellectual gladiature of the brightest kind, between Parsons, as counsel for one Claflin, indicted of blasphemy under a statute of Massachusetts, and James Sullivan, the Attorney-General of the State. The wide reputation of Mr. Parsons was in no respect accidental. The blasphemy I will not repeat, but it gave Mr. Parsons an occasion or opportunity of showing up some of the supposed phases of Calvinistic theology, or, more accurately, some of the opinions or statements of writers supposed to be of that school, which gave countenance, he thought, to what was charged against Claflin as blasphemy, and were, if anything, rather worse. I supposed, at the time, that there was no other help for Claflin; and I dare say that, bad as any blasphemy may be, there may be found in some extreme views of very different schools of theology, something quite as bad. But the marvel was, to see the promptness and acuteness with which Parsons repeated, explained, applied, and enforced his citations in the best form for his client. My imagination fired at the spectacle of this omnis homo, as well furnished in theology as in law, and of as much repute for Greek as for English, So cratic in his subtlety, and not otherwise in his careless dress, his purple Bandanna handkerchief curled loosely over his neckcloth, and his reddish-brown scratch, something awry,? It was a glory of the Bar. But the stiff old Statute was too much for him. Barring the rope, I should have been willing to sit there for two, not for blasphemy, nor alongside of Claflin, but to hear a repetition of Parsons. When I returned to Philadelphia, I was not surprised at the reputation which there surrounded the name of Theophilus Parsons. William Lewis was a native of Chester County, in the State of Pennsylvania, where his birth took place about the year Both of these facts, however, rest upon early report, rather than upon authentic record. His condition in early life was that of the sons of country people generally, at that time. He used to say, as I have heard, that he This content downloaded from His early education was no doubt imperfect ; but by the force of strong native powers he acquired, pretty much by self-teaching, a good English education ; and while he was studying law in the office of Nicholas Wain, an eminent Quaker and highly respectable lawyer, he mastered enough of Latin and French to read the old Entries and Reports, and he read them faithfully. His literary tincture was light. I rather suspect that it did not amount to what may be called the middle tincture, now pretty common among us ; but all his life, after I knew him, he was something of a purist

in language, and very exact in pronunciation, according to the best standards ; and, with some satisfaction, would correct an error in either respect by an educated man, which his ear detected at the Bar. He must have read law intensely at some period of his life, for no man of his day knew the doctrines of the common law better. He came to the Bar in Philadelphia before the adoption of the Constitution in , as his friend, Edward Tilghman also did. The books in the office of the Prothonotary of the Supreme Court, of that early day, and in that of the Common Pleas of Philadelphia County, from which Mr. Williams has made his printed Catalogue, cannot be relied on as evidence of first admissions to the Bar. Richards, that he was in practice at the Bar in , which was immediately after his return from the Temple. Lewis, by the same Catalogue, was admitted in September Term, , the first Supreme Court which was held by Chief-Justice McKean, after his appointment and that of his associates, in July and August, , under the new Constitution, and was put to flight, in the same month, by the entry of the British into the City.

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