

**JOEL PARKER: SOMETIME CHIEF-
JUSTICE OF THE STATE OF NEW
HAMPSHIRE, AND ROYALL
PROFESSOR OF LAW IN THE LAW
SCHOOL OF HARVARD UNIVERSITY**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649191550

Joel Parker: sometime chief-justice of the state of New Hampshire, and Royall Professor of Law in the Law School of Harvard University by George S. Hale

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

GEORGE S. HALE

**JOEL PARKER: SOMETIME CHIEF-
JUSTICE OF THE STATE OF NEW
HAMPshire, AND ROYALL
PROFESSOR OF LAW IN THE LAW
SCHOOL OF HARVARD UNIVERSITY**

JOEL PARKER:

SOMETIME CHIEF-JUSTICE OF THE STATE OF
NEW HAMPSHIRE,

AND

ROYALL PROFESSOR OF LAW IN THE LAW SCHOOL OF
HARVARD UNIVERSITY.

FROM THE AMERICAN LAW REVIEW FOR JANUARY, 1876.

By George Silsbee Hale.

CAMBRIDGE:
PRESS OF JOHN WILSON AND SON.

1876.

~~II. 564~~

~~17372.11~~ 1878, Sept. 20.

NS 11986.3

From the
President's office.

JOEL PARKER.

JOEL PARKER died at his residence in Cambridge, Mass., on the seventeenth day of August, 1875. He was born in Jaffrey, in the State of New Hampshire, on the twenty-fifth of January, 1795, the sixth in descent from Abraham Parker, supposed to have been a native of Marlborough, in Wiltshire, England, who was admitted a freeman in Woburn, Mass., in 1645. His father, Abel, who was born in Westford in 1753, having removed to Pepperell, was enrolled, in 1774, in Capt. John Nutting's company of minute-men, attached to the regiment of Col. William Prescott, and marched with his company, on the nineteenth of April, 1775, to meet the British troops on their expedition to Concord. He was too late to share in the glory of that day; but upon his arrival at Cambridge enlisted in the same company under Col. Prescott, to serve until January following, and was stationed at that place. He was not included in the troops detailed for the occupation of Bunker's Hill; but, by giving his ration of spirit to a comrade, obtained by exchange a share in the battle, and there received a severe wound in the leg from a musket-ball, which his descendants still preserve. He served during the war, also, in New York and Rhode Island, and held commissions as an ensign and lieutenant.

He married, Oct. 14, 1777, Edith, daughter of Jedediah Jewett, of Pepperell; and in May, 1780, removed to Jaffrey, N. H., "settled in the unbroken forest, and cleared his farm himself, with such assistance as he could obtain." To use his own words, "Thus ended my military career, as on the fifth day of May, 1780, I moved into this town, which prevented my pursuing my natural inclination, which was that of a soldier;" a martial inclination of which his son's indisposition to retreat from a contest seems a natural inheritance. Here he resided for more than half a century. "He was a tall, stately man," writes a surviving contemporary of his son, "grave in deportment, and commanded my respect not more on account of his talents and moral worth than for his lameness, occasioned by a musket-ball which was received by him at Bunker Hill."

Abel Parker held many offices of dignity and confidence in the town and state; was for twenty years a Judge of Probate; sat in the convention which adopted the Federal Constitution; voted for John Quincy Adams in the electoral college of 1824; and died full of years and honors in 1831, leaving four sons, the survivors of nine children, — Edmund, who became a Judge of Probate for Hillsborough County; Asa, who held the same office for Cheshire County; Isaac, a prosperous and respected merchant in Boston; and his youngest child, the subject of this sketch. Mrs. Parker was a deeply religious woman, of vigorous intellect and marked character.

Such was the stock from which Joel Parker sprang, and such the domestic influences under which he was nurtured. After studying in the Academy at Groton, where the late President James Walker was one of his schoolmates, he entered the sophomore class at Dartmouth College in February, 1809, at the early age of thirteen, and graduated in 1811, not yet seventeen years of age, small of stature, but tenacious of his dignity. "Well, my little fellow," said the stage-driver of the coach which brought him from Hanover, "I suppose we must take you for half-fare." "I shall pay the whole or none," was his reply. The Rev. Dr. William Cogswell, and Daniel Poor, the missionary of Ceylon, Amos Kendall, Chief Justice Shepley, of Maine, and Judge Nathaniel Wright, of Cincinnati, were among his classmates. After his graduation he studied law at Keene, and with his brother Edmund at Amherst, and entered the bar of Cheshire County, at the October term in 1817, at the former place, where he at once engaged in practice.

In the year 1821, contemplating a change of residence, he visited the West,¹ and was admitted to practice in the Circuit Court of the United States at Columbus, Ohio, in January, 1822; but, fortunately for his native State, returned in the latter year, and devoted himself assiduously to his chosen pursuit.

Free from domestic cares, affianced only to his profession, he early gained an honorable position by the steady exercise of natural abilities well adapted to its pursuit. He was industrious,

¹ The passport, of which we append a copy, with which the young lawyer set out on his journey, while it contains a personal description of the subject of our sketch, also furnishes an interesting illustration of the change which less than fifty-five years have wrought in the social relations of the different States of the Union. The least

thorough, minute, painstaking, cautious, persistent, and untiring. "Judge Parker's mode of practice in the trial of cases," writes an early professional associate, who still enjoys a ripe and honored age, "to take down the testimony in full of the witnesses in writing, and to cross-examine them at great length as to all the circumstances they might know relative to the case, contributed greatly to change the previous practice of the witness's first telling his story of what he knew, followed by a brief cross-examination, with only a few notes, made by the counsel, of the leading points of the testimony."

A slight circumstance, indeed, to particularize in the management of cases, in these days of note-taking and stenographers, but illustrative, nevertheless, of the times, and of the introduction of a more thorough and laborious mode of practice.

adventurous visitor to Alaska would not think to-day of invoking protection or recommendation in this form:—

STATE OF NEW HAMPSHIRE.

BY HIS EXCELLENCY SAMUEL BELL, *Governor and Commander-in-Chief of the said State of New Hampshire, one of the United States of America.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING.

KNOW YE THAT Joel Parker, Esq., the bearer hereof, of the age of twenty-six years, of the height of five feet and nine inches, of light complexion, brown or dark hair and blue eyes, a native citizen of the United States, and an inhabitant of the town of Keene, in this State, is a person of fair reputation, and respectable standing in society.

[SAMUEL BELL.]

The said Joel Parker being about to depart from this State, and to travel to and visit other parts and places,—

IT IS DESIRED, That all within the said United States of America, and that all foreign States, potentates, and powers, and all others in every quarter of the world who may see these presents, and whom it may concern, do permit him to pass safely and freely without giving or permitting to be given to him any hindrance or molestation in his voyage or voyages, or in his journeyings or travels by land, while pursuing his lawful business and affairs; but, on the contrary, affording all requisite protection and assistance, as would be granted and afforded here to persons coming in similar manner recommended to protection and assistance.

IN TESTIMONY WHEREOF, We have delivered to him this PASSPORT, signed by our own hand, with the seal of our said State annexed, and countersigned by our Secretary of said State.

Given at Concord this seventh day of June, anno Domini one thousand eight hundred and twenty-one, and in the forty-fifth year of the Independence of the United States of America.

By his Excellency's command.

SAM. SPARRHAWK, *Secretary.*

There was nothing in the place or time to make his early career eventful. In 1830 he added to his reputation by assisting in the defence of Daniel H. Corey for the murder of Matilda Nash, and published a report of the trial. Corey was acquitted on the ground of insanity; a subject of which Judge Parker afterwards, in the interesting case of Prescott, — tried before him in 1834 for the murder of Mrs. Cochran, and executed under circumstances which left grave doubts of the justice of the punishment, — showed a wise appreciation, in advance of the public feeling, and in which he manifested his interest as one of the early movers in the establishment of an asylum in New Hampshire for the insane.

He was a member of the Legislature of New Hampshire in 1824–26: and the Hon. George W. Nesmith, who sat with him in this body, and afterwards upon the bench over which he had presided, remarks that his "recollection as to the standing of Judge Parker as a legislator is, that he seldom spoke without previous study or diligent investigation of the matter under discussion; and that he was learned and useful and uniformly able in debate, and his remarks were generally listened to with great favor."

"In 1832 Mr. Parker brought forward a bill prepared by himself, abolishing the then existing Court of Common Pleas, and allowing one judge to preside at the trial of civil cases, and in all criminal cases except murder and treason. This bill was also the foundation of chancery practice in this State [New Hampshire]. The strongest objection made to it arose from the fact that it conferred too much labor and responsibility upon one judge to carry through a term alone. The Committee on the Judiciary, which had the charge of the bill, refused to report it until sanctioned by Chief Justice Richardson in advance. His assent was obtained in writing, and the Judiciary Bill became a law."¹ At the same session, one of the judges of the Superior Court of Judicature, the highest judicial tribunal of the State, was removed from his office upon an address of the legislature; and in January, 1833, Mr. Parker's

¹ "Mr. Bell remarked," says Judge Nesmith, speaking of a trial where Parker was counsel, "that he was sustained in one of his legal positions by a case in the New York Reports that went *in quatuor pedibus* in his favor. 'Of course,' said Parker, 'that must be a beastly case.' — 'Yes,' said Judge Richardson: 'you had better keep clear of the legs of that creature.'"

townsman, Samuel Dinsmoor, then Governor of New Hampshire, appointed him, at the age of thirty-eight, to fill the vacancy. This office he held till 1838, when, on the death of Chief Justice Richardson, he became his successor. Judge Parker's opinions are contained in thirteen volumes of the New Hampshire Reports, from the 6th to the 18th inclusive, commencing with the case of *Leeds v. Sayward*, 6 N. H. 83, and closing with that of *Crane v. Ingalls*, 18 N. H. 613. During this period the reports were prepared by the members of the court, then consisting of four judges, — both judges and reporters; — for “the gaunt rigor of democratic economy deprived the bench in that State of a natural adjunct.” And we find a silent testimony of the industry and fidelity with which he performed his labors in the large proportion which fell to his share. Of the twelve hundred and forty-four cases reported during this period, and comprising seven thousand four hundred and fifty pages, five hundred and ten, covering three thousand three hundred and fifty-six pages, contain opinions from his pen. So lies buried, we had almost said, the labor of our great judges; but it is not buried, or, if buried, it is but to spring up and bear fruit in the harvest ripened under the “gladsome light of jurisprudence.” If among these cases there are many whose interest terminated with the execution, that “fruit of the law” which they bore to the successful party, there are yet many which have contributed to promote justice, to elevate the community, whose rights they declared and whose conduct they controlled, and which still exercise an influence over a vast and increasing population who accept it unconsciously of its source. Judge Parker's opinions are characterized by independence, thorough research, and careful study; not wanting in a quiet confidence springing from self-reliance, and from a consciousness of the labor and investigation which fortified it. Among these may be mentioned, as touching upon subjects of permanent interest and illustrating his intellectual qualities and habits, the early case of *Britton v. Turner*, 6 N. H. 481, in which by a clear and well reasoned statement he lays down an equitable rule on a much-vexed question in reference to the liability on a special contract for labor, not completed according to its terms; holding substantially that the laborer is entitled to recover, not upon the contract, but for the benefit actually enjoyed by the other party, not exceeding the contract price, but is liable for all the damages by